

CRA No. 16 of 2021



2025:CGHC:22807-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 16 of 2021

1 Abdul Shaheed S/o Abdul Kareem Ansari Aged About 21 Years R/o Navapara , Ward No. 01, Podi, Police Station Podi, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

... Appellant

versus

1 State Of Chhattisgarh Through Police Station , Podi, District Koriya Chhattisgarh., District : Koriya (Baikunthpur), Chhattisgarh

... Respondent

(Cause title is taken from Case Information System)

For Appellant	: Ms. Madhunisha Singh, Advocate
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For Respondent/State	: Mr. Sangharsh Pandey, G. A.
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Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

Per, Bibhu Datta Guru, J

10/06/2025

1. Heard Ms. Madhunisha Singh, learned counsel, appearing on behalf of the appellant as well as Mr. Sangharsh Pandey, learned Govt. Advocate appearing on behalf of the State/respondent.

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2. This appeal is directed against the judgment of conviction and order of sentence dated 23.11.2020 passed by the Court of learned Special Judge (POCSO Act), Baikunthpur, District Koriya, Chhattisgarh in Special Criminal Case (POCSO) No.11 of 2018 whereby the appellant has been convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
Under Section 6 of the Protection of Children from Sexual Offences Act, 2012	R. I. for life and fine amount of Rs.5,000/-, in default of payment of fine, additional rigorous imprisonment for six months.
Under Section 377 of IPC	R. I. for life and fine of Rs.5,000/-, in default of payment of fine, additional rigorous imprisonment for six months.
Both the sentences were directed to run concurrently.	

3. Learned State counsel submits that notice issued to the brother of the complainant/victim (PW-5) has been served, but no one appeared on behalf of the complainant to contest the present appeal.
4. Case of the prosecution, in brief, is that on 07.04.2018 at around 1.00 p.m. when the mother of the victim returned to her home for lunch, having found her brother-in-law (Devar) in an objectionable position with her son (victim), committing sexual assault/carnal intercourse with him, thereafter FIR was registered and the criminal law was set into motion. During course of investigation, Spot Map (Ex.P/1) was got prepared. Victim got medically examined vide Report Ex.P/22. Accused was apprehended and statements of the witnesses including the victim was recorded by the police as well as before the Judicial Magistrate

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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.

5. In order to bring home the offence, the prosecution has examined 15 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.
6. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 23/11/2020 convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
7. Learned counsel appearing for the appellant would submit that the statement of the victim is filled with contradictions and omissions, thus not worthy of being given credence. She further submits that Complainant and other material witnesses have turned hostile and the doctor has also not given any definite opinion about carnal intercourse. She further submits that conviction cannot be based on guesswork. She submits that victim is a child witness, thus, not to be believed in the absence of corroboration and prosecution story is filled with doubts, benefit whereof should be extended to the accused.
8. Learned counsel appearing for the State, per contra, would submit that though the complainant/PW-4 despite being mother of the victim has turned hostile, however, reason therefor also appears to be obvious,

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accused and she being relatives. He further submits that accused is brother-in-law (devar) of the complainant and Victim/PW-5 has duly proved on record the manner of incident and has assigned role to the accused in commission of charged offences. He further submits that injury on the private part of the victim stands proved by the medical report (Ex.P/22) and statement of attending doctor PW-11. He would also submit that age of the victim being under 18 years, which is otherwise remains unchallenged during entire cross-examination, stands proved from the statements of PW-1 (Mohd. Shareef Saiyyad), PW-4 (Shamshunisha), PW-5 (Ayan), PW-10 (Mumtaj) and PW-11 (Dr. Pradeep Kumar Rohan). He would further submits that the impugned judgment of conviction and order of sentence passed by learned Trial court is just and proper and warrant no interference of this court.

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 learned trial Court with utmost circumspection and carefully as well.
10. PW-1 is father of the victim, who has stated that the age of the victim to be around 4 years. PW-4, mother of the victim, has stated that age of the victim to be around 5 years. Victim PW-5 during his examination has stated that his age has been assessed to be less than 12 years by the learned trial Court. PW-10 has proved on record particulars of Anganbadi Record as Ex.P/19, according to which date of birth of victim is stated to be 01.04.2013. Statement of these witnesses remains totally

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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. Learned counsel for the appellant has taken a plea that PW4, mother and PW1, father of the Victim has turned hostile. Other witnesses PW-2 and PW-3 who were supposed to corroborate the statements of PW-1 and PW-4 have also turned hostile.
13. The reason for their turning hostile appears to be obvious, of being won over, as the accused is brother of PW-1, father of the victim. It appears that in the garb of such relationship matter might have got patched up amongst them. However, PW-1 and PW-4 both have categorically stated that on the date and time of incident when they were not available at home, accused had visited their house. This statement, not only remains unchallenged but an affirmative suggestion has been advanced by the defence side to show that on the date of incident a dispute had occurred concerning breaking of mobile phone and matter was reported to police in that respect, which conclusively establishes that accused on the date and time of incident was present in the house of victim.
14. Be the case as it may, under law mere their hostile approach does not preclude this court, to bring the case to a logical conclusion based on the testimony of the victim and other materials with attending

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circumstances. Law does not give full authority to an individual to decide out of court conviction or acquittal of any accused. It is settled position of law that the statement of hostile witness cannot be noted en block. There is statement is required to be considered as whole to find out as to whether any weight or credence can be given or not.

15. It is the settled law that the deposition of hostile witness can be relied upon at least up to the extent he supported the case of the prosecution. In that view, the proposition of law which emerges is that evidence of a hostile witness does not get effaced from record, rather is the position is required to be examined cautiously to find out as to what extent he supported the prosecution version.
16. 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.
17. 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.
18. In the present case, as above noted, though PW-1 and PW-4 have turned hostile yet, their statement in the court remains unchallenged, insofar as presence of accused in the house of victim on the date and time of incident is concerned. Further, victim/PW-5 has categorically stated that on the date and time of incident when her mother had been out for work,

accused had come to his house. He after taking lunch was moving out to play, but the accused stopped him on the pretext that he would play song for him, and took him inside the room. There in the room, the accused laid him down on the floor, covered him with a blanket and after removing his pant and underwear, committed carnal intercourse. He has further stated that when her mother came, noticing her arrival he escaped from the spot. He has also stated that even 2 years ago this accused had committed the same act, however, due to neglect of her mother said incident could not get reported. He has proved on record factum of his examination by the doctor and recording of statement by learned judicial Magistrate. His aforesaid statement is found to be in conformity with his previous statement made to police and before learned judicial Magistrate under section 164 CrPC. Despite his tender age, he during cross-examination while understanding the import and importance of the suggestion put to him, he has not only denied the suggestion of the defence but has reiterated the ashamed act of accused. He has also falsified the story put forth by PW-1 and PW-4 regarding presence of accused in their house that being relative he had visited on the date and time of incident and there was dispute concerning breaking of mobile phone in the hands of accused and matter was reported to police in that regard.

19. In this way, PW-5 has remained firm in his statement. Though, being a child witness, he has affirmatively endorsed the suggestion of prosecution regarding factum of incident. It was not, that he was accepting every suggestion. As above noted, having been suggested

during cross-examination by the defence side that accused did not commit alleged act, he not only denied the suggestion but has also attributed his role in commission of crime. He has stated like a natural witness and thus his statement inspires confidence of this court. During examination in court, initially not speaking about the facts of incident voluntarily, in the light of age of the victim and also considering the fact that having been examined on the same day her mother had turned hostile, he also might have been tutored by her leading to his confused state of mind, prudent mind of this court advises to ignore the same. Even otherwise, minor contradictions in the statement of a natural witness, that too of a child witness, who is victim of unnatural sexual/carnal intercourse in the hands of his uncle, does not require much attention to be paid.

20. In cases under the POCSO Act, a ‘sterling’ witness refers to a witness whose testimony is of high quality on caliber to the extent that the Court can accept their version of events without requiring additional corroboration. The Supreme Court in ‘n’ numbers of cases, has observed that the testimony of a victim can be sufficient for conviction, if it is trustworthy and of sterling quality.

21. 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 precise, 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.”

22. Dr. Rohan PW/11 has corroborated and proved on record his examination report Ex.P/22 as per which probability of carnal intercourse has been affirmed, based on finding of fact that abrasion was noticed on the anal region and victim was terrified and was crying during examination. Blood like stains were also noticed on the undergarments. PW-11 vide his report Ex.P/23 has proved that accused was able to perform sexual intercourse. In this way statement of PW-4 stands corroborated by the medical evidence as well.
23. Apart from him as above noted other official witnesses PW-7, PW-8, PW-12, PW-13 and PW-15 have duly proved their part. Nothing material could be elucidated by defence side during their cross-examination.
24. So, from the statements of PW-11 and vide report Ex.P/23 it stands established on record beyond reasonable doubt that accused was able to perform sexual intercourse. His report Ex.P/22 proves commission of carnal intercourse with the victim. Victim/PW-5 has categorically assigned role to the accused in commission of said offence against him. Presence of the accused not only remains unchallenged by the defence during cross-examination, rather same is an admitted fact. There is no dispute about the accused being uncle/relative of the victim. Age of the victim has been determined to be less than 12 years. Therefore, having aforesaid materials on record, compels us to hold that prosecution has proved on record beyond reasonable doubt, that on 7th April, 2018 at

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around 1 PM, the accused above named committed carnal intercourse with the victim below 12 years of age. Point "B" is accordingly, answered in affirmative.

25. Thus, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellants. The conviction and sentenced as awarded by the trial Court is hereby upheld. The present appeal lacks merit and is accordingly **dismissed**.

26. 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.

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

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice