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2025:CGHC:34885

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HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 215 of 2022

Reserved on 01/07/2025

Pronounced on 22/07/2025

State Of Chhattisgarh, Through Police Station Kurud, District Dhamtari (C.G.)

... Appellant

versus

Rupendra Das Manikpuri S/o Salik Das Manikpuri Aged About 21 Years R/o Village Bagod, Police Station Kurud, District Dhamtari (C.G.)

.. Respondent

For Appellant/State : Mr. R. N. Pusty, Government Advocate

For Respondent : Mr. Shobhit Koshta, Advocate.

Single Bench : Hon'ble Shri Justice Sanjay S. Agrawal

CAV Judgment

1. This appeal has been preferred by the appellant/State under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C."), questioning the legality and propriety of the judgment dated 27.05.2022 passed by the Court of Special Judge (Under POCSO Act), Dhamtari (C.G.) in Special Criminal Case (POCSO) No.24/2019, whereby, the respondent/accused has been acquitted with regard to the offence punishable under Sections 354-D, 509 of IPC read with Section 8 of the Protection of Children from Sexual Offences

Act, 2012 (hereinafter referred to as “the POCSO Act”) and under Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the SC/ST Act”).

2. Briefly stated the case of the prosecution is that on 14.10.2019, a written report (Ex.P-7) was lodged by the prosecutrix, a 15 years old, before the Police Station Kurud, District Dhamtari, alleging inter alia, that on the said fateful day, around 4:15 pm, when she was returning home from the School along with her friends, namely, Heena (PW-1) and Kajal (PW-2), the respondent/accused, came and shouted while expressing his love, saying "xxx I Love You" (xxx is denoting the name of prosecutrix). It is alleged further that previously also, she was harassed and misbehaved by him, for which, he was reprimanded and made him understood by the Teachers, but he did not stop and continuously harassing her.
3. Based upon the aforesaid complaint, an FIR (Ex.P-6) was registered by the concerned Police Station against him for the offence punishable under Sections 354-D and 509 of IPC read with Section 8 of the POCSO Act and Section 3(2)(va) of the SC/ST Act. Her statement under Section 164 Cr.P.C. was recorded on 24.10.2019 and after completion of investigation, the charge-sheet was submitted before the Special Judge (SC/ST Act), Dhamtari in connection with Crime No.500/2019 against the respondent for the offence punishable under Sections 354-D and 509 of IPC read with Sections 8 and 12 of the POCSO Act and Section 3(2)(va) of the SC/ST Act, where, the charge has been framed under Sections 354-D and 509 of IPC read with

Section 8 of the POCSO Act and Section 3(2)(va) of the SC/ST Act, which was denied by him and claimed to be tried.

4. The trial Court, after considering the evidence led by the prosecution, held that the respondent is not involved in connection with the alleged crime and, accordingly, he was acquitted from the commission of the alleged offence and, being aggrieved, the instant appeal has been preferred.
5. Mr. Ratan Pusty, learned counsel appearing for the appellant/State submits that the finding recorded by the trial Court acquitting the respondent from the commission of the alleged crime is, apparently contrary to the materials available on record, inasmuch as, the evidence led by the prosecutrix, her friends and parents of her, have not been scanned in its proper manner and erred further in disbelieving her 'birth certificate', seized vide Ex.P-3 from her father, wherein, her date of birth was shown to be '29.11.2004'. While inviting attention towards the statement of the prosecutrix and her friends, it is contended further that a bare perusal of their testimonies would reveal the fact that she was stalking not only on the date of the alleged incident, but previously also, which clearly establishes the offence punishable under Sections 354-D and 509 of IPC and, contended further that the respondent, while knowing fully of her caste that she belongs to the 'Scheduled Caste community', has committed the alleged offence, but the trial Court has utterly failed to give its finding on this "particular issue". The judgment under appeal is, therefore, liable to be quashed.

