



2025:CGHC:22874

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1533 of 2023

Rohit Kalar S/o Anjori Kalar, Aged About 29 Years R/o Village - Dhodha,
P.S. - Gandai, District : Khairagarh-Chhuikhadan-Gandai, Chhattisgarh

... Appellant(s)

versus

State Of Chhattisgarh Through Station House Officer, Police Station -
Gandai, District : Khairagarh-Chhuikhadan-Gandai, Chhattisgarh

... Respondent(s)

For Appellant(s) : Mr. Palash Agrawal, Advocate.

For Respondent(s) : Ms. Shubha Shrivastava, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Judgment on Board

10/06/2025

1. This criminal appeal arises out of the judgment of conviction and order of sentence dated 26.05.2023 passed by the Special Additional Sessions Judge, Khairagarh, District Khairagarh-Chhuikhadan-Gandai in Special Session Case No.03/2022, whereby the appellant has been convicted and sentenced in the following manner :-

CONVICTION	SENTENCE
Under Section 363 of the Indian Penal Code, 1860.	RI for 5 years and fine of Rs.1,000/-, in default of payment of fine to further undergo SI for 2 months.
Under Section 9 (m)(u) r/w Section 10 of the Protection of Children from Sexual Offences Act, 2012.	RI for 5 years and fine of Rs.1,000/-, in default of payment of fine to further undergo SI for 2 months.
(All the sentences were directed to be run concurrently)	

2. The prosecution story, in brief, is that on 28.11.2021, at around 7:45 P.M., mother of the victim made a written complaint at Gandai Police Station, alleging that her daughter, born on 18.09.2019, was 2 years and 10 months old. On the evening of 28.11.2021, the victim was playing at her aunt's house, which is adjacent to their own house but has a separate entrance. Around 5 P.M., the accused visited and gave the victim 2 rupees to buy chocolates and biscuits before leaving. About 30-45 minutes later, the accused returned, picked up the victim, and started taking her towards his house. The victim's aunt forbade the accused from taking the child, which he overheard. Since the accused and his sister would often take the victim to their home to feed her, she didn't say anything. Around 6 P.M., their neighbor, Ramsahayata Verma, brought the victim home in his arms and informed that while he was heading to tie up the cows, he saw the accused removing his and the victim's clothes. He immediately brought the

child home. It was alleged that the accused attempted to do something inappropriate with the victim by removing her clothes. The incident was then reported to her husband and other villagers. Based on the complaint, an FIR was registered against the accused under Crime No. 254/2021, and the case was taken up for investigation. The statements of witnesses were recorded, and a certified copy of the victim's birth certificate was seized. The statements of key witnesses were recorded under Section 164 of the Code of Criminal Procedure before the Judicial Magistrate First Class, Chhuikhadan. A site plan of the crime scene was prepared by the Police and the Patwari. Upon finding evidence of the crime, the accused was formally arrested in the presence of witnesses, and his family members were informed. After completing further necessary investigations, the charge-sheet was filed. The charges against the accused were framed under Sections 363, 354(A)(B) of the IPC and Sections 7/8, 9(D)(P)/10, and 11(iv)/12 of the Protection of Children from Sexual Offenses Act, 2012. The appellant abjured his guilt and pleaded innocence.

3. In order to establish the charge against the appellant, the prosecution examined as many as 10 witnesses and exhibited the documents (Exs.P-1 to P-13). The statement of the appellant under Section 313 of CrPC was also recorded in which he denied the material appearing against him and stated that he is innocent and he has been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has

convicted the accused/appellant and sentenced him as mentioned in para 1 of the judgment. Hence, this appeal.

4. Learned counsel for the appellant submits that the impugned judgment passed by learned trial Court is bad in law and contrary to the facts and circumstances of the case. There is no conclusive evidence on record that the offence is committed by the present appellant and he has been falsely implicated in crime in question. He further submits that the minimum sentence awarded to the appellant is 5 years under Section 363 of the IPC & Section 9 (m) (u) r/w Section 10 of the POCSO Acta and the appellant is languishing in jail since 01.12.2021 and has already suffered the jail sentence of about 3 years 6 months & 9 days. He also submits that though the victim is stated to be a minor girl, but the there is no medical report of the victim to show that the appellant had tried to outrage the modesty of victim. As such, the criminal appeal deserves to be allowed and the impugned judgment deserves to be set-aside.
5. On the other hand, learned counsel for the State opposes the submissions made by learned counsel for the appellant and submits that the prosecution has proved its case beyond reasonable doubt and the eye-witness (PW-1) has clearly deposed the conduct of the appellant in the Court statement 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.

6. In compliance of the Court's order dated 03.04.2025, victim alongwith her mother appeared through District Legal Services Authority (DLSA) and raised strong objection.
7. I have heard the learned counsel for the parties and perused the record with utmost circumspection.
8. The issue that arises for consideration in the present appeal is whether the testimony of the victim deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.
9. It is pertinent to observe that the question whether conviction of the appellant can be based on the sole testimony of the victim in cases of sexual assault is no longer *res integra*. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments and has held that the sole testimony of the victim if found reliable can be the sole ground for convicting the appellant and that the creditworthy testimony of the victim in cases of such nature deserves acceptance.
10. Insofar as, age of the victim on the date of the commission of the offence is concerned, she was admittedly 02 years 10 months & 10 days old at the time of the unsavory incident.

