



2026:CGHC:20648

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1294 of 2025

Tulsi Sharma S/o Late Suman Sharma Aged About 32 Years R/o Baidam, P.S.- Tantijhariya, District- Hazari Bhag (Jharkhand), Present Address Taraimal, P.S.- Punjipathra, District- Raigarh C.G.

--- Appellant

versus

State of Chhattisgarh Through Officer-Incharge, Police Station- Rajpur, District- Balrampur-Ramanujganj (C.G.)

--- Respondent

For Appellant	:	Mr. Abhinav Dubey, Advocate
For State	:	Mr. Soumya Rai, Deputy Government Advocate

CRA No. 1414 of 2025

Bablu Sonwani S/o Late Premsai Sonwani Aged About 24 Years R/o Village Parsotampur Saraidih, Police Station Dhourpur, District Balrampur Ramanujganj Chhattisgarh

---Appellant

Versus

State of Chhattisgarh Through The Incharge, Police Station, Rajpur, District Balrampur Ramanujganj Chhattisgarh

--- Respondent

For Appellant	:	Mr. Bharat Rajput, Advocate
For State	:	Mr. Soumya Rai, Deputy Government Advocate



2026:CGHC:20648

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per, Ramesh Sinha, Chief Justice

04/05/2026

1. Heard Mr. Abhinav Dubey, learned counsel for the appellant in CRA No.1294 of 2025; Mr. Bharat Rajput, learned counsel for the appellant in CRA No.1414 of 2025. Also heard Mr. Soumya Rai, learned Deputy Government Advocate for the State.
2. Both these appeals are being heard and decided together, as the common thread passes through the issue.
3. The appellants have filed these criminal appeals under Section 415 (2) of the BNSS Act, 2023 questioning the judgment of conviction and order of sentence dated 10/06/2025 passed by the Additional Sessions Judge, Fast Track Special Court (POCSO Act) Ramanujganj, District Balrampur-Ramanujganj, C.G in Special Sessions (POCSO) Case No.59/2022.
4. **CRA No.1294 of 2025** has been preferred by the Appellant Tulsi Sharma and he has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 12 of Protection of Children from Sexual Offences Act, 2012	R.I. for 2 years and fine of Rs.500/- and in default of payment of fine additional R.I. for 01 month



5. **CRA No.1414 of 2025** has been preferred by the appellant Bablu

Sonwani and he has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 363 of the Indian Penal Code, 1860	R.I. for 5 years and fine of Rs.500/- and in default of payment of fine additional R.I. for 01 Month
Under Section 6 of Protection of Children from Sexual Offences Act, 2012	R.I. for 20 years and fine of Rs.20,000/- and in default of payment of fine additional R.I. for 03 months
	All the sentences shall run concurrently.

6. The prosecution story in brief is that on 12.06.2022, the father of the victim (B) (PW-3) gave written information (Ex.P. 4) to the effect that his minor daughter/victim had gone to her grandfather's village, Retu, on June 8, 2022, to visit him. On June 11, 2022, at approximately 2:00 p.m., she left without informing anyone at home. He subsequently searched for the victim at her relatives' homes, but was unable to locate her. Therefore, he suspects that an unknown person may have lured her away and taken her away.

7. On the basis of the above complaint, a First Information Report (Ex. P/5) was registered against an unknown person under Section 363 of the Indian Penal Code under Crime No. 133/2022 by Head Constable Dhovasai Paikra (PW-5) of Police Station Rajpur. During the investigation, after inspecting the spot of incident, i.e. the house of the victim's grandfather, a site map (Ex. P/6) was prepared and



during the search of the victim, on 09.07.2022, the victim was recovered from the possession of accused Bablu Sonwani from village Taraimal, Police Station Punjipathra, District Raigarh (Chhattisgarh) as per recovery panchnama (Ex. P/1).

8. During the subsequent investigation, the victim was sent for her medical examination to the Community Health Centre (CHC), Rajpur. Dr. Chandrababha Singh (PW-4) medically examined the victim and reported as per Ex.P.9 that a definite opinion could not be given regarding sexual intercourse with the victim. Subsequently, to obtain information regarding the victim's date of birth, a certified copy of the admission and discharge register of the victim in Class 1 was seized from the Headmaster of the Government Primary School where the victim was studying as per the seizure memo (Ex.P.-2). The said document mentions the victim's date of birth as 22.07.2006. On receiving the kit in sealed condition from the hospital and presenting it, it was seized in the presence of witnesses as per seizure memo Ex.P. 13 and by constable Bhikharam the underwear of accused Bablu Sonwani was seized in the presence of witnesses as per seizure memo Ex.P.14 after it was brought from the hospital in a sealed condition and produced.
9. During the subsequent investigation, on 09.07.2022, accused Bablu Sonwani was taken into custody and a memorandum statement was recorded in the presence of witnesses. Based on the memorandum statement, the maroon colored TVS sports bike number CG 15 DU



3686 used by accused Bablu Sonwani in the incident was seized in the presence of witnesses, as per seizure memo Ex.P.- 12. Accused Bablu Sonwani, Shamshad Alam, Ramesh Sonwani, and Tulsi Sharma were arrested in the presence of witnesses, and their families were informed of their arrest. Accused Bablu Sonwani's ability to have sexual intercourse and his underwear were tested. Dr. Alok Mishra, PW- 6, submitted a test report in accordance with Ex.P. 10, stating that accused Bablu Sonwani was capable of having sexual intercourse and that his underwear should be chemically examined. It was handed over to the concerned constable for investigation.

10. Thereafter, the statements of the victim's parents and other witnesses were recorded, and the victim's statement under Section 164 of the Code of Criminal Procedure was recorded in the court of Judicial Magistrate First Class, Rajpur. The underwear seized in the case, i.e., belonging to the victim and the accused Bablu Sonwani, were sent to FSL Ambikapur for radiological examination. Thereafter, after completing all the legal formalities related to the investigation in the case, the Rajpur police station filed a charge sheet against the accused in the present case under Sections 363, 366, 368, 376 (2) (n)/34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.
11. The learned trial Court has framed the charges as follows:-



Name of the Accused	Charge
Smt. Husnara Khatoon @ Sabo	Under Section 368/34 of the Indian Penal Code, 1908 & Section 17 of the Protection of Children from the Sexual Offences Act, 2012
Tulsi Sharma	Under Section 509B of the Indian Penal Code, 1908 & Section 11 of the Protection of Children from the Sexual Offences Act, 2012
Samshad Alam	Under Section 368/34 of the Indian Penal Code, 1908 & Section 17 of the Protection of Children from the Sexual Offences Act, 2012
Ramesh Sonwani	Under Section 368/34 of the Indian Penal Code, 1908 & Section 17 of the Protection of Children from the Sexual Offences Act, 2012
Bablu Sonwani	Under Section 363 & 376 (2) (n) of the Indian Penal Code, 1908 & Section 6 of the Protection of Children from the Sexual Offences Act, 2012

12. The accused persons denied the charge and claimed trial. In support of its case, the prosecution has examined the evidence of the victim P.W.1, in-charge Head Teacher P.W.2, father of the victim P.W.3, Dr. Chandraprabha Singh P.W.4, Head Constable Dhobasai Painkra P.W.5, Dr. Alok Mishra P.W.6, Sub-Inspector Akhilesh Singh P.W.7 and Inspector Sushma Verma P.W.8.



13. On the basis of the evidence produced in the case, when the statements of the accused were examined in the form of questionnaire under Section 313 of the Code of Criminal Procedure, the accused pleaded innocence and the accused Bablu Sonwani and Ramesh Sonwani gave evidence in defence.
14. After appreciation of oral as well as documentary evidence produced by the prosecution the learned trial Court has convicted the appellants and sentenced them as aforementioned in preceding para of this judgment, hence, this appeal.
15. Learned counsel appearing for the appellants would submit that the impugned judgment of conviction and sentence is manifestly illegal, perverse and contrary to the evidence available on record, and the same deserves to be set aside. They would further submit that the the prosecution has relied upon Ex. P/3 (Dakhil Kharij Register) to establish the age of the victim. However, PW-2 (Headmaster), in his deposition has categorically admitted that the date of birth was not supported by any documentary proof at the time of admission and the entry was made only on the basis of oral information furnished by the father. Thus, Ex. P/3 lacks foundational reliability and cannot be treated as conclusive proof of age. They would next submit that the learned trial court has committed a grave error in relying upon such unverified entry to hold the victim to be a minor. The entire prosecution case rests upon the testimony of PW-1 (victim), which is not trustworthy for the reason that she has made



material improvements and contradictions in her deposition and her statements at different stages are not consistent on material particulars and further her conduct, as admitted in cross-examination, indicates voluntary companionship and the medical evidence does not support the allegation of forcible sexual assault as alleged against the appellant Bablu Sonwani. Thus, the prosecution has failed to prove the guilt of appellant Bablu Sonwani beyond reasonable doubt. With respect to role of Appellant Tulsi Sharma is concerned it is submitted that the victim has not attributed any specific overt act of sexual assault or coercion to him and the allegations that he assisted the co-accused, does not constitute any offence under the charged provisions. Thus, no offence is made out against appellant Tulsi Sharma, and his conviction is wholly unsustainable. It is therefore submitted that the appeals be allowed, the impugned judgment be set aside, and both the appellants be acquitted of all charges.

