2025:CGHC:25465

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 176 of 2023

[Arising out of judgment dated 31.10.2022 passed in Special Sessions Trial (POCSO) No.60/2019 by the Additional Sessions Judge, 1st Fast Track Court, Special Judge (POCSO Act), Durg, District Durg, Chhattisgarh.]

- Lalesh @ Lala Barle S/o Veer Singh Barle, aged about 23 years, R/o Shankar Nagar, Dundera, P.S.-Utai, District-Durg, Chhattisgarh.

... Appellant

versus

- The State of Chhattisgarh through Police Station – Pulgaon, District – Durg, Chhattisgarh.

... Respondent

For Appellant	**:-**	Mr. Shrikant Kaushik, Advocate, on behalf of Mr. Rishikant Mahobia, Advocate.
For State-Respondent	**:-**	Mr. Sharad Mishra, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment On Board

18/06/2025

1. Assailing the legality, validity, correctness of order and judgment dated 31.10.2022 passed by the Additional Sessions Judge, 1st Fast Track Court, Special Judge (POCSO Act), Durg, District Durg, Chhattisgarh, in Special

Sessions Trial (POCSO) No. 60/2019, the appellant has preferred this criminal appeal under Section 374(2) of the CrPC, by which the appellant herein has been convicted and sentenced as under:-

Conviction	**Sentence**
Section 363 of the IPC	Rigorous imprisonment for 3 years with fine of ₹ 500/-; in default of payment of fine amount the appellant has to undergo additional simple imprisonment for one month.
Section 366 of the IPC	Rigorous imprisonment for 5 years with fine of ₹ 500/-; in default of payment of fine amount the appellant has to undergo additional simple imprisonment for one month.
Section 506B of the IPC	Rigorous imprisonment for 3 years with fine of ₹ 500/-; in default of payment of fine amount the appellant has to undergo additional simple imprisonment for one month.
Section 3/4 of the POCSO Act.	Rigorous imprisonment for 10 years with fine of ₹ 2,000/-; in default of payment of fine amount the appellant has to undergo additional

	simple imprisonment for one month.
All the sentence are directed to run concurrently.	

Prosecution Case:-

2. The case of the prosecution as projected by the prosecution and accepted by the trial Court is that the appellant abducted the minor victim (PW-1) from the lawful guardianship of her parents and committed the intercourse with the victim on 25.03.2019 against her wishes and thereby committed the aforesaid offence.

3. It is further case of the prosecution that on 25.03.2019 mother of the victim (PW-2) reported the matter to the police that on 25.03.2019 when she (PW-2) and her husband (PW-3) had gone for work, her daughter (victim) and victim's cousin sister were at home. At about 4:00 pm, when she (PW-2) and her husband (PW-3) came to home, victim's cousin sister informed them that the appellant had taken the victim with himself. They (PW-2 & PW-3) were trying to call her, but it could not be connected as the mobile phone of the victim was switched off pursuant to which FIR was registered against the appellant for offence

under Section 363 of the IPC. After recovery of minor victim (Ex.P/1) she (PW-1) has stated that the appellant told her to come with him to search his wife which she refused and then the appellant threatened her and cut his hand by blade and snatched her mobile and took her with him forcefully. The appellant firstly took her (PW-1) at village Birejhar, thereafter, Chingari and lastly Pauwara where the appellant committed sexual intercourse with her by threatening her to kill. On the basis of the said statement of the victim, offence under Sections 366 & 376 of the IPC and Sections 3, 4 of the POCSO Act (for short "the Act") were inserted.

4. Wheels of investigation started running and the appellant was arrested. Minor victim (PW-1) was medically examined by Dr. Vinita Dhurve (PW-11), who prepared the victim's medical report vide Ex.P/29, in which no external injury was found over the body of the victim and in the internal examination hymen was foud ruptured and blood was found on the vagina, however, no definite opinion has been given by doctor (PW-11) with regard to recent sexual intercourse. Slides of the victim was prepared and sent for the chemical analysis to FSL. In the FSL report (Ex.P/26)

on the slides of the victim and on the clothes of the victim as well as on the clothes of the appellant no stains of semen and human sperm were found. As per admission register (Ex.P/12C) the date of birth of the victim is 02.12.2001, meaning thereby, on the date of offence i.e. 25.03.2019, the victim was aged about 17 years 3 months. However, with regard to age determination of the victim Dr. Vinita Dhurve (PW-11) suggested for the X-Ray, which has not been done for the reason best known to the prosecution.