6. On the other hand, Mr. Shobhit Koshta, learned counsel appearing for the respondent, while referring to the provision prescribed under Section 354-A of IPC and in absence of disinterest shown by the prosecutrix, submits that the respondent has not committed the offence under Section 354-A of IPC and, in support has placed his reliance upon the decision rendered by the **High Court of Bombay at Goa** in the matter of **Navendu Sudhir Gupta Vs. Honey Navendu Gupta and Another**, reported in **2024 SCC OnLine 2078**. It is contended further while referring to the statement of the prosecutrix (PW-6), where she has not deposed that the alleged offence was committed by the respondent by knowing the fact that she belongs to the “Scheduled Caste community” and, therefore, the respondent cannot be held guilty for the offence punishable under Section 3(2)(va) of the SC/ST Act and has placed reliance in this regard to the principles laid down by the Supreme Court in the matter of **Khuman Singh V/s. State of Madhya Pradesh**, reported in **(2020) 18 SCC 763**. It is, therefore, contended by him that the trial Court has not committed any illegality in acquitting the respondent from the commission of the alleged crime.
7. I have heard learned counsel appearing for the parties and perused the entire record carefully.
8. The respondent/accused was charge-sheeted with regard to the offence punishable under Sections 354-D and 509 of IPC read with Section 8 of the POCSO Act and Section 3(2)(va) of the SC/ST Act, with regard to the offence committed by him on 14.10.2019, when the prosecutrix was returning home from the School along with her friends, as alleged by her in written report (Ex.P-7) lodged on the same day, i.e.

14.10.2019. In order to ascertain the alleged allegations, the trial Court has framed the following two issues :-

(I) Whether on the date of incident, i.e. on 14.10.2019 prosecutrix being under the age of 18 years was 'child' within the meaning of Section 2(d) of the POCSO Act ?

(II) Whether on and before the aforesaid date of incident accused despite unwillingness having been shown by the prosecutrix used to follow her and on 14.10.2019 with intent to insult modesty of the prosecutrix uttered 'xxx I Love You'?

9. While entertaining the issue No.(I), it was observed by the trial Court that though, the 'birth certificate' of the prosecutrix was seized from her father vide Ex.P-3, but in order to establish the same, neither any witness was examined, nor even the original of it was produced and observed further that since no other material-document like, her 'School's record' was placed, therefore, it cannot be said that she was minor on the alleged fateful day, i.e. 14.10.2019 and accordingly, the respondent was not found to be guilty for the offence punishable under Section 8 of the POSCO Act.
10. Insofar as issue No.(II) is concerned, it was held by the trial Court after considering the statement of the prosecutrix (PW-6), vis-a-vis, her friends, namely, Heena (PW-1), Kajal (PW-2) and her parents (PW-3 and PW-4) that only a single act of expressing his love towards the prosecutrix was done by the respondent on 14.10.2019 when she was returning home along with her friends and since none have stated that she has shown her disinterest at any point of time, therefore, it cannot be said that the respondent has committed the alleged offence under

Section 354-D of IPC and, accordingly, he was acquitted from the commission of the alleged offence.

11. Insofar as the allegations of intending to insult her modesty is concerned, it was observed, while taking note of her (PW-6) statement, vis-a-vis, the complaint (Ex.P-7) made by her, that the alleged allegations of her appears to have been improved regarding the mode of alleged 'utterance', as such, her statement cannot be held to be trustworthy and, in consequence, the respondent has been acquitted from the commission of the crime under Section 509 of IPC.
12. As far as the allegations levelled against the respondent that he, despite knowing the fact that she (prosecutrix) belongs to the "Scheduled Caste community", has committed the alleged offence under Section 3(2)(va) of the SC/ST Act is concerned, the trial Court has, however, failed to give any of its findings to this effect.
13. The questions which, therefore, arise for determination in this appeal are :-
 - (a) *Whether the prosecutrix was minor at the relevant point of time;*
 - (b) *whether the alleged offence levelled by her in her complaint (Ex.P-7) was committed by the respondent; and/or,*
 - (c) *whether the trial court was justified in acquitting the respondent from the commission of the alleged crime ?*
14. In order to establish the 'minority' of the prosecutrix on the alleged fateful day, i.e. 14.10.2019, a birth certificate of her was seized vide Ex.P-3 from her father on 15.10.2019 and, a bare perusal of it would

