



2025:CGHC:20172-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 310 of 2024**

Ritesh @ Pappu Manjhi S/o Ramlal Manjhi, Aged About 18 Years, 10 Months, R/o Manjhi Mohalla, Sitamani Korba, Police Station Kotwali, District- Korba, Chhattisgarh.

... Appellant**versus**

State of Chhattisgarh Through Station House Officer, Police Station Kotwali, District- Korba, Chhattisgarh.

---- Respondent

(Cause Title taken from Case Information System)

For Appellant : Ms. Nirupama Bajpai, Advocate

For Respondent/State : Mr. Shailendra Sharma, Panel Lawyer

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Arvind Kumar Verma, Judge

Judgment on Board**Per Ramesh Sinha, Chief Justice****02.05.2025**

1. Heard Ms. Nirupama Bajpai, learned counsel for the appellant as well as Mr. Shailendra Sharma, learned Panel Lawyer, appearing for the State/respondent.

2. The appellant has preferred this appeal under Section 374(2) of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.')
- questioning the impugned judgment dated 09.10.2023 passed by the Additional Sessions Judge, Fast Track Special Court (POCSO), Korba, District Korba (C.G.) in Special Case (POCSO) No.17/2022, whereby the trial Court has convicted and sentenced the appellant with a direction to run all the sentences concurrently in the following manner :-

<u>CONVICTION</u>	<u>SENTENCE</u>
Under Section 366 of the Indian Penal Code, 1860	Rigorous imprisonment for 10 years with fine amount of Rs.500/-, in default of payment of fine, additional rigorous imprisonment for 6 months.
Under Section 376(AB) of the Indian Penal Code, 1860	In the alternative, conviction of the appellant under Section 6 of the Protection of Children from Sexual Offences Act, 2012.
Under Section 6 of the Protection of Children from Sexual Offences Act, 2012	Imprisonment for life (i.e. till his remaining natural death) with fine amount of Rs.500/-, in default of payment of fine, additional rigorous imprisonment for 6 months.

3. Case of the prosecution, in brief, is that, on 03.04.2022, at about 01.30 PM, the complainant / mother of the victim (PW-1) submitted a written complaint (Ex.P/1) at Police Station Kotwali, Korba alleging that on 16.03.2022, her third child/victim (PW-2) had gone

alone from her house to the shop for buying goods between 06.00 PM to 07.00 PM on 16.03.2022, from where the victim came back at about 07.30 PM and started crying after vomiting. On being asked the reason, the victim told that 'Pappu Mama' forcibly took her to a room, took off her clothes as also the underwear and was inserting his finger in her private part/urination area as well as he was asked her to suck his penis by putting it in her mouth, on which the victim cried. The accused has threatened her not to tell the incident to anyone.

4. Upon receiving the above information from the victim, the complainant took her to the said room, but at that relevant time, the accused was not present. The complainant did not know whom the victim called 'Pappu Mama', but on 01.04.2022, when she gone to a wedding at neighbourhood with her children and husband, on seeing the accused i.e. Pappu Manjhi, the victim recognised him and stated the complainant that he was the person who had taken the victim to the room on that day and put his penis in the victim's mouth as also putting his finger in her private part.
5. On the basis of the written complaint (Ex.P/1), First Information Report (Ex.P/2) was registered against the appellant at Police Station Kotwali, Korba in connection with Crime No.0343/2022 for the offence punishable under Section 376AB of the Indian Penal Code, 1860 (for short, 'IPC') as well as Sections 5(m) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short,

'POCSO Act') and wheels of the investigation started. During the investigation, Sub-Inspector, Bhavana Khandare prepared the map of the incident vide Ex.P/6 on 03.04.2022 as well as recorded the statement of the victim and her parents. The consent of the prosecutrix and her mother was taken to examine the private parts of the victim vide Ex.P/5. The victim was sent to District Hospital, Korba along with application (Ex.P/7) for medical examination and on the same day, the accused was arrested vide arrest memo Ex.P/9 and information Ex.P/10 was given to the family of the accused. The accused was sent for medical examination to District Hospital, Korba along with application Ex.P/8, on the same date application Ex.P/11 was given to Tehsildar, Korba for preparing Patwari map of the place of incident. The statement of the victim was recorded before the Chairman, Child Welfare Committee, Korba and on the same day, the application (Ex.P/13) was given before the First Class Judicial Magistrate, Korba for recording the statement of the victim under Section 164 of the Cr.P.C. The mother of the victim has produced the photocopy of the mark-sheet of K.G.I vide Article A-1 and original birth certificate vide Article A-2, vide seizure memos Ex.P/3 and Ex.P/4, respectively. Application (Ex.P/14) was given to the Principal, Lions English High School, Sitamani, Korba for producing the admission-discharge certificate of the victim, which was seized vide Ex.P/15, according to which, date of birth of the victim is 24.06.2014.

- 6.** Thereafter, statements of witnesses were recorded under Section 161 of Cr.P.C. and, after due investigation, the police filed charge-sheet in the concerned jurisdictional Court and, thereafter, the case was committed to the Court of Sessions for trial in accordance with law, from where the learned Fast Track Court under POCSO Act, Korba, District Korba (C.G.) received the case on transfer for trial and for hearing and disposal in accordance with law. The trial Court has framed charges against the appellant for the offence punishable under Sections 366 and 376(AB) of the IPC as also Section 6 of the POCSO Act and proceeded on trial. The appellant abjured his guilt and entered into defence stating that he has not committed any offence and he has been falsely implicated in the crime in question.
- 7.** So as to prove the complicity of the accused/appellant in the crime in question, prosecution has examined as many as 4 witnesses and exhibited 16 documents in support of its case as well as 2 Articles. In support of the defence, appellant/accused has examined 2 witnesses.
- 8.** The trial Court after completion of trial and after appreciating oral and documentary evidences available on record, by the impugned judgment dated 09.10.2023 convicted and sentenced the appellant in the manner mentioned in the second paragraph of this judgment, against which this appeal under Section 374(2) of the Cr.P.C. has been preferred by him calling in question the impugned judgment of conviction and order of sentence.

9. Learned counsel for the appellant vehemently argued that the learned trial Court has failed to properly appreciate the evidence led by the prosecution and has wrongly convicted the appellant. The prosecution failed to prove the case against the appellant beyond reasonable doubt. The statements of the victim is full of conjectures and surmises and are highly unreliable. The age of the victim have not been proved and no ossification test for determining the age has been done which makes the whole case of prosecution doubtful. Hence, the conviction is liable to be set aside.
10. On the other hand, learned State counsel for the State/respondent submitted that the appellant has committed a heinous crime of rape against a minor girl, who is aged about 7 years and the same has been duly proved by the prosecution beyond reasonable doubt. As such, the judgment of conviction and sentence awarded by the learned trial Court is just and proper warranting no interference.
11. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
12. **The first question for consideration before this Court would be, whether the trial Court has rightly held that on the date of incident, the victims were minor?**

13. 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 ingredient 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.
14. In ***Jarnail Singh Vs. State of Haryana, (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.”

- 15.** In the present case, the prosecution has presented birth certificate of the victim (Article-A/2), in which the date of birth of the victim is mentioned as 24.06.2014. 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 24.06.2014 hence, we are of the considered opinion that the trial Court has rightly held that the date of birth of the victim is 24.06.2014 and the age on the date of incident i.e. 16.03.2022 was about 07 years 08 months and 5 days.
- 16. The next question for consideration would be, whether the trial Court is justified in convicting the appellant for offence under Section 363 of the IPC ?**
- 17.** The appellant has been convicted for offence under Section 366 and 376(AB) of the IPC, which is punishable for kidnapping, abducting or inducing woman to compel her marriage. Kidnapping has been defined under Section 359 of the IPC. According to Section 359 of the IPC, kidnapping is of two kinds: kidnapping from India and kidnapping from lawful guardianship. Section 361 of the IPC defines kidnapping from lawful guardianship which states as under:-

“361. Kidnapping from lawful guardianship.-Whoever takes or entices any minor under sixteen years of age if a male, or

under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

- 18.** The object of Section 359 of the IPC is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the the protection of the rights of parents and guardians having the lawful charge or custody of minors or insane persons. Section 361 has four ingredients:-

“(1) Taking or enticing away a minor or a person of unsound mind.

(2) Such minor must be under sixteen years of age, if a male, or under eighteen years or age, if a female.

(3) The taking or enticing must be out of the keeping of the lawful guardian of such minor or person of unsound mind.

(4) Such taking or enticing must be without the consent of such guardian.

So far as kidnapping a minor girl from lawful guardianship is concerned, the ingredients are : (i) that the girl was under 18 years of age; (ii) such minor was in the keeping of a lawful guardian, and (iii) the accused took or induced such person to

leave out of such keeping and such taking was done without the consent of the lawful guardian.

19. The Supreme Court while considering the object of Section 361 of the IPC in the matter of **S.Varadarajan v. State of Madras, AIR 1965 SC 942** took the view that if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so and held that if evidence to establish one of those things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian and held as under:-

“It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. If evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No

doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. But that part falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to “taking”.”

- 20.** Reverting to the facts of the present case, in light of ingredients of offence under Section 361 of the IPC which is punishable under Section 366 of the IPC & as well as principles of law laid down by the Supreme Court in the matter of **S.Varadarajan** (supra), it is evident that on 16.03.2022, the victim (PW-2) had gone alone from her house to the shop for buying goods between 06.00 PM to 07.00 PM, from where the victim came back at about 07.30 PM and started crying after vomiting. On being asked the reason, the victim told that 'Pappu Mama' forcibly took her to a room, took off her clothes as also the underwear and was inserting his finger in her private part/urination area as well as he was asked her to suck his penis by putting it in her mouth, on which the victim cried. She also stated that the accused has threatened her not to tell the incident to anyone. As such, we are of the considered view that the trial Court is absolutely justified in convicting the appellant for offence under Section 366 of the IPC.
- 21. The next question for consideration before us is whether the appellant has committed rape on minor victim?**

- 22.** It has been stated by the victim (PW-2) that two days before Holi festival, she had gone to Guruji's grocery shop to buy '*Kha*' (a kind of eating chocolate), at that relevant time, the accused came and closed her mouth and eyes as also took her to his elder mother's room, removed his underwear as well as all clothes and put his penis in her mouth as well as inserted his finger in her private part. She further deposed that she screamed and ran away from the room and went towards her house. After reaching house, she narrated the whole incident to her mother. Then, she along with her mother went to the said room, but the accused was not found there. She deposed that few days later, she saw the accused at a wedding in the locality and told her mother that he was the man who had picked her up that day and doing bad things.
- 23.** The mother of the victim (PW-1) has testified that the victim is her daughter, she had gone to a grocery store near her house to buy some groceries, where the accused came there and took her from the back, picked her and took her to his room, took her clothes off and tried to do bad things with her, due to which her daughter started crying loudly. The accused put his penis in her daughter's mouth. She further deposed that when her daughter did not return home for 15 minutes, she went out to look for her and saw that she was coming towards her house crying. When she asked the victim the reason for crying, she told her that the accused had removed her clothes and inserting his penis in her mouth as aksi

the accused was inserted his finger into the private part of the victim. As soon as her daughter gave the said information, she went to that room, but the accused was not there. She deposed that on 01.04.2022, a wedding was taken place in the locality, where she along with her husband and daughter/victim, at that relevant time, accused was also present. On seeing him, her daughter/victim started panicking and told her that the accused is the person who had picked her up on that day and doing wrong things with her.

24. The irrefutable evidence of the victim, on the date of incident i.e. 16.03.2022, the accused kidnapped/abducted the victim without the legal protection of their parents and their consent, committing penetrative sexual assault on a victim's urinary tract at the incident site, village Manjhi Mohalla, Seetamani and committing aggravated penetrative sexual assault on the victim and the fact that the victim was raped has been found to be irrefutable.
25. In the case of **Ganesan v. State**, (2020) 10 SCC 573, the Supreme Court observed and held that that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.
26. In the case of **State (NCT of Delhi) v. Pankaj Chaudhary**, (2019) 11 SCC 575, it was observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony,

without corroboration. It was further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises.

27. In the case of ***Sham Singh v. State of Haryana, (2018) 18 SCC 34***, the Supreme Court observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It was further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.
28. Applying the law laid down by the Supreme Court to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the victim. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the victim can be sustained.
29. The view taken by the learned trial Court that the appellant is the author of the crime is a pure finding of fact based on evidence available on record and we are of the opinion that in the present case, the only view possible was the one taken by the learned trial Court.

- 30.** From the above analysis, we are of the considered opinion that the prosecution has been successful in proving its case beyond reasonable doubt and the learned trial Court has not committed any legal or factual error in arriving at the finding with regard to the guilt of the appellant/convict.
- 31.** Accordingly, the appeal being devoid of merit is liable to be and is hereby **dismissed**.
- 32.** The appellant/convict is stated to be in jail. He shall serve out the sentence awarded by the trial Court by means of the impugned judgment of conviction and order of sentence dated 09.10.2023.
- 33.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are 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.
- 34.** Let a certified copy of this order alongwith the original record be transmitted to trial Court concerned forthwith for necessary information and action, if any.

Sd/-
(Arvind Kumar Verma)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head-Note

Testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Court should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.