2025:CGHC:42575-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1679 of 2019

Judgment reserved on : 18.06.2025

Judgment delivered on : 22.08.2025

Appellant (s)

versus

1 - State Of Chhattisgarh Through The Station House Officer, Police Station Chirmiri, District Koriya, Chhattisgarh

Respondent(s)

For Appellant (s)	**:**	Mr. Rohit Sharma, Advocate through Legal Aid
For Respondent(s)	**:**	Ms. M. Asha, PL

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Amitendra Kishore Prasad

C A V Judgment

Per Rajani Dubey J.

1. The present appeal is directed against the judgment of conviction and order of sentence dated 19.09.2019 passed by the learned Special Judge (Under POCSO Act) Baikunthpur, Koriya in Special Criminal Case (POCSO) No.04/2019, whereby

the appellant has been convicted under Section 376 (3) of IPC and sentenced to undergo life imprisonment and fine of Rs.1 Lakh with default stipulations.

2. The prosecution case, in brief, is that on 20.12.2018, the prosecutrix lodged report to the concerned police station stating therein that her mother has got divorce from her father/accused and is residing separately with her second husband. On 05.12.2008 at around 9:00 pm, she after finishing dinner with her father and sister went to bed. She slept with her sister on one bed and her father on the other bed in the same room. At around 11:30 pm when she and her sister were under deep sleep, the accused raped her by removing her legging and undergarment. Upon being objected, she scolded and continued performing such act. He also threatened her not to disclose to anyone. After around 5 days she shared the incident with Jyoti, a nearby relative, who shared it with her aunt (bua) Her aunt scolded the accused and kept the prosecutrix at her house. On 15.12.2018 when after taking dinner etc. she was sleeping with her Bua, Fufa and sister in the house of accused/appellant, at around 12:00 pm the accused/appellant by removing her legging and undergarment established physical relationship. Despite being objected accused/appellant continued and fulfilled his lust. She shared such information with her aunt (Mausi) , who shared with her mother, thereafter they decided to report the matter. Upon the report of the prosecurix, a case was

registered against the accused and he was arrested and after investigation charge sheet was filed before the Magistrate concerned. On the basis of the evidence adduced by the prosecution and material available on record, learned trial court convicted the accused/appellant, as mentioned in para 1 of the judgment.

3. Learned counsel for the appellant submits that the judgment passed by the learned Trial Court is contrary to law and material available on record. There are material omissions and contradictions in the statements of the prosecution witnesses. There were so many family members at home, as such it was not possible for the accused to commit rape on the prosecutrix. There is also delay in lodging the FIR. There was dispute between the accused and mother of the prosecutrix and she performed second marriage with some other man as such false allegation has been levelled against the accused, but all these aspects of the matter have not been considered by the learned Trial Court. Therefore, the appeal deserves to be allowed. Reliance has been placed on the judgments rendered by the Hon'ble Supreme Court in the matters of **Babloo Pasi vs State of Jharkhand and another**, reported in **(2008) 13 SCC 133**, **Dola @ Dolagobinda Pradhan and another vs State of Odisha**, reported in **(2018) 18 SCC 695** and the judgment rendered by this Court in the matter of **Sunder Lal @ Pappu vs State of Chhattisgarh,** passed in **CRA No.352/2024 vide**

judgment dated 05.07.2024.

4. Per contra, learned State counsel supports the impugned judgment and submits that the learned Trial Court has minutely appreciated the evidence available on record and has rightly convicted the appellant. Therefore, the appeal deserves to be dismissed.

5. Heard learned counsel for the parties and perused the material available on record.

6. Firstly we have to consider as to whether on the date of incident the prosecutrix was below 16 years of age or not ?

7. The prosecution has mainly relied upon the school admission register and discharge register vide Ex-P/12 as well as Class -1 marksheet (Article-A/1). PW-5 Smt. Nirmala Toppo, Principal of Primary School, Koriya Colliery, District Koriya stated in his deposition that during investigation, school admission register and discharge register were seized by the police as per seizure memo (Ex-P/9). The enrollment register is Ex-P/12. The attested copy of the said register is Ex-P/12-C and as per this register, the date of birth of the prosecutrix is 05.06.2005. She was admitted in Class-1 on 16.06.2010. In the cross-examination, she admitted that at the time of admission of prosecutrix, she was not posted in the school and endorsement in respect of the date of birth of the prosecutrix in the said school register is not in her handwriting.

8. PW-1 prosecutrix stated that she is aged about 14 years and her

birth year is 2005 and the date of month she does not remember. The mother of the prosecutrix (PW-2) stated that the date of birth of her daughter is 05.06.2005. The mother of the prosecutrix has not stated anything in her deposition as to on what basis she is saying that her date of birth is 05.06.2005. From the evidence, it appears that regarding the age of the prosecutrix, only school admission and discharge register (Ex-P/12) is available in support of the date of birth of the victim.

9. This Court in **Sunder Lal @ Pappu @ Vishal** (supra) held in paras 13, 14 & 15 as under:-

> 13. In case of Ravinder Singh Gorkhi Vs. State of UP, 2006 (5) SCC 584, relying upon its earlier judgment in case of Birad Mal Singhvi Vs. Anand Purohit, 1988 supp. SCC 604, the Hon'ble Supreme Court has held as under :
> "26. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."
> 14. 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. 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 victim 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."

15. 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 XXX

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 scrutinised 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."

10. In light of the above, in the present case, it is clear that the regarding the prosecution's evidence with respect to the age of the victim, no clinching and legally admissible evidence has been brought by the prosecution to prove the fact that the victim was minor on the date of incident, despite that the learned Trial Court has held her minor in the impugned judgment. Hence we set aside the finding recorded by the learned Trial Court that on the date of incident, the victim was below 16 or 18 years of age.

11. So far as issue of forcible intercourse by the appellant on the victim is concerned, we have carefully perused the evidenced of the victim.

12. PW-1 prosecutrix stated that the accused is her uncle (Phupha). Prior to 6 months, her father committed rape on her, which she informed to her Bua (Aunt), then her aunt kept her and her sister in her home. On the date of incident, when she was sleeping with her aunt, her phupha i.e. accused and their children were sleeping, then the accused removed her clothes and forcibly committed sexual intercourse with her by gagging her mouth. The next morning she told about the same to her sister, who told the same to her Bua (aunt), upon which she scolded the accused/phupha. The prosecutrix further stated that she also informed the incident to neighbour Jyoti, who told to report the matter along with her aunt to the police station concerned, but her aunt did not go to report the matter. Subsequently her mausi came to know about the incident and she told the same to the mother of the prosecutrix, thereafter they reported the matter to the police station concerned. She admitted her signatures on A to A part of the FIR (Ex-P/1). She gave her consent for medical examination vide Ex-P/2 and admitted her signatures on A to A part of the same. The Magistrate recorded her statement under Section 164 of CrPC vide Ex-P/3 & P/4 and she admitted her signatures on A to A part of the same.

13. In the cross-examination, the prosecutrix remained firm on this point that the accused committed sexual intercourse with her. The mother of the prosecutrix (PW-2) stated that the prosecutrix is her daughter. She got separated from her husband and is living in her parental house and she performed second marriage with some other man. She further stated that prior to 6 months, the prosecutrix's aunt (mausi) told her that the accused/phupha and the father of the prosecutrix committed rape with her, then she went to both to enquire about the same, but when they denied to have committed the same, then she went to police station to lodge report. She denied this suggestion that due to previous animosity with the father of the prosecutrix, she has falsely implicated him.

14. PW-3 aunt/mausi of the prosecutrix stated that it was informed by the prosecutrix that on 05.12.2018, her father committed rape on her, which she informed to her aunt (bua), thereafter the prosecutrix and her sister were kept by her aunt (bua) in her home. She further stated that on 15.12.2018 at about 12 pm, when the prosecutrix was sleeping, then the accused, who is her phupha, removed the lagging and panty of the prosecutrix and committed forcible sexual intercourse with her. She further stated that upon getting information, she along with her father, her sister Anita and prosecutrix got lodged the report. This witness admitted her signatures on the seizure memo (Ex-P/8 & P/9).

15. The sister of the prosecutrix (PW-4) supported the statement of

the prosecutrix and stated that when she along with the prosecutrix was sleeping, then her committed wrong with the prosecutrix, thereafter they were kept by their aunt (bua) to her home, where the accused committed forcible sexual intercourse with her.

16. Dr. Ayushi Rai (PW-6) examined the prosecutrix on 21.12.2018 and she found that her hymen was recently ruptured and was in the position of 5 O'clock. Redness was present and no bleeding was found and she gave her report (Ex-P/13). She denied this suggestion of defence that by playing or riding bicycle, hymen can rupture.

17. Learned counsel for the appellant strongly objected on this point that as per FIR, the date of incident is 15.12.2018, whereas the FIR was lodged on 20.12.2018 and cause of delay was not explained by the prosecutrix, but looking to the statement of the prosecutrix, her mother and her aunt, it is clear that her mother and father are separated. In her statement, the prosecutrix stated that firstly her father committed forcible sexual intercourse with her and after some days when she was sleeping in her aunt's house, then the accused, who is her phupha, committed forcible sexual intercourse with her, then she informed her bua/aunt/wife of the accused about the same but she did not report the matter, thereafter she informed the same to her sister and her mausi (aunt), thereafter her aunt (mausi) informed her mother (PW-2) about the same, then they went to police station and lodged FIR.

Before the learned Judicial Magistrate also, the prosecutrix stated against the accused vide Ex-P/3 and before the learned Trial Court, she remained firm on this point that the accused committed forcible sexual intercourse with her. Dr. Ayushi Rai (PW-6) also found her hymen ruptured so the medical report also supports the prosecution case. Thus, the prosecution has proved this fact that the accused committed rape with the prosecutrix.

18. The prosecution has failed to prove this fact beyond reasonable doubt that on the date of incident, the prosecutrix was below 16 or 18 years of age so the offence under Section 376 (3) of IPC and Section 6 of POCSO Act is not made out against the appellant and only the ofence under Section 376 (2) (f) of IPC is made out against the appellant, as such the conviction of the appellant is altered from Section 376 (3) of IPC to Section 376 (2) (f) of IPC and accordingly he is convicted under Section 376 (2) (f) of IPC and as the minimum sentence under Section 376 (2) (f) of IPC is of 10 years, thus looking to the facts and circumstances of the case, he is sentenced to undergo RI for 10 years.

19. The appellant is in jail since 22.12.2018, as such after setting off the period of detention undergone by the appellant against the sentence of imprisonment, the remaining jail sentence shall be served by him.

20. The appeal is partly allowed.

21. The trial Court record along with a copy of this judgment be sent back immediately to the trial Court concerned for compliance and

necessary action. The copy of this judgment be also sent to the concerned Jail Superintendent for information and necessary compliance.

Sd/-
Rajani Dubey
Judge

Sd/-
Amitendra Kishore Prasad
Judge

Nirala