5. After due investigation, appellant was charge-sheeted for the aforesaid offences and the case was committed to the Court of Sessions for trial in accordance with law. The appellant / accused abjured his guilt and entered into defence.

6. During the course of trial, in order to bring home the offence, the prosecution has examined as many as 11 witnesses; exhibited 30 documents, whereas, the appellant in defence has not examined any witness, but exhibited 2 documents. Statement of the appellant was recorded under Section 313 of CrPC in which he denied the circumstances

appearing against him in the evidence brought on record, pleaded innocence and false implication.

7. The learned trial Court after appreciating the oral and documentary evidence available on record, convicted the appellant for the offences as mentioned in the opening paragraph of the judgment, against which this appeal has been preferred by the appellant herein questioning the impugned judgment of conviction and order of sentence.

Submission of the parties:-

8. Mr. Shrikant Kaushik, learned counsel for the appellant, would submit that the trial Court is absolutely unjustified in convicting the appellant for the offence in question. He would also submit that the case of the prosecution is solely based on the statement of the victim who is not the sterling witness and even her age on the date of offence has not been proved to be less than 18 years. He would further submit that there is no medical as well as forensic evidence of supporting the case of the prosecution and even the victim was the consenting party. As such, the appellant is entitled for acquittal on the basis of benefit of doubt and the appeal deserves to be allowed.

9. Mr. Sharad Mishra, learned State counsel, would submit that the prosecution has been able to bring home the offence beyond reasonable doubt and the trial Court has rightly convicted the appellant for offence in question as the victim (PW-1) has clearly implicated the appellant in crime in question and, therefore, the appeal deserves to be dismissed and the appellant is not entitled for acquittal.

10. I have heard learned counsel for the parties, considered their rival submissions made herein-above and gone through the records meticulously.

Discussion and analysis:-

11. **Age of the victim:-** The trial Court has held the age of the victim was less than 18 years at the time of offence relying upon the dakhil kharij register (Ex.P/12-C) proved by Ramesh Kumar Dewangan (PW-6), Head Master. However, Ramesh Kumar Dewangan (PW-6) has not supported the dakhil kharij register (Ex.P/12-C) as in the cross-examination he has categorically stated that he has not made any entry in the register as he was not posted as head master at that time in the school and he does not know on what basis such entry was made and even, according to victim (PW-1), victim's mother (PW-2) and

victim's father (PW-3) date of birth of the victim is 02.12.2002. The Supreme Court in the matter of **Manak Chand alias Mani vs. State of Haryana**[1]**,** has reiterated the law laid down by it in the matter of **Birad Mal Singhvi vs. Anand Purohit**[2] and observed that the date of birth in the register of the school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth. It was further reiterated that if the date of birth is disclosed by the parents, it would have some evidentiary value, but in absence the same, cannot be relied upon. Similarly, their Lordships of the Supreme Court in the matter of **P. Yuvaprakash v. State Represented by Inspector of Police**[3] have held that to determine the age of the victim the prosecution must have brought on record the following documents i.e. (i) matriculation or equivalent certificates and in 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* and only in absence of either (i), (ii) and (iii), the medical opinion

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1 2023 SCC Online SC 1397

2 1988 (Supl.) SCC 604

3 2023 SCC OnLine SC 846

could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. However, for age determination of the victim, X-Ray has not been done, though it was suggested by Dr. Vinita Dhurve (PW-11), who medically examined the victim. As such, in view of the aforesaid contradiction, it could not be said that the victim was minor on the date and time of offence to base the conviction of the appellant for offence in question, accordingly, I hereby reject the finding of the Special Court that the victim was minor at the time of offence.

12. **Medical Evidence & Forensic evidence:-** The victim (PW-01) was medically examined by Dr. Vinita Dhurve (PW-11), who prepared the medical report of the victim vide Ex.P/29 in which no external injuries were found over the body of the victim however in the internal examination hymen was found ruptured and also blood was found on the vagina. Though, the medical evidence has partly supported the case of the prosecution, but it has not been corroborated by the forensic evidence as in the FSL report (Ex.P/26) on the slides of the victim and on the clothes of the victim as well as on the clothes of the appellant no stains of semen and human sperm were found. As such, it is of no use to the prosecution.

13. Lastly, to base the conviction of the appellant for offence in question, the statement of the victim should be of "sterling quality". Now, the question for consideration would be whether the statement of victim inspires confidence and appears to be absolutely trustworthy, unblemished and whether it is of sterling quality?

14. At this stage, it would be appropriate to notice the judgment of the Supreme Court in the matter of **Rai Sandeep alias Deepu v. State (NCT of Delhi)**[4] in which their Lordships of the Supreme Court have observed that who can be said to be a "sterling witness" and which has been recently followed in the matter of **Santosh Prasad @ Santosh Kumar v. The State of Bihar**[5]. Their Lordship of the Supreme Court in the matter of **Rai Sandeep alias Deepu** (supra) have held in paragraph No.22 as under:-

> "22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre 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

[4] (2012) 8 SCC 21
[5] (2020) 3 SCC 443

> 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, can it 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."

15. Victim (PW-1) is the daughter of the sister of the appellant's wife. It is the case of the prosecution that the appellant came to the house of the victim and asked her to accompany him which she refused, thereafter, the

appellant threatened her and also cut his hand by blade which he kept in his pocket along with the cutter and also snatched the mobile of the victim and took her (PW-1) forcefully with him on his motorcycle. However, neither the blade and cutter nor the mobile of the victim have been recovered from the possession of the appellant. The appellant is said to have taken her (PW-1) to village Birejhar and from where he took her to village Chigari at the house of Santoshi (not examined), maternal aunt of the victim (मौसी), where they (appellant & victim) met with Mamta (not examined), wife of the appellant, and Santoshi (not examined). However, the victim did not disclose anything to them though she could have done so. Further, from village Chigari, the appellant took the victim with him to village Pauwara at the house of his maternal grand-father (नाना) Heeralal (PW-4) to stay in the night and where the appellant is said to have committed sexual intercourse with the victim against her wishes and also threatened her to kill. However, the victim again did not disclose anything to maternal grand-father Heeralal (PW-4) and maternal grand-mother Sundari Bai (not examined) of the appellant, about the criminal act of the appellant and in the next morning they (the appellant and the victim) left the house.

Heeralal (PW-4), maternal grand-father of the appellant, in his statement before the Court has stated that in the late night appellant came to his house along with the victim and stayed in his house. He also stated that the appellant slept with him in separate room and the victim slept with his wife Sundari Bai (not examined) in separate room. He further stated in the next morning appellant left his house along with the victim and the victim did not make any complaint about the criminal act of the appellant.

16. As such, though victim could have made complaint about the criminal act of the appellant to her maternal aunts Mamta (not examined) and Santhoshi (not examined) as well as to maternal grand-father Heerlal (PW-4) and maternal grand-mother Sundari Bai (not examined) of the appellant, but she did not do so and, therefore, she (PW-1) appears to be a consenting party which is also the case of the defence. In that view of the matter, I am of the considered opinion that statement of the victim is not of "sterling quality" and she is not a "sterling witness" as she fails to pass any of the tests of "sterling witness" in light of the decision of the Supreme Court in the matter of **Rai Sandeep alias Deepu** (supra) followed in the matter of **Santosh Prasad alias Santosh Kumar** (supra), and even as

per the prosecution, the appellant had inflicted injury on himself, but the appellant was not medically examined to prove the same, for the reason best known to the prosecution. Therefore, it would be unsafe to base the conviction of the appellant on the basis of the statement of the victim (PW-1).

17. Accordingly, the prosecution has not been able to bring home the offence as I have already discussed in the foregoing paragraphs that victim (PW-1) did not make any complaint about the criminal act of the appellant though she could have done that and also the statement of the victim (PW-01) is not of “sterling quality” as she fails to pass any of the tests of “sterling witness”. Though the medical evidence has partly supported the case of the prosecution, but considering the fact that the victim appears to be a consenting party which is also the case of the defence, it is of no use to the prosecution. Further, the forensic evidence is not supported the case of the prosecution and also the prosecution has failed to prove that the victim was minor at the relevant time of offence. As such, it would be absolutely unsafe to maintain the conviction of the appellant for offence in question, and,

therefore, he is entitled for acquittal on the basis of benefit of doubt.

Conclusion:-

18. In view of the aforesaid discussion and analysis, the impugned judgment of conviction and order of sentence dated 31.10.2022 passed by the learned Special Court is liable to be and is hereby set aside. The appellant stands acquitted of the charges for offence in question. He is stated to be in jail from 27.03.2019 to 06.04.2020 and since 20.06.2022. I direct him to be set at liberty forthwith, if his detention is not required in any other offence.

19. This criminal appeal is allowed.

20. Let a certified copy of this judgment along with the original record be transmitted to the trial Court concerned and also the copy of this judgment be sent to the concerned Superintendent of Jail where the appellant is lodged and suffering jail sentence, forthwith for information and necessary action, if any.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit