



HIGH COURT OF CHHATTISGARH, BILASPUR
CRA No. 2230 of 2023

Lacchuram Mandavi S/o Late Shri Pandurm Mandavi Aged About 50 Years
R/o Bade Hadma Munda, School Para, Ps Kuankonda, District South Bastar
Dantewada (C.G.)

---- Appellant

Versus

State of Chhattisgarh Through Aarakshi Kendra Kuakonda, District South
Bastar Dantewada (C.G.)

---- Respondent

(Cause Title taken from Case Information System)

For Appellant : Mr. Saurabh Dangi, Advocate
For Respondent/State : Mr. Nitansh Jaisawal, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice and
Hon'ble Shri Sachin Singh Rajput, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

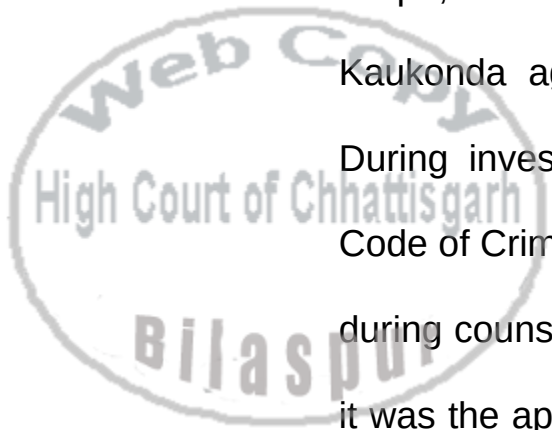
16.04.2024

1. This criminal appeal preferred under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and order of sentence dated 05.09.2023 passed by the learned Additional Sessions Judge (FTC) South Bastar, Dantewada, District – South Bastar, Dantewada (C.G.) in Special Sessions (POCSO) Case No. 07/2020, by which the appellant has been convicted for offence punishable U/s 201 of IPC and U/s 6 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for a term of 5 years & fine of Rs.1,000/-, in default of payment of fine additional Rigorous



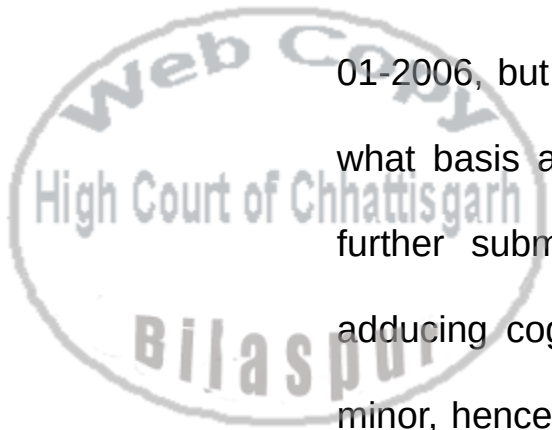
Imprisonment for 01 year and Life Imprisonment & fine of Rs.2,000/-, in default of payment of fine additional Rigorous Imprisonment for 01 year with a direction to run both the sentences concurrently.

2. Case of the prosecution, in brief, is that between August 2019 to October 2019 on 17.01.2020, the present appellant, being a step father of the victim, who on the date of incident was a minor, outraged the modesty of the victim by aggravated penetrative sexual assault resulting in pregnancy and to cover up the act lodged a false police complaint against a person named Hunga at Police Station, Frazerpur Parpa, Over the complaint, an FIR was registered by Police Station Kaukonda against Hunga under Section 376, 506 Part II of IPC. During investigation, statement of the victim under Section 164 of Code of Criminal Procedure, 1973 (for short 'CrPC') was recorded and during counseling at Juvenile Justice Board, the victim confessed that it was the appellant who has committed the offence and the appellant was arrested.
3. After investigation, the appellant was charged with offence punishable under Section 376(3), 201 of IPC and Section 6 of the POCSO Act.
4. Statement of accused was recorded under Section 313 of the Cr.P.C. in which he denied all the circumstances appearing against him and stated that he is innocent and has been falsely implicated.
5. The prosecution examined as many as 12 witnesses and exhibited 34 documents to bring home the charges.





