2025:CGHC:40757-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1342 of 2024

1 - Beer Bahadur Singh S/o Subhan Singh Aged About 21 Years Resident Of Village Bahrasi, P.S. Janakpur, District M.C.B., Chhattisgarh

... Appellant

versus

1 - State Of Chhattisgarh Through Station House Officer, Police Station Janakpur, District M.C.B., (C.G.)

... Respondent/State

(Cause title taken from CIS)

For Appellant	**:**	Shri Ramsajiwan, Advocate.
For Respondent/State	**:**	Shri Sakib Ahmed, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per, Bibhu Datta Guru, J

13.08.2025

1. Heard Mr. Ramsajiwan, learned counsel, appearing on behalf

of the appellant as well as Mr. Sakib Ahmed, learned Panel Lawyer appearing on behalf of the State/respondent.

2. This appeal is directed against the judgment of conviction and order of sentence dated 26.04.2023 passed by the learned Upper Sessions Judge F.T.S.C. (POCSO) Manendragarh District Korea (C.G.) in Special Crime No. 39/2019, whereby the appellant has been convicted and sentenced as under:-

Conviction	**Sentence**
Under Section 341 of the IPC	Simple imprisonment for 01 months & fine of Rupees 100/- in default of fine simple imprisonment for 7 days.
Under Section 376(2)(n) of the IPC	Life Imprisonment & fine of Rs. 500/- in default of fine Rigorous Imprisonment for 01 year.
Both sentences are to be run concurrently.	

3. Case of the prosecution, in brief, is that that on 09.01.2019, while the victim was returning home after purchasing tea leaves from a shop, the accused intercepted her, caught hold of her hand, gagged her mouth, and dragged her to a nearby field, where he removed her knickers and committed rape

upon her three times consecutively despite her cries and pleas for release. After about an hour, the accused let her go, and she returned home. Thereafter the FIR was registered and the criminal law was set into motion. During course of investigation, Spot Map (Ex.P/2) was got prepared. Prosecutrix got medically examined vide Report (Ex.P/11). Accused was apprehended and statements of the witnesses including the prosecutrix was recorded by the police as well as before the Judicial Magistrate under Section 164 CrPC. Upon completion thereof, charge-sheet was submitted accordingly. After framing the charges against the accused/appellant, the charges were read out and explained to the appellant, he denied committing the crime and demanded trial.

4. In order to bring home the offence, the prosecution has examined 17 witnesses in its support. Statement of the accused/appellant under Section 313 Cr.P.C was recorded, wherein he has pleaded his innocence and false implication in the matter.

5. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated

26.04.2023 convicted and sentenced the appellant as mentioned in paragraph two of this judgment. Hence, this appeal.

6. Learned counsel for the appellant submits that the conviction is contrary to the facts, evidence, and material on record, and is liable to be set aside. It is contended that the appellant, a 21-year-old student, has been falsely implicated on the basis of false and baseless allegations, and the prosecution has failed to prove the case beyond reasonable doubt. The trial court relied on the testimony of interested and unreliable witnesses, which suffers from material contradictions and omissions. He further submits that the essential ingredients of the offences under Sections 341 and 376(2)(n) IPC have not been established, and the judgment and sentence are illegal, arbitrary, and unsustainable in law. He also submits that no adverse finding was given in the FSL report, benefit whereof should be extended to the accused.

7. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and submits that the prosecution has proved its case beyond

reasonable doubt and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.

8. 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 learned trial Court with utmost circumspection and carefully as well.

9. **The first question for consideration is whether the victim is minor/ below the age of 18 years or not?**

10. PW-1 victim herself stated that she is 12 years and she studied in class 8th which is corroborated by the Ex.P-7C Dakhil Khariz register which is proved by PW-6 Santosh Kumar Soni, Incharge Head master of Government Primary School Baheratola in which the Date of Birth of the prosecutrix is mentioned as 11.06.2005. Statement of these witnesses remains totally unchallenged during cross-examination. Therefore, for want of challenge and proved materials available on record, we do not have any hesitation in holding that the victim on the date of incident being below the age of 18 years, is 'child' within the meaning of section 2(d) of the

POCSO Act.

11. **The next question for consideration would come, whether the appellant committed such heinous act with the Victim or not?**

12. PW-1, the prosecutrix herself deposed that she knows and recognizes the accused, on 09.01.2019, at about 6:00 p.m., her maternal grandmother, Phulbai, sent her to buy tea leaves from a shop. While returning home with the tea leaves, the accused, Bir Bahadur, met her on the way, covered her mouth with a towel, lifted her, and took her to a nearby field. There, he removed her knickers and forcibly committed rape upon her three times consecutively. Thereafter, the accused fled from the spot. She returned home crying and informed her aunt, Shashikala, who then told her maternal grandmother, Phulbai. She further stated that her maternal grandmother took her to Janakpur Hospital, from where she was referred to the District Hospital, Baikunthpur, where she was medically examined. She stated that she fainted due to the act of rape committed by the accused.

13. PW-2 Father of the prosecutrix stated that the victim had been

residing at her maternal grandmother's house since childhood. On the night of the incident, his brother-in-law called him and informed him that the accused, Bir Bahadur, had raped the victim. He stated that thereafter the victim took to Janakpur for treatment, from where she was referred to the District Hospital, Baikunthpur. The witness further stated that upon returning home, the victim narrated the incident to her mother, who then informed him. He came to know that when the victim had gone to a shop to purchase tea leaves, the accused intercepted her while she was returning, gagged her mouth, lifted her, and took her to a field, where he forcibly committed rape upon her. After about an hour, the accused released her, and she returned home and told her aunt about the incident.

14. PW-3 Mother of the victim has stated that she knows the accused, Bir Bahadur, on the date of the incident, in the evening, her mother, Phulbai, sent the victim to the shop to buy tea leaves. While returning from the shop, the accused caught hold of the victim, gagged her mouth, and took her to a field near his house, threatening to kill her if she raised an

alarm. There, the accused forcibly committed rape upon her. The witness further stated that she went to search for the victim two to three times but could not find her. She further stated that the victim returned home crying at about 7:00 p.m. and, on being asked, told her that while she was returning from the shop with tea leaves, the accused had forcibly caught hold of her, gagged her mouth, taken her to a nearby field, raped her, and threatened to kill her, if she raised an alarm.

15. PW/9 Dr. Vishakha Dey in her deposition on the basis of the physical and internal examination of the victim, opined the following points:-

1. The victim is a minor female who has not attained puberty, as indicated by the absence of secondary sexual characteristics and pubic hair, and the fact that menstruation had not commenced.

2. The complete tear of the hymen extending to the posterior fornix, first-degree perineal tear, abrasions, and lacerations to the labia minora and vaginal wall, along with active bleeding and the evacuation of approximately 200 ml of blood clot, are consistent

with recent and forceful vaginal penetration.

3. The nature and severity of the injuries indicate that they were caused by blunt force applied to the genital region.

4. The injuries were fresh at the time of examination and could have been inflicted within a short time prior to presentation.

5. The findings are consistent with sexual assault.

16. As per FSL Report, (Ex. P/20) in (Ex. A & B), no human sperm was found.

17. Medical Examination of the appellants/accused was conducted a report vide Ex.P/17 and opined that the appellant is able to do sexual intercourse. In examination in chief, this witness has admitted that accused had indulged in sexual intercourse 24 hours prior to the medical examination,No opinion has been given in this regard in the examination report.

18. It is settled principle that if the testimony of the victim is trustworthy and totality of the circumstances appearing on

the record of the case disclose that the victim does not have a strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her/his evidence.

19. It has also become almost settled position of law that conviction can be based on the solitary statement of victim, provided same inspires confidence of the court.

20. The Supreme Court in the matter of **Rai Sandeep alias Deenu v. State (NCT of Delhi)**, 2012 (8) SCC 21 held as under:-

> *"22. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural*

and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more recise, the version of the said witness on the core

spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

21. Also, the Supreme Court in the matter of **State of Maharashtra vs Chandraprakash Kewal Chand Jain,** 1990 SCC 550 held as under:-

> ***"****A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled*

*by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.***"***

22. Reverting to the facts of the present case in light of above principles of law laid down by their Lordships of the Supreme

Court, it is quite vivid that from the statement of victim PW1 that, while she was returning from the shop with tea leaves, the accused had forcibly caught hold of her, gagged her mouth, taken her to a nearby field, raped her, and threatened to kill her,

23. In the result, particularly considering the fact that the victim has categorically stated that the accused has raped her and also threatened her with dire consequences and particularly looking to the Medical examination report (Ex.P/11) wherein it is categorically stated by the Doctor that sexual assault was done forcefully on the victim therefore this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant.

24. At this juncture, it is noteworthy to mention here that the victim was below 16 years of age on the date of incident i.e. 9-1-2019. In the case at hand, the accused has been tried for offence under Section 376(2)(n) which provides commission of rape repeatedly on the same woman, whereas the appellant has to be tried under Section 376(3) IPC, which has been inserted on 21-4-2018. The same provides that whoever, commits rape on a woman under sixteen years of age 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 that person's natural life, and shall also be liable to fine.

25. Wide power has been conferred under Section 386 CrPC (427 BNSS) and pursuant to the same, the appellate Court can exercise the power under Section 216 CrPC (239 BNSS) of altering or adding the charge. For the sake of convenience, Sections 386 & 216 CrPC are quoted below :

> **386. Powers of the Appellate Court**.- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-
>
> (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

216. Court may alter charge -(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the

opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

26. The Supreme Court in the matter of ***Chandra Pratap Singh v State of Madhya Pradesh*** reported in **(2023) 10 SCC 181** held thus at para 13 :

> 13. In view of the wide powers conferred by Section 386 of Cr.PC, even an Appellate Court can exercise the power under Section 216 of altering or adding the charge. However, if the Appellate Court intends to do so, elementary principles of natural justice require the Appellate Court to put the accused to the notice of the charge proposed to be altered or added when prejudice is likely to be caused to the accused by alteration or addition of charges. Unless the accused was put to notice that the Appellate Court intends to alter or add a charge in a particular manner, his advocate cannot effectively argue the case. Only if the accused is put to notice by the Appellate Court that the charge is intended to be altered in a particular manner, his advocate can effectively argue that even the altered

> charge was also not proved. For example, in the present case, it was necessary for the Appellate Court to put the appellant to notice that it intended to convict him with the aid of Section 34 of IPC, for which a charge was not framed. We may add here that the Court can give the notice of the proposed alteration or addition of the charge even by orally informing the accused or his advocate when the appeal is being heard. In a given case, the Court can grant a short time to the advocates for both sides to prepare themselves for addressing the Court on the altered or added charge.

27. In view of wide powers conferred by Section 386 CrPC (427 BNSS), even an appellate Court can exercise the power under Section 216 CrPC (239 BNSS) of altering or adding the charge, the appellant is convicted under Section 376(3) IPC in place of Section 376(2)(n) and is sentenced to undergo RI for 20 years instead of life imprisonment as imposed by the trial Court. Since no prejudice is caused to the accused by alteration of charge, observance of principles of natural justice is not required at this juncture.

Remaining portion of conviction, sentence as also the fine amount imposed by the learned trial Court shall remain unaltered.

28. *Ergo*, the present appeal is **partly allowed** and the judgment of conviction and order of sentence passed by the learned trial Court is modified to the above extent.

29. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing the 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.

30. Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/- Sd/-

(Bibhu Datta Guru)
Judge

(Ramesh Sinha)
Chief Justice

Shoaib/Gowri

Head note

In view of wide powers conferred by Section 386 CrPC (427 BNSS), even an appellate Court can exercise the power under Section 216 CrPC (239 BNSS) of altering or adding the charge. However, when prejudice is likely to be caused to the accused by alteration or addition of charges, observance of principles of natural justice would be necessary.