



2026:CGHC:4052-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRA No. 1660 of 2021**

1 - Roshan @ Butru Ram Chelak S/o Late Budharu Ram Chelak, Aged About 20 Years, R/o Kosanala Satnami Basti, Rearby Satnam Bhawan Supela, Police Station Supela, District- Durg Chhattisgarh.

... Appellant**versus**

1 - State of Chhattisgarh Through - Station House Officer, Police of Police Station Supela, District - Durg Chhattisgarh.

... Respondent

(Cause title taken from Case Information System)

For Appellant	:	Mr. Qamrul Aziz,	Advocate.
For State/Respondent	:	Mr. Shailendra Sharma,	Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Ravindra Kumar Agrawal, Judge****Judgment on Board****Per Ramesh Sinha, Chief Justice****23-01-2026**

1. The present criminal appeal has been filed by the appellant under Section 374(2) of the Cr.P.C. against the impugned judgment of conviction and sentence dated 18-11-2021 passed by the learned Additional Sessions Judge, Second Fast Track Special Court (POCSO Act) Durg in Special Sessions Case No.75/2019 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 323 of the IPC	R.I. for 6 months and fine amount of Rs.500/-, in default of payment of fine further R.I. for 1 month,
Under Section 377 of the IPC	Life imprisonment and fine amount of Rs.5000/-, in default of payment of fine further R.I. for 3 months,
Under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (as defined under Section 5(m) of the POCSO Act)	Life imprisonment and fine amount of Rs.5000/-, in default of payment of fine further R.I. for 3 months.

2. The case of the prosecution is that on 19-04-2019 at about 06:15 p.m. the minor son of the complainant came back to his house by crying and informed his father that when he had gone to Gym Park, Neharu Nagar the appellant slapped him 2-3 times and took him towards shrubs took his private part and inserted it in his mouth. After seeing a lady coming there, he fled away. The father of the victim PW-3 lodged report to the police on the same day and FIR under Section 377, 323 of the IPC was registered against the appellant which is Ex.-P/1. The victim was sent for his medical examination to Govt. Hospital Supela where he was medically examined by Doctor S.K. Agrawal PW-9 who gave his report Ex.-P/12. While medically examining the victim the doctor has noticed swelling and pain on the right cheek of the victim. Spot map was prepared by the police and Ex.-P/4 was prepared by the Patwari. School register with respect to the age of the victim was seized vide seizure memo Ex.-P/9 and according to the school register Ex.-C/1 his

date of birth is 11-12-2012. The appellant was arrested on 20-04-2019 and he too was sent for his medical examination to Govt. Hospital Supela where he was medically examined by PW-8 Doctor Dinesh Patel who gave his report Ex.-P/11 and found that the appellant cant do sexual/oral intercourse. Statement of the witnesses under Section 161 of the Cr.P.C., statement of the victim under Section 164 of the Cr.P.C. have been recorded and after completion of usual investigation charge sheet was filed before the learned trial Court for the offence under Section 377(m) 323 of the IPC and Section 3, 4 of the Protection of Children from Sexual Offences Act, 2012 (in short 'the POCSO Act').

3. The learned trial Court has framed charge against the appellant for the offence under Section 377, 323 of the IPC and Section 4 of the POCSO Act. The appellant denied the charge and claimed trial.

4. In order to prove charge against the appellant the prosecution has examined as many as 9 witnesses. The statement of the appellant under Section 313 of the Cr.P.C. has also been recorded in which he denied the circumstances appearing against him, pleaded innocence and has submitted that he has been falsely implicated in the offence.

5. After appreciation of oral as well as documentary evidence led by the prosecution the learned trial Court has convicted and sentenced the appellant as mentioned in the earlier part of this judgment. Hence, this appeal.

6. Learned counsel appearing 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 prosecution witnesses which cannot be made basis to convict him in the offence in question. The evidence of the victim is full of exaggeration and he being the child witness is a tutored witness. It was a place public view, i.e., the park and one cannot dare to commit the offence there. There is no other evidence that any one have seen the appellant there and the case of the prosecution is solely rests upon the evidence of the victim PW-1. There is no corroborative evidence in the case, yet the appellant has been convicted for the alleged offence. Therefore, the appeal may be allowed and the appellant may be acquitted.

7. On the other hand, learned counsel appearing for the State opposes the submission made by learned counsel for the appellant and has submitted that the prosecution has proved its case beyond reasonable doubt. There is no infirmity or exaggeration in the evidence of the victim PW-1. The minor contradictions is quite natural as the victim was 6-7 years old boy and he has been examined before the Court after about 7 months. The victim has duly supported the prosecution case and he being the victim of the offence cannot be doubted that he would falsely implicate the appellant. In the medical examination injuries have been found on his cheek which further supported the allegation that the appellant slapped him 2-3 times and then committed the offence. The act of the appellant does come under the offence of aggravated penetrative sexual assault and the learned trial Court after adverting the entire evidence has convicted and sentenced the appellant which needs no interference.

8. We have heard learned counsel for the parties and perused the record of the learned trial Court.

9. The age of the victim is not in dispute and the defence has also not specifically disputed the age of the victim. The victim is aged about 6-7 years which reflected from his school register Ex.-C/1 which has been seized by the police vide seizure memo Ex.-P/9, in that document Ex.-C/1 his date of birth is recorded as 11-12-2012 and the date of incident is 19-04-2019 and therefore, in absence of any specific challenge and in view of the facts and circumstances of the case, the age of the victim is undisputedly 6 to 7 years. After having gone through the records of the case as well as consideration of the learned trial Court with respect to the age of the victim we find no infirmity or perversity in holding that on the date of incident the victim was 6 years and 4 months of age.

10. Further consideration in the case is as to whether the appellant has committed the offence or not.

11. The victim has been examined as PW-1. After satisfying the IQ of the victim/PW-1 the learned trial Court proceeded for recording his evidence. He stated in his evidence that nearby his house there was a gym park where he had gone in the evening to play. The appellant came there and dragged him towards tree and he took out his private part and inserted in his mouth. He did it repeatedly and after seeing a lady coming there he left him and fled away. He explained the act of the appellant through a boy male toy (gudda). When he protested the

appellant slapped him 2-3 times and when a lady came there he left him and fled away. He came to his house by crying and informed the incident to his parents, thereafter, had gone to police station for lodging of the report. His statement was also recorded in the court. In cross-examination he remained firm in saying that the appellant has committed the offence with him by inserting his penis into his mouth and slapped him 2-3 times. Despite having his tender age, he specifically stated about the act of the appellant and strongly denied the suggestion of the defence. Nothing could be abstracted from this witness to disbelieve him. Even the defence could not bring on record any animosity that he has been falsely implicated in the offence. From perusal of his 164 Cr.P.C. statement Ex.-C/2 there is no contradiction in his evidence and he duly corroborated the same. The quality of the evidence given by this witness, PW-1 puts him as sterling witness who duly proved the offence against the appellant.

12. PW-2 is mother of the victim. She stated that at about 6-6:15 p.m. her son came back by crying and informed that the appellant inserted his penis into his mouth and after seeing a lady coming there he fled away. She had gone to police station for lodging of the report against the appellant. In cross-examination she too remained firm that her son has informed about the incident, though she admitted that she has not inquired about the incident from the friends of his son, but in opinion of this Court even if she has not inquired about the incident from his friends it does not dilute the offence particularly when the victim has proved the offence against the appellant. She too has stated that there

was no previous dispute with the appellant and she knew him as he is resident of the same vicinity.

13. PW-3 is father of the victim and complainant who has stated that at about 06-06:15 p.m. his minor son came back from the park by crying and informed about the incident that the appellant inserted his penis into his mouth and slapped about 2-3 times and after seeing a lady coming there he fled away. After coming into knowledge of the incident he immediately lodged the report at Police Station Supela, which is Ex.-P/1. His son was sent for his medical examination and his statement was also recorded by the Magistrate. In cross-examination he admitted that he could not tell as to who was there with the victim because they were inside the house. The appellant is also resident of same vicinity and the same community. He denied that his son has not received any injury on his cheek and also denied that he tutored him for raising allegation against the appellant. The defence could not abstract any material from this witness also about any previous animosity or dispute with the appellant.

14. PW-9 Doctor S.K. Agrawal has medically examined the victim while examining the victim he found swelling and pain on his right cheek and gave his report Ex.-P/12. No any question has been put to this witness to establish that the victim not received any injuries on his cheek.

15. PW-8 Doctor Dinesh Patel who medically examined the appellant has found the appellant capable to perform sexual intercourse and skin sensation and reflection were present.

16. In the matter of **P. Ramesh Vs. State represented by Inspector of Police, reported in (2019) 20 SCC 593** the Hon'ble Supreme Court has held in para 13 of the judgment that:-

“13. Section 118 [**“118. Who may testify.—** All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Explanation.—A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.”] of the Evidence Act, 1872 deals with the competence of a person to testify before the court. Section 4 [**“4. Oaths or affirmations to be made by witnesses, interpreter and jurors.—**(1) Oaths or affirmations shall be made by the following persons, namely:(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;(b) interpreters of questions put to, and evidence given by, witnesses; and(c) jurors: Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.”] of the Oaths Act, 1969 requires all witnesses to take oath or affirmation, with an exception for child witnesses under the age of twelve years. Therefore, if the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined without oath or affirmation. The rule was stated in *Dattu Ramrao Sakhare v.*

State of Maharashtra [Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341 : 1997 SCC (Cri) 685] , where this Court, in relation to child witnesses, held thus : (SCC p. 343, para 5)

“5. ... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.”

17. The allegation against the appellant is that he committed unnatural sexual intercourse with the victim and committed offence of aggravated penetrative sexual assault. The aggravated penetrative sexual assault has been defined in Section 5 of the POCSO Act. There are various categories in Section 5 of the POCSO Act which defines the aggravated penetrative sexual assault and in the present case Section 5(m) of the POCSO Act is attracted which reads as under:

“5. Aggravated penetrative sexual assault.—

xxxxxx xxxxxx xxxxxx
xxxxxx xxxxxx xxxxxx

(m) Whoever commits penetrative sexual assault on a child below twelve years; or”

18. Section 6 of the POCSO Act is also relevant to be noted here which reads as under:-

“6. Punishment for aggravated penetrative sexual assault.—(1) Whoever, commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”

19. The child is defined in Section 2(1)(d) of the POCSO Act which reads as under:-

“2. Definitions—(1) in this Act, unless the context otherwise requires, —

xxxxxx xxxxxx xxxxxx
xxxxxx xxxxxx xxxxxx

(d) **“child”** means any persons below the age of eighteen years;”

20. The penetrative sexual assault is defined in Section 3 of the POCSO Act which reads as under:-

“3. Penetrative sexual assault —A person is said to commit “ penetrative sexual assault” if—

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person. ”

21. From the evidence of the victim the allegation against the appellant has duly been proved by the prosecution that on the date of incident he committed the offence with the victim by which duly satisfied the ingredients of offence of Section 5(m)/6 of the POCSO Act as well as Section 377 of the IPC and also from the injury report of the victim the offence of Section 323 of the IPC has also been proved by the prosecution and there is no infirmity or perversity in his conviction.

22. So far as the offence in question is concerned, the appellant has been sentenced under Section 377 of the IPC for life imprisonment and under Section 6 of the POCSO Act for life imprisonment. For the offence under Section 377 of the IPC the maximum sentence provided is life imprisonment and there is no minimum sentence provided for it. For the offence under Section 6 of the POCSO Act the minimum sentence is provided which is not less than 20 years but which may extend to imprisonment for life.

23. In the present case the maximum sentence has been provided to the appellant by the learned trial Court. The proportion of sentence has been considered by the Hon'ble Supreme Court in the matter of **Raj Bala Vs. State of Haryana & Others**, reported in 2016 (1) SCC 463 in paragraph 1 & 2 the Hon'ble Supreme Court has held as under :-

"1. In Gopal Singh v. State of Uttarakhand[(2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608], while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot

be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive.

The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

[Emphasis supplied]

2. Seven years prior to that, in *Shailesh Jasvantbhai v. State of Gujarat* [(2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499], it has been held that:- (SCC pp. 361-62, paras 7-8)

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of

criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society.

Friedman in his *Law in Changing Society* stated that:

"State of criminal law continues to be-as it should be-a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724]"

[Emphasis supplied]

And again: (SCC p. 363, para 13)

"13....The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has

been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

24. Further, in the matter of **Mohammad Giasuddin Vs. State of Andhra Pradesh** reported in (1977) 3 SCC 287 Hon'ble Supreme Court has observed that If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries and held in Para 9 as follows:-

"9. Western jurists and sociologists. from their own angle have struck a like note. Sir Samuel Romilly, critical of the brutal penalties in the then Britain, said in 1817 : "The laws of England are written in blood". Alfieri has suggested : 'society prepares the crime, the criminal commits it'. George Nicodotis, Director of Criminological Research Center, Athens, Greece, maintains that 'crime is the result of the lack of the right kind of education'. If it is thus plain that crime is a pathological aberration. that the criminal can ordinarily be redeemed. that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by reculturation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The *human* today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore, consider a therapeutic, rather than an 'in terrorem' outlook, should prevail in our criminal courts. since brutal incarceration of the person merely produces laceration of his mind. In the words of George Bernard Shaw : 'If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries'. We may permit ourselves the liberty to quote from Judge Sir Geoffrey Streatfield : "If you are going to have anything to do with the criminal Courts, you should see for yourself the conditions under which prisoners serve their sentences'."

25. Considering the facts and circumstances of the case and aforesaid law laid down by the Hon'ble Supreme Court, age of the victim, the circumstances under which the alleged offence is committed,

we are of the opinion that ends of justice would meet if the sentence awarded to the appellant is reduced to R.I. for 20 years instead of life imprisonment. Therefore, while maintaining the conviction of the appellant for the offence under Section 377 and 323 of the IPC and Section 6 of the POCSO Act, his sentence for the offence under Section 377 of the IPC and Section 6 of the POCSO Act is reduced for Rigorous Imprisonment for 20 years, the fine sentence and default stipulations under these offence are remained intact. The conviction and sentence awarded to the appellant for the offence under Section 323 of the IPC is maintained. The appeal is accordingly partly allowed.

26. The appellant is reported to be in jail since 20-04-2019, he shall serve the entire sentence as awarded by this Court. He is entitled for set off his undergone period during the trial as well as during the pendency of this appeal.

27. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentences to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

28. Record of the trial Court be sent back along with copy of this judgment.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice