



2026:CGHC:4040-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1290 of 2019

{Arising out of judgment dated 29.07.2019 passed in Special Criminal Case No.129/2015 by the learned Additional Sessions Judge (F.T.C) Durg}

Dinesh Nirmalkar, S/o. Bisesar Nirmalkar, Aged About 23 Years,
R/o. Village Tekari, Thana Vidhansabha, District Raipur,
Chhattisgarh.

... Appellant

versus

State Of Chhattisgarh, Through Police Station- Bori, District Durg,
Chhattisgarh.

... Respondent

For Appellant	:	Mr. Deepak Jain, Advocate
For Respondent	:	Mr. Amit Buxy, Dy. Govt. Advocate

(Division Bench)

Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Arvind Kumar Verma

Judgment on Board
(23.01.2026)

**Sanjay K. Agrawal, J.**

1. This criminal appeal preferred by the appellant under Section 374(2) of Cr.P.C. is directed against the impugned judgment of conviction and order of sentence dated 29.07.2019, passed by the learned Additional Sessions Judge (F.T.C.) Durg in Special Criminal Case No.129/2015, by which the sole appellant herein has been convicted and sentenced as under :

CONVICTION		SENTENCE
U/s. 363 of I.P.C.	:	Rigorous imprisonment for 5 years and fine of Rs.500/-, in default of payment of fine amount, 2 months additional rigorous imprisonment.
U/s. 366 of I.P.C.	:	Rigorous imprisonment for 5 years and fine of Rs.500/-, in default of payment of fine amount, 2 months additional rigorous imprisonment.
U/s. 376(2)(i) of I.P.C. & U/s. 6 of the POCSO Act, 2012.	:	Rigorous imprisonment for 10 years and fine of Rs.1000/-, in default of payment of fine amount, 2 months additional rigorous imprisonment.



2. Case of the prosecution, in short, is that, on 30.06.2015 at 11:00 A.M. from village Arsi, Police Station Bori, District Durg, the appellant herein abducted the minor victim (PW-3) from the lawful guardianship of her parents and committed sexual intercourse against her wishes and thereby the aforesaid offences have been committed. The FIR was lodged by the father of the victim on 02.07.2015 vide Ex.P-15 and offence under Section 363 of I.P.C. was registered and the wheels of investigation started running. Thereafter, the victim (PW-3) was recovered on 11.07.2015 and she was medically examined by Dr. Veenita Dhruwe (PW-9) vide Ex.P-19, but no external or internal injury was found and no definite opinion about recent sexual intercourse was given. The vaginal slides of the victim were prepared and sent for chemical examination to FSL and as per the FSL report, semen & human sperm was found on the seized articles. The age of the victim was found to be less than 18 years as per the Dakhil Khariz Register (Ex.P-21C) proved by Kamleshwar Singh Ganwal (PW-8). After due investigation, the appellant was charge-sheeted for the aforesaid offences and the case was committed to the Court of Sessions for trial in accordance with law in which the appellant abjured his guilt



and entered into defence stating that he has not committed any offence and he has been falsely implicated.

3. During the course of trial, in order to bring home the offences, prosecution has examined as many as 13 witnesses and exhibited 23 documents and the appellant-accused in support of his defence has not examined any witness but has exhibited the document Ex.D-1.
4. The learned trial Court, after appreciating the oral and documentary evidence on record, convicted the appellant for the aforesaid offences as mentioned in the opening paragraph of this judgment, against which the present appeal has been preferred.
5. Mr. Deepak Jain, learned counsel for the appellant, would submit that Kamleshwar Singh Ganwal (PW-8) was not the author of Dakhil Khariz Register, therefore, the age of victim to be less than 18 years on the date of offence has not been proved. He would further submit that the victim was major and consenting party on the date of offence and the medical & forensic evidence would not support the case of the prosecution; therefore, the appellant is entitled for acquittal and the appeal deserves to be allowed.



6. Mr. Amit Buxy, learned State counsel, would support the impugned judgment and submit that the prosecution has been able to bring home the offences beyond reasonable doubt and the trial Court has rightly convicted the appellant for the aforesaid offences; therefore, the appeal deserves to be dismissed.
7. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
8. In order to prove the age of the victim, the prosecution has brought the Dakhil Khariz Register in which the date of birth of the victim has been recorded as 26.07.1999, which shows that the victim was minor on the date of offence. However, in order to establish the date of birth and to prove the Dakhil Khariz Register, Headmaster of the School, Kamleshwar Singh Ganwal has been examined as PW-8. He has clearly stated in the cross-examination that he has not made entry in the subject Dakhil Khariz Register and he has also failed to establish on what basis the date of birth of the victim has been recorded and he is also not sure as to whether any document was produced at the time of entry of date of birth, which has been recorded in the Dakhil Khariz Register. As



such, the date of birth of the victim has not been proved by the prosecution. Though the mark-sheet has been produced by the victim but it has also not been proved by the person who has prepared the mark-sheet. Therefore, the age of the victim could not be proved to be less than 18 years on the date of offence.

9. Now the question is whether the victim was a consenting party ?
10. The victim has been examined as PW-3. She was allegedly kidnapped by the appellant on 30.06.2015 and she was recovered by the police vide Ex.P-4 on 11.07.2015. As per her statement, she was called by the appellant on mobile phone, which she came and the appellant has taken her in his motorcycle to village Tekari and they remain stayed there in the house of appellant's friend for 5 to 6 days and during that period the appellant had made physical relation with her, but she has not made any alarm and she did not inform any of relatives of the appellant's friend family. Thereafter, they stayed for 5 to 6 days at Pandri, Raipur and the appellant again made physical relation with her but she did not cry for help and did not inform anyone, which goes to show that she was a consenting party and she herself had gone voluntarily



along-with the appellant. Furthermore, the prosecution case is not supported by the medical evidence, as according to the statement of Dr. Veenita Dhruwe (PW-9), no internal & external injury was found over the body of victim, hymen was old torn and no sign of recent sexual intercourse was found. Even in the cross-examination, Dr. Veenita Dhruwe (PW-9) while referring to Ex.P-19 stated that she was informed by the victim that she had gone along-with the appellant on 30.06.2015 and she remained with the appellant for a week as husband & wife at village Tekari and thereafter some other place for four days. In the slides of the victim, semen & human sperm was found, however, it has not been subjected to matching of semen, as held by the Supreme Court in the matter of **Krishan Kumar Malik Versus State of Haryana**¹.

11. In view of the aforesaid analysis, it has not been proved that the victim was minor on the date of offence, therefore, she was major and consenting party and furthermore, the case of the prosecution is not supported by the medical & forensic evidence. As such, the appellant is entitled for acquittal.
12. In view of the above, the impugned judgment of conviction and order of sentence dated 29.07.2019 is hereby set aside.

¹ (2011) 7 SCC 130



Consequently, the appeal is allowed. The appellant stands acquitted from the charges framed against him for the offence under Sections 363, 366, 376(2)(i) & Section 6 of the POCSO Act, 2012. The appellant is already on bail, he need not surrender; however, his bail bond shall remain in force for a period of six months in view of the provision contained in Section 437-A of the Cr.P.C.

13. Let a certified copy of this judgment along-with the original record be transmitted to the concerned trial Court forthwith for necessary information & action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Kumar Verma)
Judge

Ashok