11. Ramsahayata Verma (PW-1) is Grandfather of the victim and eye-witness of the incident has clearly deposed that he knows the accused, Rohit Kalar, who is a resident of his village, Dhoda. He also know the victim, who is about 3 years old and the daughter of Smt. Bhuneshwari and Mahendra. About two to three months ago, he was heading towards the cowshed to tie up the cows when he saw that the accused, Rohit Kalar, had his pants partially lowered and the victim's clothes were also lowered from the bottom. He then picked up the victim and took her to her mother's house. The accused ran away from there. When he returned, the accused was no longer there. He had informed the police about these details. On the same night, the victim, her parents, and he went to the Gandai Police Station to file a report against the accused regarding the incident. The police questioned him and recorded his statement. Later, they visited their village and prepared a site map of the incident location in his presence, which is Exhibit P-1, bearing his signatures from A to A. The Patwari also visited their village and prepared a map of the incident location in his presence, which is Exhibit P-2. Thereafter, the police brought him to the Chhuikhadan Court to record his statement under Section 164 of the CrPC, which is Exhibit P-3.

12. Mother of victim (PW-3) also supported the statement of PW-1, who is an eye-witness of the case and has stated that she also knows the accused, Rohit Kalar, who is a resident of their village, Dhoda. The victim is her daughter, approximately 3 years old,

born on 18.01.2019. The incident occurred on the evening of 28.11.2021. On that day, her daughter was playing at her sister-in-law, Tarani Vishwakarma's, house, which is adjacent to their house, but has a separate entrance. Around 5 P.M., the accused, Rohit Kalar, visited her house and gave her daughter 2 rupees to buy chocolates and biscuits before leaving. After he left, she started preparing dinner. About 30-45 minutes later, she heard her sister-in-law, Tarani, telling the accused, who was taking her daughter in his arms towards his house, that it was getting late and asking where he was taking the child. She overheard this conversation as the victim often taken by the accused, Rohit Kalar, and his sister, Pinky Kalar, to their home to play, so she did not say anything to the accused when he took her that day. Around 6 P.M., their neighbor, Ramsahaya Verma, brought her daughter home in his arms and told her father-in-law, Kartik Ram Vishwakarma, that he saw the accused removing his and her daughter's clothes near the cowshed. He said if he hadn't taken her daughter away, the accused might have committed a wrong act. After that, her husband, Mahendra Vishwakarma, informed Kuleshwar Verma and Amar Singh about the incident, and they went to the Gandai Police Station to file a report. The accused had removed both his and her daughter's clothes, and if Ramsahaya Verma hadn't intervened, something wrong might have happened. The police questioned her, recorded her statement, and took her photo. They also took her to the

Chhuikhadan Court for recording of her statement under Section 164, which is Exhibit P-6.

13. Vyasnarayan Churendra (PW-10), Inspector has stated that he was posted as an Inspector at Gandai Police Station in 2021. On 28.11.2021, the victim's mother filed a written complaint at the Gandai Police Station alleging that the accused, Rohit Kalar, had molested her minor daughter and attempted to commit a wrong act. Based on this written complaint, he registered First Information Report (FIR) on the same day, which is Exhibit P-13. Further investigation was conducted by Sub-Inspector Ramnath Khurshyam. After completing the investigation, he submitted a charge-sheet to the court, which is Exhibit P-12.

14. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of 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."

15. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version. In **State of H.P. v. Shree Kant Shekar (2004) 8 SCC 153** the Hon^{ble} Supreme Court held as follows:

“21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”

16. On these lines, the Hon^{ble} Supreme Court in **Shivasharanappa and Others v. State of Karnataka, (2013) 5 SCC 705** observed as follows:

“17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form

the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

17. The Supreme court in the matter of **State of UP v. Sonu Kushwaha, (2023) 7 SCC 475** has held as under :

“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that

the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”

18. Considering the statement of the Ramsahayta Verma (PW-1) who is an eye-witness has specifically stated the act of present appellant, statement of mother of the victim (PW-3), statement of Vyasnarayan Churendra (PW-10), Inspector, further considering the objection raised by mother of the victim who appeared through District Legal Services Authority (DLSA), the material available on record and the principle of law laid down by the Supreme Court in the above-stated judgments, I am of the considered opinion that the learned Special Judge has rightly convicted the appellant for offences under Section 363 of the IPC and Section 9 (m)(u) r/w Section 10 of the POCSO Act. I do not find any illegality and irregularity in the findings recorded by the trial Court.

19. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction and sentence as awarded by the Special Additional Sessions Judge,

Khairagarh to the appellant is hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

20. The appellant is in jail. He shall serve out the sentence as ordered by the trial Court.
21. Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.
22. Registry is also directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail term, 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 the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ramesh Sinha)
Chief Justice

Headnote

“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.”