6. The trial Court upon appreciation of oral and documentary evidence on record and considering that it is the appellant who have committed aforesaid offence, convicted and sentenced him in the aforementioned manner, against which the appeal under Section 374(2) of the CrPC has been preferred by the appellant.
7. It has been argued by the learned counsel for the accused/appellant that as per case of the prosecution, victim was minor on the date of incident, but this fact has not been proved by adducing lawful evidence. In this regard, only Dakhil-Kharij register (Ex. P-11A) of the victim has been seized, which shows that date of birth of victim is 02-01-2006, but it has not been proved by any of the witnesses that, on what basis aforesaid date of birth was recorded in the school. It is further submitted that since prosecution has failed to prove by adducing cogent evidence that, on the date of incident, victim was minor, hence the finding recorded by learned trial Court in this regard is not sustainable. He further argued that the victim (PW-2) along with her mother (PW-1) have turned hostile and have not supported the prosecution case, they both could not adduce evidence regarding the date of birth of the victim, which raises suspicion regarding the correct date of birth. He submitted that statement of victim before counselor of the Juvenile Justice Board has been heavily relied upon by the learned trial Court to convict the present appellant and not her deposition before the trial Court. Therefore, the impugned judgment of conviction and order of sentence deserves to be dismissed.



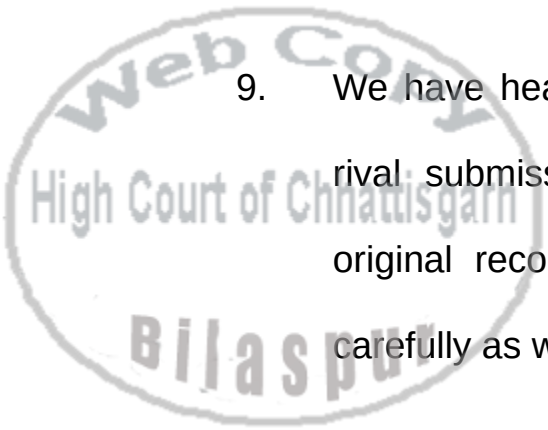


8. On the other hand, learned State Counsel opposed the submissions of learned counsel for the appellant and submitted that the offences committed by the appellant were heinous in nature and thus, the learned trial Court had rightly convicted him. He submitted that the trial Court had considered all the arguments made by the appellant and there was sufficient evidence to prove his guilt beyond a reasonable doubt. Moreover, the DNA Report of the appellant also matched with the DNA of the fetus, which proves that the appellant is the biological father. Therefore, the judgment passed by the learned trial court was sound and did not warrant any interference.

9. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the trial Court with utmost circumspection and carefully as well.

10. The first question for consideration before this Court would be, whether the trial Court is rightly held that on the date of incident, the victim was minor?

11. When a person is charged for the offence punishable under the POCSO Act, or for rape punishable in the Indian Penal Code, the age of the victim is significant and essential ingredients to prove such charge and the gravity of the offence gets changed when the child is below 18 years, 12 years and more than 18 years. Section 2(d) of the POCSO Act defines the "child" which means any person below the age of eighteen years.





12. In *Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263*, the Hon'ble Supreme Court laid down the guiding principles for determining the age of a child, which read as follows :

“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.

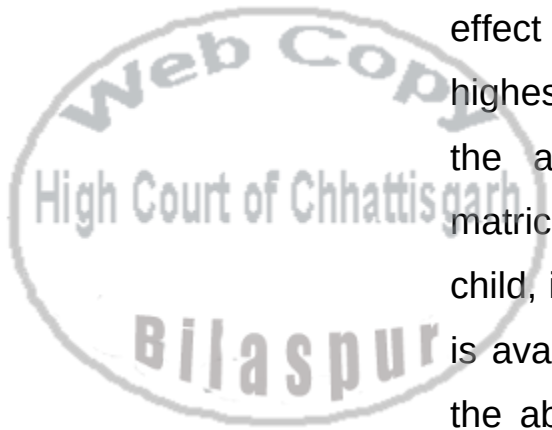
(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule(3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in 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



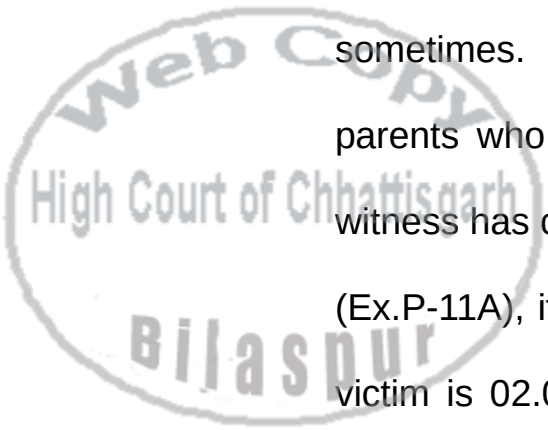


basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and 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.”





13. In the instant case, the prosecution has presented a certified copy of the Dakhil Kharij Register (Ex.P-11A) of the Government Primary School, Badehadmamunda, District - Dantewada in which the date of birth of the victim is mentioned as 02.01.2006 and the Assistant Teacher of the said school B. Samrath (PW-07), appeared in the Court and displayed the original Dakhil Kharij Register, in which the date of birth of the victim is mentioned as 02.01.2006. In the cross-examination, though he has admitted that he was not present in the victim's school at the time of her admission. In Bastar region, children are brought to school at a later age, but has clarified that this happens sometimes. He has denied the defense's suggestion that most of the parents who bring the children to school are illiterate, although the witness has clarified that this happens rarely. In Dakhil Kharij Register (Ex.P-11A), it has been clearly mentioned that the date of birth of the victim is 02.01.2006. The victim was given admission in school on 01.08.2015, which was rejected on 28.04.2018 when she passed fifth class in 2018. Thus, the victim has passed class five examination at the age of about 12 years, which seems completely reasonable and logical. Dakhil Kharij Register is a public document maintained by a public servant in the discharge of his official duties. The entry made in the filing/dismissal register has been made by a public servant, which has been given in proper custody by one public servant to another public servant. As per Section 94 of the Juvenile Justice Act, 2015, the Dakhil Kharij Register is a document issued by the school, which comes under first class documents. The defence has not presented





any oral or documentary evidence to refuse the said date of birth, therefore, there is no reason to disbelieve the date of birth of the victim, as 02.01.2006 hence, the trial Court has rightly held that the date of birth of the victim is 02.01.2006 and on the date of incident, she was minor below the age of 16 years and her age was around 13 years and 07 months.

14. The next question for consideration before us is whether the appellant has committed rape on minor victim and concealed the evidence ?

15. According to the prosecution case, the accused, who is the stepfather of the victim, had himself lodged a report in the Police Station Frazerpur Parpa regarding the victim's pregnancy due to the crime of rape being committed against her, whereas, after counselling the victim told that the accused had committed the crime of rape with her due to which she became pregnant.

16. In this case, victim's mother (PW-1), victim (PW-2), victim's neighbour Smt. Kosi (PW-3), Mangli (PW-4), Handa Mandavi (PW-5) and victim's uncle Raju Ram (PW-6) without supporting the case of prosecution and without making any kind of allegation against the accused, have completely denied from their respective police statements Exs.P-1, P-6, P-7, P-8 and P-9.

17. This fact is clear from the statements of the witnesses examined in case that the victim was the step daughter of the accused who had married the victim's mother and had kept her as his wife. This fact has

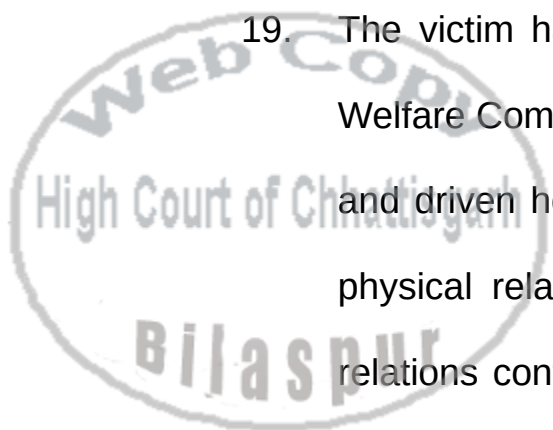


also been accepted by the accused in his cross-examination, which proves the fact that the accused is the stepfather of the victim.

18. This fact has also become clear from the statements of the witnesses that due to the stoppage of the victim's mensuration, the victim was taken by her mother and the accused for treatment to the District Hospital, Dantewada, where after she was found to be pregnant, she was referred to Dimrapal Medical Centre College, Jagdalpur and after examination, the victim was found to be pregnant. This fact has not been disputed by the defence.

19. The victim has admitted the fact that she had told before the Child Welfare Committee that her father Lachchuram had beaten her mother and driven her out the house and had taken off her clothes and had physical relations with her, after which he kept on having physical relations continuously with her, although she has further clarified that she had said so out of fear of the policemen. When asked why she was afraid of the police or what the police had said to scare her, the victim clarified that the police were repeatedly saying that no one else, he was her father, that is why she was scared, but she did not tell the interrogating madam about being scared. She has also admitted that the doctor at Dimrapal Hospital had told her that she was pregnant.

20. The accused is the stepfather of the victim and in such cases where the crime of rape is committed by the family members of any girl child, it is completely natural for such girls to get distracted and try to save them and in this case also, an attempt is being made by the victim to

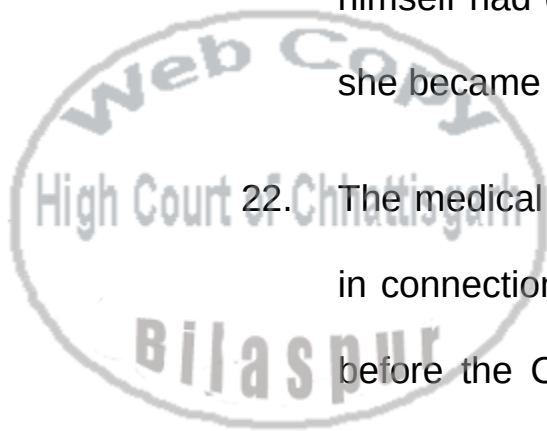




save the accused before the Court, who is her stepfather, but she has made a statement regarding establishing physical relations by the accused with her, although she has made it clear that she made such a statement out of fear, but from the evidence, there does not appear to be any reason for the victim's fear.

21. Even if the statement of the victim is not believed in this case for the sake of argument, still there is not only medical evidence but also DNA test report against the accused. In such a situation, in the absence of the victim's statement, it is necessary to see whether the accused himself had committed the crime of rape with the victim due to which she became pregnant or not ?

22. The medical examination of the victim was done by Dr. Sahima Rizvi, in connection with which Dr. R.K. Singh (PW-11) has been examined before the Court, who has clearly stated in his examination-in-chief that he was worked with Dr. Sahima Rizvi, Medical Officer, who was posted in his school and has given her resignation and gone somewhere else, hence he knows and recognizes her signature and handwriting very well. He further stated that the victim, aged about 14 years, was presented before Dr. Sahima Rizvi for examination by the SHO, Frazerput Parpa, who on examining the victim found that there was a mole in the middle part of the chest of the victim. The victim had told that she is 14 years old unmarried and has not been menstruating for four months. The victim had also also that Hunga had forcefully established physical relations with her several times between the months of August and October. He has also stated that after internal





and external examination of the victim, no injury was found on her body. The hymen of the victim was not intact. After examining of the victim, it cannot be said that she was not subject to sexual assault. The victim's pubic hair, vaginal swab, nail clippings, buccal swab were prepared and preserved by Dr. Sahima Rizni for FSL. He further stated that the victim was hospitalized in Government Medical College, Dimrapal Jagdalpur from 19.12.2019 to 25.12.2019, because the victim was an unmarried girl whose age was only 14 years and was found to be 17 weeks and 3 days pregnancy. Sonography of the victim was done, on the basis of which the victim was found to be pregnant. Her discharge ticket is marked as Ex.P-34.

23. Sub-Inspector, Urmila Sahu (PW-9) has stated in her main examination that during the trial of the case, the DNA of the victim, the child of the victim and the accused was examined to match it. The application for testing was submitted which is Ex.P-23. The identification forms filled for DNA testing before the Court at the time of trial are Exs.P-24 to P-26 respectively. After getting the permission for DNA testing through the Public Prosecutor, vide Ex.P-27, the samples of the DNA were sent to the State Forensic Science Laboratory, Raipur, where from report was received vide Ex.P-28.

24. In this case, the blood samples of the victim, the child born to the victim and the accused were taken before the Court with the permission of the Court, an identification form was prepared and the blood samples were sent for testing by the expert team on the same date, which is confirmed by the order dated 21.10.2021. The test



report and its procedure have not been disputed in any way by the defence nor any application has been submitted by the defence regarding summoning the witness who had conducted the DNA test. There has been no challenge of any kind to the rest report. In this case, blood samples of the victim, her child and the accused were taken before the Court, properly sealed and immediately analyzed for DNA. Thus, there is no basis to case doubt on the credibility of DNA test report (Ex.P-28). According to the DNA test report (Ex.P-28), the victim and the accused are the biological parents of the child to whom the victim has given birth, which is confirmed by the unbroken report Ex.P-28.

25. In this way, the situation of crime committed by the accused is also clear from the statement of the victim, although the victim stated that due to fear, she had given statements against the accused before the police and Child Welfare Committee, but it is not credible. The reason for victim's fear is not clear. Yet even if the victim's statement is not believed in this case, still in that situation, the fact that the victim and the accused are the biological parents of the child born to the victim was proved from the unbroken DNA report Ex.P-28.

26. In the present perspective, DNA report and FSL report play an important role for examining the involvement of a accused in a crime. These types of crimes occur in private and sometime rape is also followed by murder. In such a situation, DNA report and experts' reports become material. The present era is the era of science and that is the reason why provision has been made in the CrPC to collect



DNA test and all other such witnesses, who are related to the scientific world. In this case, after obtaining formal consent, blood samples from the accused, the victim and the child born to the victim were taken and DNA analysis was done. After being sent for testing, clear report has been submitted to the effect that the biological parents of the child born to the victim are the victim and the accused, which is not only conclusive but also irrefutable evidence in relation to the accused.

27. The DNA test report Ex.P-28 confirms the fact that the accused himself had established physical relations with his stepdaughter continuously from August 2019 to October 2019 and caused sexual assault by penetrating more than once or repeatedly. The victim had become pregnant due to aggravated penetrative sexual assault and the accused, with the intention of shielding himself from legal punishment, tried to save himself by filing a false report implicating an innocent person before the Police Station, Frazerpur Parpa and trying to mislead him and destroyed the evidence to save himself. Thus, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentenced as awarded by the trial court is hereby upheld. The present appeal lacks merit and is accordingly **dismissed**.
28. The appellant is stated to be in jail since 28.12.2019 being the date of arrest. He is directed to serve out the sentence as awarded to him by the trial court.





29. Let the lower court record and copy of this judgment be sent to the trial court forthwith for necessary information and its compliance.

(Sachin Singh Rajput)
Judge

(Ramesh Sinha)
Chief Justice

Chandra



**Head-note**

DNA report and FSL report play an important role for examining the involvement of a accused in a crime. Court must recognize the conclusiveness and correctness of DNA testing while adjudicating the crimes.

किसी अपराध में आरोपी की संलिप्तता की जांच के लिए डीएनए रिपोर्ट और एफएसएल रिपोर्ट महत्वपूर्ण भूमिका निभाती है। न्यायालय को अपराधों पर निर्णय देते समय डीएनए परीक्षण की निर्णायकता और शुद्धता को अवश्य पहचानना चाहिए।

