



2026:CGHC:34739-DB



CGHC010535702025



2026:CGHC:34739-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 54 of 2026

Sudhir Netam S/o Motiram Netam Aged About 31 Years R/o Sirpur, Sadakpara, Thana Farasgaon, District- Kondagaon (C.G.)

... Appellant(s)

versus

State Of Chhattisgarh Through - Police Station- Farasgaon, District- Kondagaon (C.G.)

...Respondent(s)

(Cause-title taken from Case Information System)

For Appellant : Shri KPS Gandhi, Advocate
For Respondent/State : Shri Soumya Rai, Dy GA

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Justice Ravindra Kumar Agrawal
Judgment on Board

Per Ravindra Kumar Agrawal, J.
07.08.2026

Heard Shri KPS Gandhi, learned counsel for the appellant. Also heard Shri Soumya Rai, learned Dy GA for the State.

1. Present appeal has been listed for consideration on IA- 1 of 2026 which is an application for suspension of sentence and grant of bail. Considering the fact that the appellant is in jail since 25.08.2020 with consent of the parties, the appeal itself has been heard finally and the said IA stands disposed off.



2. Learned counsel for the State would submit that the notice to the complainant has been served on 22.07.2025. However, no representation has been made on their behalf.

3. Present appeal under section 415 (2) of the BNSS 2023 filed by the appellant against the impugned judgment of conviction and sentence dated 20.12.2022 passed by the learned Additional Session Judge FTC Special Judge (POCSO), district-Kondagaon CG, in Special case- 39 of 2020, whereby the appellant has been convicted and sentenced in the following manner with default stipulation:

Conviction	Sentence
u/s 363 of the IPC	RI for 5 years and fine of Rs.1,000/-
u/s 506 of the IPC	RI for 01 year and fine of Rs.1,000/-
u/s 376 AB of the IPC	RI for 20 years and fine of Rs.1,000/-
u/s 4(2) of the POCSO Act	RI for 20 years and fine of Rs.1,000/- All the sentences to run concurrently

4. Case of the prosecution in brief is that on 24.08.2020, PW3-father of the victim lodged a report to the Police that on 21.08.2020, at about 1 pm, appellant allured his minor daughter and took her to the maize field and committed rape upon her and threatened her not to disclose the incident to anyone, otherwise, she would be killed. On the said report, FIR Ex.P2 was registered against the appellant for the offence under Section 363, 376 and 506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).



5. Victim was sent for her medical examination to the Community Health Centre, Farasgaon, where she was medically examined by Dr Jyotirmay Prabhavati, PW10, who gave her report Ex.P13. While medically examining the victim, the doctor noticed injury on her private part, and opined that according to history, physical and genital examination, there are signs suggestive of recent forceful penetration of vagina, however, final opinion is reserved pending availability of FSL report. Spot Map Ex.p1 was prepared by the Police, and Ex.P6 was prepared by the Patwari. With respect to age and date of birth of the victim, the Primary School Mark-sheet of the victim has been seized vide seizure memo Ex.P4. School Register has also been seized vide seizure memo Ex.P11 and after retaining attested true copy, original register was returned back to the School. Appellant was arrested on 25.08.2020 and he too was sent for his medical examination to the Community Health Centre, Farasgaon, where he was medically examined by Dr Lakhan Jurri, PW7, who gave her report Ex.P18. While medically examining the appellant, the doctor noticed no injuries on the body of the appellant and he found him capable for performing sexual intercourse.

6. Statement under section 161 CrPC of the witnesses and statement of the victim under section 164 CrPC have been recorded. The vaginal swabs of the victim were sent to the Regional FSL, Jagdalpur for examination, from where, report Ex.P23 was received and according to the report, no semen or sperm was found on the vaginal swabs.



7. After completion of usual investigation, charge-sheet against the appellant was filed before the learned trial court for the offence under sections 363, 376 AB and 506 of the IPC and section 4 of the POCSO Act.

8. Learned trial court framed charge against the appellant for the offence under sections 363, 376AB and 506 of the IPC, and Section 4 of the POCSO Act. Appellant denied the charge and claimed trial.

9. In order to prove the charge against the appellant, prosecution has examined as many as 16 witnesses, statement of the appellant under section 313 of the CRPC has been recorded, in which he denied the circumstances appearing against him, pleaded innocence and submitted that he has been falsely implicated in the offence.

10. After appreciation of oral as well as documentary evidence lead by the prosecution, learned trial court has convicted the appellant and sentenced him as has been mentioned in the earlier part of the judgment. Hence this appeal.

11. Learned counsel for the appellant would submit that prosecution has failed to prove the case beyond reasonable doubt. There are material omissions and contradictions in the evidence of the prosecution witnesses which cannot be made basis to convict the appellant for the offence in question. There is no reliable evidence with respect to age of the victim that she was minor and less than 18 years of age on the date



of incident. The School record has not been proved in accordance with law, and the same cannot be taken into consideration as proof for age of the victim, particularly, when there are material discrepancies in the evidence of prosecution witnesses. He would also submit that evidence of the victim PW1 is not sufficient to hold the appellant guilty for the alleged offence. At the time of incident, the friend of the victim was also with her. However, she has also not duly supported the prosecution case, and she has not informed any one while the appellant allegedly committing the offence. There was sufficient opportunity for her friend to inform other persons in the vicinity about the incident but she did not do so. Although the injury was noticed on the private part of the victim, but no semen and sperm were found in the vaginal swab of the victim. He would further submit that that the incident is alleged to be on 21.08.2020, however, FIR has been lodged on 24.08.2020 and there is no sufficient explanation for delayed lodging of the FIR. All these circumstances, and evidence available on record, make the appellant entitled for benefit of doubt and by giving him the benefit of doubt, he may be acquitted.

12. On the other hand, learned counsel appearing for the State opposes the submissions made by the learned counsel for appellant and submitted that but for minor omissions and contradictions the evidence of the prosecution witnesses is reliable and sufficient to hold the appellant guilty for commission of alleged offence. The victim has duly supported the prosecution case and her evidence is duly corroborated by her friend PW2, who was with the victim at the relevant time. Injuries have been



noticed by the doctor, while she was medically examined. He would further submit that though the FIR has been registered on 24.08.2020, however, in the offences of rape, such small delay in lodging the report does not dilute the offence of the accused. He would further submit that the age of the victim has also duly been proved by producing her school record, which has been proved by the Teacher of the School, PW9, and there is no reason for false implication of the appellant. Appellant has failed to raise probable objection in his defence. The victim was minor on the date of incident, who suffered the offence of rape by the appellant. The allegation has been duly proved by the prosecution and the learned trial Court has also rightly convicted the appellant for the alleged offence. Therefore, the appeal has no merit, and is liable to be dismissed.

13. We have heard learned counsel for the parties and perused the record of the trial court with utmost circumspection.

14. The first and foremost question would be, age of the victim as to whether she was minor on the date of incident or not and whether prosecution has proved that victim was minor on the date of incident, by producing cogent evidence for the same.

15. Prosecution has mainly relied upon the School Register Ex.P10C which is sought to be proved by PW9, who is In-charge Headmistress of the school. She stated in her evidence that police has seized the school register with respect to age and the date of birth of the victim vide seizure memo Ex.P11 and after retaining its attested true copy, original register



was returned to the school. She is author of the School Register and her signature is also there in it. As per the School Register, date of birth of the victim is 14.06.2009 and she made the relevant entries. Though in her cross-examination, she admitted that she has not obtained any document with respect to the date of birth of the victim from her father at the time of her admission in the school but there is no suggestion given by the defense that wrong date of birth has been recorded in the school register. This witness is the author of the school register and proved the school register Ex.P10C and nothing adverse is there in her cross-examination to disbelieve her evidence that wrong date of birth of the victim has been recorded in it.

16. The admissibility and evidentiary value of the school register have been considered by the Hon'ble Supreme Court in the matter of **Jarnail Singh v. State of Haryana**, 2013 (7) SCC 263, and the Hon'ble Supreme Court in Para 22 to 24 held that:

“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 7A, 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 off 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 for a child who is a victim of crime. For, in our view, there is hardly any difference in so far 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 VW- PW6. 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 concerned child, 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 concerned child, on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW - PW6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied upto class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW-PW6, on the next available basis, in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW4), to prove the age of the prosecutrix VW – PW6. Satpal (PW4) was the Head Master of the Government High School, Jathlana, where the prosecutrix VW - PW6 had studied upto class 3. Satpal (PW4) had proved the certificate Exhibit-PG, as having been made on the basis of the school records indicating, that the prosecutrix VW - PW6, was born on 15.5.1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view, that the High Court was fully justified in relying on the aforesaid basis for establishing



the age of the prosecutrix VW – PW6. It would also be relevant to mention, that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW-PW6. The deposition of Satpal-PW4 has not been contested. Therefore, the date of birth of the prosecutrix VW - PW6 (indicated in Exhibit P.G., as 15.7.1977) assumes finality. Accordingly it is clear, that the prosecutrix VW-PW6, was less than 15 years old on the date of occurrence, i.e., on 25.3.1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW - PW6 was a minor on the date of occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW-PW6 had accompanied the accused-appellant Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.”

17. PW1 is the victim, who has disclosed her age as 11 years at the time of recording her evidence, which has not been challenged by the accused in her cross-examination. PW3 is father of the victim, who stated in his evidence that victim was aged about 11 years on the date of incident and the police has seized her Primary School mark-sheet with respect to her date of birth. In his cross-examination, age of the victim as shown by him has not been challenged in his cross-examination.



18. These evidences have clearly established the age of the victim that she is less than 12 years of age at the time of alleged incident and she comes under the definition of a “child”, as has been defined under section 2 (d) of the POCSO Act and the learned trial court has also properly appreciated the evidence with respect to the age of the victim in which we do not find any perversity.

19. With respect to offence of rape, we again examined the evidence of the victim as well as other witnesses.

20. Victim-PW1 has stated in her evidence that on the date of incident, she along with her friend had gone to grocery shop to purchase biscuit. When they were returning, on the way, appellant allured them to go towards the field to eat Guava fruit and then the victim along with her friend accompanied the appellant. The appellant took them to his *badi*, asked her friend PW2 to stay there by giving his mobile phone to her. He took the victim with him inside the *badi* to pluck guava fruit. When she had gone inside, the appellant laid her down on the floor and after removing his and her clothes, he committed sexual intercourse with her. At the time when he was committing the offence, he gagged her mouth. After committing the offence, he threatened her not to disclose the incident to anyone, otherwise he would kill her. Due to fear, she could not disclose the incident to her friend and she informed to her parents firstly. She informed her mother on the next morning and then other family members were informed and a meeting was called for in the



village. In the said village meeting, appellant confessed his guilt and the members of the village meeting had beaten the appellant, where he asked to forgive him and promised that he will not repeat the incident. On the next day of the meeting, her parents lodged the report to the police.

In cross-examination, she remained firm in saying that it is the appellant who took her and her friend with him towards his *badi*, where he committed rape upon her. She firmly denied the suggestion that the appellant did nothing her.

21. The quality of evidence which the victim gave makes her evidence “sterling”. As there is no infirmity, omission or contradiction taken out by the defense, so that her evidence could be disbelieved. Even there is no reason for false implication of the appellant.

22. PW2 is the friend of the victim, who was with them at the time of alleged incident. She too has stated that when she along with the victim were returning from the grocery shop after purchasing biscuit, on the way appellant allured them and took them towards the fields, asked her to stay near the field and he has taken the victim inside the field for plucking guava fruit and after some time, both of them returned. When she along with her friend were returning to the house, her friend (victim) disclosed that the appellant did bad work with her and threatened her with dire consequences. She too firmly denied that appellant did nothing with the



victim. She remained firm in saying that appellant took them towards the field.

23. PW3 is father of the victim. He stated in his evidence that his daughter informed about the incident that the appellant committed rape upon her in his maize field and threatened her with dire consequences. When he asked from the appellant, he denied his guilt and then he lodged the report to the police. Though he is not the witness to the incident but he duly supported the information given to him by the victim about the incident. Although he admitted that there was a family dispute with the appellant, but in absence of any recent quarrel or incident, the old family dispute cannot be considered as reason for false implication of the appellant.

24. PW4 is uncle of the victim, who also is the witness that the victim informed about the incident. PW5 is mother of PW2, friend of the victim. She too has stated in her evidence that mother of the victim informed her about the incident. PW6 is cousin brother of the victim, who proved the fact with respect to village meeting, when the victim disclosed about the incident committed by the appellant. He stated that in the village meeting appellant confessed his guilt and then it has been decided in the village meeting that since the victim is minor, report should be lodged to the police.

25. PW10- Dr Jyotirmay Prabhawati, who medically examined the victim has found injury on private part of the victim. She noticed perennial



tear, redness over the vagina, recently ruptured hymen and opined that according to physical, and genital examination of the victim, there are signs suggestive of recent forceful penetration of vagina. However, final opinion was reserved pending availability of FSL report. She proved her MLC report Ex.P13.

In cross-examination, though she admitted that if a minor girl being subjected to forceful sexual intercourse on a rough surface, there is every possibility of injury on her back and in the present case she could not notice any injury on back of the victim. She admitted that the alleged offence committed upon the victim was one or two days old from her examination on 24.08.2020.

26. Looking to the evidence of the victim, as well as the other surrounding circumstances and the evidence of other witnesses, allegation of rape upon the minor victim has duly been corroborated by the medical evidence.

27. Although in FSL report Ex.P23, semen and sperm are found absent in vaginal swabs of the victim, that itself could not be determined in the allegation of rape, particularly when the victim firmly stated about the alleged incident of rape which has been supported by the medical evidence that injuries were found present on the body of the victim and thus, from the evidence produced by the prosecution, it can safely be held that on the date of the incident appellant kidnapped the victim, took her inside his *badi*, then committed rape upon her and threatened her



with dire consequences and thus the act of the appellant definitely comes under section 363, 506, 376(3) and section 4 of the POCSO Act.

28. In the case of **State of Punjab Vs Gurmit Singh**, (1996) 2 SCC 384, Hon'ble Supreme Court has held that:

“21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without



seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

29. In case of **State of Himachal Vs. Sanjay Kumar**, (2017) 2 SCC 51, Hon’ble Supreme Court has held that:

“30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which the testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with



the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor-centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long-lasting effects on such victims.

31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a



statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P. 5). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

30. Considering the entire facts and circumstances, evidence produced by the prosecution and the aforesaid law laid down by the Hon’ble



Supreme Court, we are of the considered opinion that learned trial court has rightly appreciated the evidence available on record against the appellant, convicted and sentenced him, which does not require any interference and accordingly, the appeal filed by the appellant is hereby dismissed.

31. The appellant reported to be in jail since 25.08.2020. He shall serve the entire sentence awarded by the learned trial court.

32. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence 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.

33. The records of the case 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