show that it was issued by the competent authority under the *Janm-Mrityu Registrikaran Adhiniyam*, 1969, therefore, it has its evidentiary value, particularly, when its 'authenticity' was not disputed despite of its recovery. It is to be noted here further at this juncture that the alleged certificate was issued much prior to the occurrence of the alleged incident, therefore, it cannot be presumed that it was obtained with an 'ulterior motive' in order to implicate the respondent for the commission of the alleged crime. It is, thus, evident that the prosecutrix, was minor on the alleged fateful day, i.e. 14.10.2019, when the alleged incident had taken place.

15. It is now to be seen whether the alleged offence under Section 8 of the POCSO Act has been committed upon her by the respondent or not and, for ascertaining the said fact, it is necessary to examine the said provision which reads as under :-

8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

16. A bare perusal of the aforesaid provision would show that it provides for punishment in respect of the offence committed for "sexual assault" defined under Section 7 of the said POCSO Act. The said provision is, therefore, relevant for the purpose in order to ascertain as to whether the respondent is liable to be punished under Section 8 of the POCSO Act for the commission of "sexual assault" or not. The said provision reads as under :-

7. Sexual assault.—Whoever, with sexual intent touches

the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

17. The aforesaid provision can be read as under :-

"Whoever,

(i) with *sexual intent touches* the vagina, penis, anus or breast of the child or; makes the child touch the vagina, penis, anus or breast of such person or any other person,
(ii) or does any other act with *sexual intent* which involves physical contact without penetration is said to commit sexual assault."

18. A close analysis of Section 7 reveals that it is broadly divided into two limbs. Sexual assault, under the first limb is defined as the touching by a person with sexual intent of four specific body parts (vagina, penis, anus or breast) of a child, or making a child touch any of those body parts of "such person" (i.e. a clear reference to the offender) or of "any other person" (i.e. other than the child, or the offender). In the second limb, sexual assault is the doing of "any other act with sexual intent which involves physical contact without penetration".

19. The use of the expression "touch" appears to be common to the first and second parts, of the first limb, while the use of expression "contact" is used in the second limb and, the "physical contact" used therein means something which is of wider import than "touching". Therefore, "physical contact" without penetration, may not necessarily involve "touch". The "other act" involving "physical contact" may involve direct physical contact by the offender, with any other body part (not mentioned in the first part) of the victim; other act, such as use of an object by the offender, engaging physical contact with the victim; or in

the given circumstances of the case, even no contact by the offender. The most important ingredient for constituting the offence of sexual assault under Section 7 of the POCSO Act is the “sexual intent” and not, a physical contact with the child and for proving the charge of “sexual assault” under Section 7 of the POCSO Act, the prosecution is not required to prove a physical contact of the offender with the child.

20. It is to be seen at this juncture, the principles laid down by the Supreme Court in the matter of **Attorney General for India Vs. Satish and Anr.** (in a batch of Criminal Appeals), reported in **(2022) 5 SCC 545**, wherein, while considering the word “touch” and “physical contact” used in the aforesaid provision, it was held that, if the act of touching the sexual part of the body or any other act involving physical contact is done with “sexual intent”, then it would fall within the definition of “sexual assault” provided under Section 7 of the POCSO Act. The relevant observations made to this effect at paragraphs 35 and 36 read as under :-

“35. The word "touch" as defined in the Oxford Advanced Learner's Dictionary means "the sense that enables you to be aware of things and what are like when you put your hands and fingers on them". The word "physical" as defined in the Advanced Law Lexicon, 3rd Edn., means "of or relating to body...." and the word "contact" means "the state or condition of touching, touch; the act of touching...". Thus, having regard to the dictionary meaning of the words "touch" and "physical contact", the Court finds much force in the submission of Ms Geetha Luthra, learned Senior Advocate appearing for the National Commission for Women that both the said words have been interchangeably used in Section 7 by the legislature. The word "touch" has been used specifically with regard to the sexual parts of the body,

whereas the word "physical contact" has been used for any other act. Therefore, the act of touching the sexual part of body or any other act involving physical contact, if done with "sexual intent" would amount to "sexual assault" within the meaning of Section 7 of the POCSO Act.

36. There cannot be any disagreement with the submission made by Mr Luthra for the accused that the expression "sexual intent" having not been explained in Section 7, it cannot be confined to any predetermined format or structure and that it would be a question of fact, however, the submission of Mr Luthra that the expression "physical contact" used in Section 7 has to be construed as "skin-to-skin" contact cannot be accepted. As per the rule of construction contained in the maxim "ut res magis valeat quam pereat", the construction of a rule should give effect to the rule rather than destroying it. Any narrow and pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted. It is also needless to say that where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. Restricting the interpretation of the words "touch" or "physical contact" to "skin-to-skin contact" would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision, "Skin to skin contact" for constituting an offence of "sexual assault" could not have been intended or contemplated by the legislature. The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case touching the sexual or non-sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin-to-skin" contact with the child"

- 21.** While keeping in mind the ingredients provided in the aforesaid provision, vis-a-vis, the principles laid down by the Supreme Court in the above referred matters, the evidence of the prosecutrix (PW-6) is, therefore, required to be examined. According to her testimony, it appears that when she was returning home from the School along with her friends, namely, Heena (PW-1) and Kajal (PW-2) on 14.10.2019 around 4.15 pm, the respondent shouted and expressed his love towards her saying "xxx I Love You". It is to be seen at this juncture that it was his solitary act while showing his "expression of love", and a close scrutiny of her statements, vis-a-vis, the statements of her friends, would reveal the fact that it was not made with an intention of his "sexual desire". It, thus, appears that the alleged expression of him alone would not constitute "sexual assault" as provided under Section 7 of the POCSO Act. None of the ingredients provided under the aforesaid provision are, thus, found to be established attributing him for the commission of the alleged crime. In view thereof, the respondent cannot be held to be guilty for the offence punishable under Section 8 of the POCSO Act.
- 22.** Now, as far as the charges framed under Sections 354-D and 509 of IPC are concerned, the evidence of the prosecutrix, vis-a-vis, her friends, namely, Heena and Kajal are required to be seen as they were with her on 14.10.2019 around 4.15 pm, when they all were returning from the School. The prosecutrix, who was examined as PW-6, deposed that when she was returning home from the School on 14.10.2019 along with her said friends, the respondent came and shouted at her saying that "xxx I Love You" and when she tried to go

away, he started abusing with filthy and obscene words, which hurt her. Further of her version is that when she was in Class 8th, at that time also, the respondent has misbehaved her, owing to which, she had made a complaint to her parents and the Teachers and, the Teachers of the School had reprimanded him for his alleged act. Although, it was stated as such, but the alleged of her version that on the said fateful day, the respondent had abused her while using filthy words are, however, not found placed in her written complaint (Ex.P-7) lodged on the said day itself, nor disinterest of her was shown from her testimony, nor was even found to be corroborated by her friends, namely, Heena (PW-1) and Kajal (PW-2).

- 23.** As far as the allegation of her that she was misbehaved by him when she was in Class 8th is concerned, the same was, however, also not found to be corroborated by her said friends (PW-1 and PW-2), nor the Teachers, who had reprimanded the respondent for his alleged act, were examined, in order to establish the alleged of her allegations. Moreover, no report as such was ever, lodged either by her or her parents for his alleged earlier act and the prosecutrix, who is now in 10th standard, is raising the alleged act of him after such a long delay of more than two years, which was even not found to be supported by others', as observed herein-above, so as to hold that on an earlier occasion also, she was misbehaved by him, as such. It is to seen at this juncture, the principles laid down by the **High Court of Bombay at Goa** in the matter of **Navendu Sudhir Gupta**, as relied upon by Mr. Shobhit Koshta, learned counsel for the respondent, where after considering the provision prescribed under Section 354-D of IPC, it was

held at paragraphs 5 and 6 as under :-

“5. The moot question before us is whether on a reading of the complaint/F.I.R. dated 11/01/2023 and supporting material collected during the investigation, an offence under Section 354-D read with Section 120-B and Section 34 IPC has been disclosed. At this stage, it would be apposite to quote the provisions of Section 354-D IPC:

354D. Stalking.-(1) Any man who--

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that--

(i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or

subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine”.

6. For an offence of stalking to be brought home under clause (i) of sub Section 1 of Section 354-D of IPC, it is required that the accused must firstly follow a woman **and** contact or attempt to contact her. The purpose and intent for following the woman and establishing contact or attempting to contact her must be for the accused to foster a personal interaction with the victim and such attempt to contact the victim to foster personal interaction must be repeated. The above acts necessarily must persist despite the woman/victim clearly indicating her disinterest in the advances of the accused.

Thus, the offence would not be complete by a mere act of following only as it must be coupled with the attempt by the accused to repeatedly contact such woman with the intent or aim to foster personal interaction; further, even if the accused was to follow the victim and attempt to repeatedly have personal interaction with her, the offence would be brought home only if there is material to demonstrate that the victim clearly indicated to the accused her disinterest in his advances, aim at fostering personal interaction.”

- 24.** Applying the aforesaid principles to the case in hand, the essential ingredients to attract the offence punishable under Section 354-D, thus, not found to be established by way of any cogent and reliable evidence attributing him for the commission of the alleged crime.
- 25.** Insofar as the allegations intending to insult the modesty of the prosecutrix, is concerned, it, however, appears from her testimony that though, it was deposed by her that the respondent has shouted at her saying "xxx I Love You" and when she avoided him, he uttered by

using filthy and obscene words. But the alleged of her version is neither reflected from her written complaint (Ex.P-7), lodged on 14.10.2019, nor was found to be corroborated by her friends, namely, Heena (PW-1) and Kajal (PW-2) as the use of alleged filthy words, as stated by the prosecutrix was, however, not revealed from their testimonies, nor was even found to be supported by her father (PW-3) and mother (PW-4). It, thus, appears that except the alleged 'expression' of him towards the prosecutrix, she was not found to be insulted by using filthy words, as alleged by her. Her version to this effect is, therefore, not found to be trustworthy and/or, would be sufficient to implicate the respondent for the commission of the alleged offence under Section 509 of IPC.

- 26.** Perusal of the record would show further that the respondent was charge-sheeted with regard to the offence punishable under Section 3(2)(va) of the SC/ST Act as well, but the trial Court has failed to give any of its finding to this effect. Although, no finding to this regard was recorded by the trial Court, but from a bare perusal of her alleged report (Ex.P-7) and her statement recorded under Section 164 Cr.P.C., marked as Ex.P-8 and her testimony, would, however, show she has not stated even a whisper that the respondent has committed the alleged offence because of knowing the fact that she is a member of 'Scheduled Caste community'.
- 27.** In view thereof, it cannot be said that the alleged act was done by the respondent with an intention that the prosecutrix belongs to 'Scheduled Caste community', so as to hold the respondent guilty for the offence punishable under Section 3(2)(va) of the SC/ST Act.

- 28.** The aforesaid observation is fortified by the principles laid down by the Supreme Court in the matter of **Khuman Singh** (supra), wherein, it was held that unless it is shown that the alleged offence was committed only on the ground that the victim was a member of the “Scheduled Caste community”, the alleged offence cannot be held to be proved. The relevant observation made therein at paragraph 14 reads as under :-

“**14.**.....There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

- 29.** Consequently, the appeal being devoid of merit is dismissed

Sd/-
(**Sanjay S. Agrawal**)
JUDGE