16. Per contra, learned State counsel supports the impugned judgment and submits that the prosecution has successfully proved its case beyond reasonable doubt. learned counsel for the State opposes the submission advanced by learned counsel for the appellant and submit that on the date of incident the victim was minor and below 18 years of age which is proved by the Dakhilkharij Register in which the date of birth of the victim is recorded as 22/07/2006. It is contended that the testimony of the victim (PW-1) is natural, consistent and inspires confidence, and conviction can be



based solely upon her testimony. Ex. P/3, duly proved by PW-2 (Headmaster), establishes that the victim was a minor, and therefore her consent, if any, is immaterial. The evidence on record clearly shows that the victim was taken away by the accused persons and subjected to sexual exploitation. The overall chain of circumstances, including the testimony of prosecution witnesses and documentary evidence, clearly establishes the guilt of both appellants. It is, therefore, prayed that the appeals being devoid of merit are liable to be dismissed, and the conviction and sentence recorded by the trial court deserve to be affirmed.

17. We have heard learned counsel appearing for the respective parties and perused the record of the trial Court and other material available on record with utmost circumspection.
18. In order to consider the age of victim, we have to examine the evidence/material placed on record by the prosecution. The prosecution has mainly relied upon the Admission Discharge Register of Ex. P-03C, wherein date of birth of victim is mentioned as 22/07/2006.
19. In-charge Headmaster (PW-2), stated (in Para-1) that since 01/07/1997 till 30/12/2022 he was posted as In-charge Headmaster of Primary School, Bhilaikala, Police Station Dhourpur, and on being received the application to provide the Dakhilkharij Register of the victim he supplied the same. He stated that in the Dakhil Kharij Register, date of birth of the victim is mentioned as 22/07/2006. In his



cross-examination (Para-5), he stated that on what basis the date of birth of the victim has been mentioned in the Dakhil Kharij Register there is no mentioning about the same. He further stated that in village many people being illiterate they do not bring any document regarding birth of their child. Date of birth of a child is recorded in the Dakhil Kharij Register which is disclosed by the parents on the basis of assumption. He further in para -6 stated that at the time of recording date of birth of the victim in the Dakhil Kharij Register the birth certificate of the victim was not produced by the father of the victim. He further stated that when the date of birth has been recorded on the basis of assumption by the parents of a child then the same can be either less or more. He further stated that in case of victim such probability is possible.

20. Father of the victim PW-03 in his statement in his examination-in-chief at para 2 has stated that he do not know the date of birth of his daughter. He further in his cross-examination at para 20 has stated that he has studied upto Class 5th. He further stated that the written complaint Ex. P/4 is not his handwriting. He is not in knowledge when and in which year his marriage was solemnized. He further in para 21 has stated that he has total 5 children. Victim is the second number daughter. He further stated that the victim was born in the second year of his marriage.

21. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 provides for presumption and determination of age. The



same reads as under :

“94. Presumption and determination of age.— (1)

Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;



(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

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



23. In paragraphs 40,42,43,44 and 48 of its judgment in **Alamelu**

(Supra), the 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 Purohit¹, 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.

XXXX



XXXX

XXXX

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 scrutinized 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.”

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 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.** the 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.”

26. Now, reverting to the facts of the present case and after considering the evidence collected by the prosecution and in the light of the aforesaid judgments of Hon’ble Supreme Court, we find that no clinching and legally admissible evidence has been brought by the prosecution to prove the fact that the victim was minor and less than 18 years of age on the date of incident, despite the fact that the trial court in the impugned judgment has held the victim minor. Accordingly, we set aside the findings given by the trial court that on the date of incident, the victim was minor as the same has not been proved by the prosecution by leading cogent and clinching evidence.
27. In order to consider the allegation of kidnapping and rape upon the victim, we have to examine the evidence/material placed on record by the prosecution.
28. The Victim (PW-1) has stated in her examination-in-chief (Para -1) that she knew the accused persons namely Bablu Sonwani, Ramesh Sonwani, Shamsad Alam, Tulsi Sharma and the absconding accused Husnara Khatun. Accused Bablu used to work as driver of her uncle, therefore, she knew her. Accused



Ramesh Sonwani is the brother of the main accused and he helped in elopment. She further stated that on 11/06/2022 when she had gone to purchase some sweet at that time accused Bablu came and asked her to come with him and thereafter she went Rajpur along with him on his motorcycle. Thereafter, they went to Sanna Jashpur and where they stayed for two days where the appellant Bablu made physical relations with her for two times. She further in para 3 has stated that thereafter the accused Bablu took her to Ambikapur at her sister's house where also they stayed for two days and he performed sexual intercourse for one time. Thereafter, the brother of Bablu Ramesh and another co-accused Shamsad reached there and said that police is searching them, therefore, go from here. Thereafter, they travelled different places and started living in a room at Taraimal and stayed there for one week. Where Bablu made continuous physical relations with her and he used to go for his work in a plant and then the victim used to stay alone in the room. In cross-examination she stated that she disclosed to the police that she was being taken by Samshad Alam and Bablu Sonwani from Ambikapur to Sitapur and if it is not there in her police statement she could not tell the reason. Even she cannot tell as to why it has not been mentioned in her statement made before the Magistrate Ex. D/2. She further stated that when they were travelling from Rajpur to Sanna Jashpur where they spent about 5 hours and crossed 4-5 villages. They also met with the villagers in the village. Though she stated



that she may have shouted for help but it is not there in her police statement Ex. D/1. She further stated that there were adjacent houses to the house of the brother of the accused Bablu Sonwani and the family members of his brother and children were residing together and they spent time together. She further admitted that while travelling from Sanna Jashpur to Ambikapur she did not disclose that the appellant forcefully taken her with him. She further admitted that when she reached Ambikapur she met with the police personnel but she did not disclose that the appellant has kidnapped her. At Sitapur Bus-stand which was a crowded place, where also she did not disclose about the incident to anyone.

29. Father of the victim PW-3 in his statement has stated that on 08/06/2022 the victim had gone to her maternal grandmother's village. On 11/06/2022 at about 6.00 o'clock in the evening his brother-in-law informed over phone that the victim is not at home since afternoon. Thereafter, he went to his in-laws village and tried to find out the victim, however, the victim could not be traced. Next day he lodged the missing report of the victim vide Ex. P-4 and on the basis of the same an FIR Ex. P/5 was lodged. He further stated that after one month of the said incident police informed him that the information has been received with regard to presence of the victim in Raigarh and for that the police asked him to accompany them. Thereafter, he went along with the



police and the victim was recovered from Taraimal Village vide seizure memo Ex. P/1.

30. PW-4, the Doctor who has medically examined the victim has not found any internal or external injury on her body. There is no evidence on record that the victim has ever resisted by making scratch by nail or tried to teeth bite on the body of the appellant to save herself while the appellant committed sexual intercourse with her.

Even there is no evidence that she raised any alarm or have shouted when she was allegedly subjected to forceful sexual intercourse by the appellant. She traveled with the appellant and stayed in his sister's house. From close scrutiny of the evidence makes it clear that the victim neither was taken by force nor she was kidnapped by the appellant, she herself accompanied the appellant on her own will and consent.

31. So far as the alleged elopement and kidnapping of the victim are concerned, in view of the evidence available on record, it is necessary to consider the judgment of the Hon'ble Supreme Court in **S. Varadarajan v. State of Madras**, AIR 1965 SC 942, wherein it has been held as under:"

"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".

32. 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.



33. Recently, the Hon'ble Supreme Court in the matter of **Tilku @ Tilak Singh v. State of Uttarakhand**, Criminal Appeal No. 183 of 2014, decided on 06.02.2025, has considered the aforesaid judgment of **S. Varadarajan** (supra) and hold that when the victim herself voluntarily gone along with the appellant, traveled to various places and also resided with him without raising any objection, no offence of kidnapping is made out.
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. 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. Thus, considering the entire facts and circumstances of the case particularly the evidence with regard to the age and conduct of the victim, her evidence, absence of any injury over her body as also the evidence which goes to show that she was in love affair with the appellant, we are of the the opinion that the victim was more than 18



years of age at the time of incident and she was a consenting party, she has not been kidnapped by the appellant and has not been taken by force and she herself eloped with the appellant Bablu Sonwani and made physical relation with him and nothing has been stated against the appellant Tulsi Sharma. Therefore, in the above facts and circumstances of the case, offence as alleged against the appellants would not be made out.

36. Both the appeals are **allowed** accordingly. The judgment of conviction and order of sentence dated 10/06/2025 is hereby **set aside**. Appellants stand acquitted of all the charges levelled against them.
37. The appellant Tulsi Sharma is on bail. His bail bonds shall remain operative for a period of 06 months in view of Section 437A of CrPC (now Section 481 of Bhartiya Nagrik Suraksha Sanhita, 2023).
38. The appellant Bablu Sonwani is reported to be in jail. He be released forthwith, if not required in any other case.
39. Keeping in view the provisions of Section 437-A CrPC (now Section 481 of the Bhartiya Nagrik Suraksha Sanhita, 2023), the appellant- Bablu Sonwani is directed to furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.10,000/- with one reliable 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



2026:CGHC:20648

28 / 28

aforesaid appellant on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

40. The lower court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

SD/-

(Ravindra Kumar Agrawal)

Judge

SD/-

(Ramesh Sinha)

Chief Justice

ashu