REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.4502 OF 2025
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO.14625 OF 2024)

Shivkumar @ Baleshwar Yadav …Appellant(s)

VERSUS

The State of Chhattisgarh …Respondent(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment dated 16.06.2023 passed by the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.9/2020. By the said judgment, the High Court confirmed the conviction and sentence as imposed on the appellant by the Special Judge (SC/ST Act), Surajpur, District Surajpur, Chhattisgarh in Session Case No.33/2018. The Trial Court, by its judgment

dated 22.10.2019, convicted the appellant for offences punishable under Sections 363, 366, 506 and 376 of the Indian Penal Code, 1860 (for short the "IPC"), Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short the "POCSO") and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the "SC/ST Act"), and sentenced him as under:-

Offence Under Section	**Sentence**
363 of IPC	R.I. for 1 year and fine of Rs.100/-, in default of payment of fine amount, additional R.I. for 1 month.
366 of IPC	R.I. for 3 years and fine of Rs.100/-, in default of payment of fine amount, additional R.I. for 1 month.
376 of IPC	R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine amount, additional R.I. for 1 month.
506 of IPC	R.I. for 3 months and fine of Rs.100/-, in default of payment of fine amount, additional R.I. for 1 month.
4 of POCSO Act	R.I. for 10 years and fine of Rs.1000/-, in default of payment of fine amount, additional R.I. for 1 month
3(2)(v) of the SC/ST Act	Life imprisonment and fine of Rs. 1000/-, in default of payment of fine amount, additional R.I. for 1 month. All the sentences shall run concurrently

3. We have heard Mr. Kaushal Yadav, learned counsel for the appellant and Mr. Rishabh Sahu, learned Deputy Advocate General for the State. We have also perused the records, including the original Trial Court records.

THE CASE OF THE PROSECUTION: -

4. On 14.05.2018, PW-1, the father of the prosecutrix, lodged a report at Police Station Pratappur, District Surajpur, Chhattisgarh (Ext.P1), stating that his daughter "P", a minor, had on 10.05.2018 at 8.00 pm served food to everyone inside the house. Thereafter, she left the house saying that she will return. When she did not return, a search was carried out, but she could not be found. The father suspected that the appellant would have lured away "P". An offence under Section 363 of IPC was registered and investigation was carried out and "P" was recovered. On questioning, it was found that the appellant had lured her away by promising marriage and after taking her forcibly subjected her to sexual intercourse. Offences under Sections 366, 376 and 506 IPC and Section 4 of the POCSO Act were added. Since the victim

belonged to the Scheduled Caste, Section 3(2)(v) of the SC/ST Act was also added. Medical examination was carried out of "P". Statements of complainant and witnesses were recorded. The marksheet, caste certificate and the school admission register (*Dakhil Kharij* Register) were seized. Chargesheet was filed against the accused.

5. Charges were framed against the accused by order dated 05.09.2018 and with the accused pleading not guilty, the case was set down for trial. The prosecution examined 19 witnesses and marked exhibits.

6. The prosecution case mainly revolves around the evidence of PW-2 – the victim, PW-1 – the complainant, PW-9 – the school teacher, who made available the school records for proof of age, and PW-10 – the Doctor.

EVIDENCE OF VICTIM: -

7. PW-2 categorically deposed that she knew the appellant; that she had left the house to serve food to her grandfather who lived a little away from their house; that the appellant who

was hiding near the *Sendhwar* tree, grabbed her, pressed her mouth and threatened to kill her when she tried to scream. The victim clearly deposed that the appellant told her that she will be made his wife and after grabbing her took her to the forest. At the forest he undressed her and forcibly committed sexual intercourse. The victim deposed that the appellant took her to the house of her maternal uncle in village Dumariya and left her there. That she stayed at the house of her maternal uncle and the appellant returned to take her, at which point the police met them and brought them to the Police Station Paratappur. She further deposed that she belonged to the Scheduled Caste (caste name disclosed by her is withheld in this judgment). The victim deposed that she disclosed the incident to her aunt PW-3 – Dhankunwar. Though she was subjected to a searching cross-examination, nothing was elicited to dilute her testimony. It should also be noticed herein that on 25.05.2018 vide Ext.P8 her statement under Section 164 of the Code of Criminal Procedure, 1973

was recorded which is corroborated by her deposition in material particulars.

EVIDENCE OF FATHER – THE COMPLAINANT (PW-1) AND THE GRANDFATHER (PW-4): -

8. PW-1, the father of the victim, corroborates the prosecution story. He deposes that they were having dinner when the victim left to serve food to his father (victim's grandfather). The victim did not return and then he lodged the report and informed the police about his suspicion on the appellant. For some strange reason, the prosecutor treated the complainant as hostile and sought permission to put leading questions. In the cross-examination by the public prosecutor, PW-1 deposed as under:-

> "It is correct to say that on the next day when I went to the house of accused Baleshwar in village Durati and asked about his whereabouts I come to know that Baleshwar was not present in my house. His mother-father were present in his house, they told that he had gone to work. While giving statement to the Police I had told that I did not met Baleshwar when I went to his house. Witness himself states that on that day I met Baleshwar in the evening. It is incorrect to say that on the next day in the evening I did not met Baleshwar. It

> is correct to say that I did not met Baleswhar and in suspicion while lodging report I told the name of accused Baleshwar in the report."

9. We are at a loss to understand as to why the witness was treated as hostile in the first place? We are frequently coming across cases where the prosecutor, for no ostensible reason, wants to treat the witnesses hostile and the Court indiscriminately grants permission. It is well settled, by judgments of this Court, that before a witness can be declared hostile and the party examining the witnesses is allowed to cross-examine, there must be some material to show that the witnesses are not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing. No doubt, the circumstances under which the Court will exercise the discretion under Section 154 of the Evidence Act, 1872 (Section 157 of the Bharatiya Sakshya Adhiniyam (BSA), 2023) and permit the party calling the witness to put any question which might be put in cross-examination by the adverse party will depend on the facts and circumstances of each case.

However, this Court has held that the contingency of cross-examining the witness by the party calling, is an extraordinary phenomenon and permission should be given only in special cases. Small or insignificant omissions cannot be the basis for treating the witnesses hostile and the Court before exercising its discretion must scan and weigh the circumstances properly and ought not to exercise its discretion in a casual or routine manner.

10. In ***Sri Rabindra Kumar Dey*** Vs. ***State of Orissa***[1], this Court held as under: -

> **"10.** Before proceeding further we might like to state the law on the subject at this stage. Section 154 of the Evidence Act is the only provision under which a party calling its own witnesses may claim permission of the court to cross-examine them. The section runs thus:
> **"The Court may, in its discretion permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party."**
> **The section confers a judicial discretion on the court to permit cross-examination and does not contain any conditions or principles which may govern the exercise of such discretion. It is, however, well-settled that the discretion must be judiciously and properly exercised in the interests of justice. The law on the subject is well-settled that a party will not**

[1] (1976) 4 SCC 233

normally be allowed to cross-examine its own witness and declare the same hostile, unless the court is satisfied that the statement of the witness exhibits an element of hostility or that he has resiled from a material statement which he made before an earlier authority or where the court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth. One of the glaring instances, in which this Court sustained the order of the court in allowing cross-examination was where the witness resiles from a very material statement regarding the manner in which the accused committed the offence. In *Dahyabhai Chhaganbhai Thakker* v. *State of Gujarat* [AIR 1964 SC 1563 : (1964) 7 SCR 361, 368, 369, 370 : (1964) 2 Cri LJ 472] this Court made the following observations:

"Section 154 does not in terms, or by necessary implication confine the exercise of the power by the court before the examination-in-chief is concluded or to any particular stage of the examination of the witness. It is wide in scope and the discretion is entirely left to the court to exercise the power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. A clever witness in his examination-in-chief faithfully conforms to what he stated earlier to the police or in the committing Court, but in the cross-examination introduces statements in a subtle way contradicting in effect what he stated in the examination-in-chief. If his design is obvious, we do not see why the court cannot, during the course of his cross-examination, permit the person calling him as a witness to put questions to him which might be put in cross-examination by the adverse party.

Broadly stated, the position in the present case is that the witnesses in their statements before the police attributed a clear intention to the accused to commit murder, but before the court they stated that the

accused was insane and, therefore, he committed the murder."

A perusal of the above observations will clearly indicate that the permission to cross-examine was upheld by this Court because the witnesses had categorically stated before the police that the accused had committed the murder but resiled from that statement and made out a new case in evidence before the court that the accused was insane. Thus it is clear that before a witness can be declared hostile and the party examining the witness is allowed to cross-examine him, there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing. **Merely because a witness in an unguarded moment speaks the truth which may not suit the prosecution or which may be favourable to the accused, the discretion to allow the party concerned to cross-examine its own witnesses cannot be allowed. In other words a witness should be regarded as adverse and liable to be cross-examined by the party calling him only when the court is satisfied that the witness bears hostile animus against the party for whom he is deposing or that he does not appear to be willing to tell the truth. In order to ascertain the intention of the witness or his conduct, the Judge concerned may look into the statements made by the witness before the Investigating Officer or the previous authorities to find out as to whether or not there is any indication of the witness making a statement inconsistent on a most material point with the one which he gave before the previous authorities. The court must, however, distinguish between a statement made by the witness by way of an unfriendly act and one which lets out the truth without any hostile intention.**

11. It may be rather difficult to lay down a rule of universal application as to when and in what circumstances the court will be entitled to exercise

> **its discretion under Section 154 of the Evidence Act and the matter will largely depend on the facts and circumstances of each case and on the satisfaction of the court on the basis of those circumstances. Broadly, however, this much is clear that the contingency of cross-examining the witness by the party calling him is an extraordinary phenomenon and permission should be given only in special cases. It seems to us that before a court exercises discretion in declaring a witness hostile, there must be some material to show that the witness has gone back on his earlier statement or is not speaking the truth or has exhibited an element of hostility or has changed sides and transferred his loyalty to the adversary. Furthermore, it is not merely on the basis of a small or insignificant omission that the witness may have made before the earlier authorities that the party calling the witness can ask the court to exercise its discretion. The court, before permitting the party calling the witness to cross-examine him, must scan and weigh the circumstances properly and should not exercise its discretion in a casual or routine manner."**

11. Similarly, in ***Gura Singh*** Vs. ***State of Rajasthan***[2], this Court held as under: -

> **"13.** We deprecate the manner in which the prayer was made by the Public Prosecutor and permission granted by the trial court to cross-examine Jarnail Singh (PW 2) allegedly on the ground of his being hostile. On facts we find that the said witness was wrongly permitted to be cross-examined. It was only on a post-event detail that he did not concur with the suggestion made by the Public Prosecutor. That single

[2] (2001) 2 SCC 205

> point, in our opinion, was too insufficient for the Public Prosecutor to proclaim that the witness made a volte-face and became totally hostile to the prosecution. Otherwise also, the permission granted and utilised for cross-examination was limited to the extent of the time of lodging the first information report (Exhibit P-2). There is no reason to disbelieve PW 2 who is closely related to the appellant and has no reason to falsely implicate, particularly when no inducement, threat or promise is allegedly given or assured."

12. It is also clear from the above judgments that merely because a witness is declared hostile does not make him unreliable. As held in ***Bhagwan Singh*** Vs. ***State of Haryana***[3].

> **"8.** We have carefully perused the evidence of Jagat Singh, who was examined in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under Section 154 of the Evidence Act. But the fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge

[3] (1976) 1 SCC 389

> against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under Section 161 IPC. There is, therefore, clear abetment by the appellant of the offence under Section 161 IPC and the ingredients of Section 165-A IPC are established against him."

13. PW-4, the grandfather of the victim confirms the fact that the victim came to his house in the night along with food and after serving food left for her house. He deposed that the next morning, he came to know that the victim was missing. In cross, he states that the Sandhwar tree was near his house at a distance of 20 feet and that if anyone shouts near the tree, it will be heard in his house. He states that no one screamed in the night that day.

14. The *panch* witnesses - PW-5 and PW-6 did not support the prosecution story.

15. PWs - 3, 7 and 8 – aunts of the victim were examined. Since nothing turned out from their evidence, they are not discussed in detail.

PROOF OF AGE OF MINOR VICTIM: -

16. PW-9 is the material witness whose deposition is crucial to ascertain the age of the victim. He is the teacher at the

Government Primary School, SarnaparaMarhatta P.S. Pratapppur, District Surajpur (C.G.). PW-9 deposes that on the demand of the DSP, who came to the school, he gave the admission register of the school. The admission register is 192 pages and admissions were mentioned in Sl. Nos. 1 to 281. The victim's name was mentioned at Sl. No. 209 and the date of birth was shown as 15.09.2004. The admission register and the certificate given regarding the fact of the date of birth were seized under Ext.P-11. In court, the admission register was marked as Article B/C. In cross examination, PW-9 deposed that the father of the victim did not produce any document regarding the date of birth. First in cross, the witness deposed that the father of the victim has not mentioned the date of birth at the time of admission but immediately the witness himself stated that the father mentioned her age as six years on the date of the admission.

17. We have seen Ext.P-11 which attests to the factum of the seizure. We have also seen Article B/C marked by PW-9. The first entry is at Sl. No. 207 and the victim's entry occurs at 209.

The admission register has 13 columns containing serial no., student's name, father or guardian's name and address, mother's name, caste or religion, local address, if parents or guardian is residing outside the city, student's date of birth, date of admission, class admitted, date of leaving the school, the class in which the student was when she left the school, reason for leaving the school and special details. The entry at Serial No. 209 has the victim's name, the name of father and mother. They all tally. The date of birth is mentioned as 15.09.2004 (in both words and figures). The date of admission is 01.07.2011 and the victim was admitted that day in the first class. The victim left the school on 02.04.2016, after passing the fifth standard.

18. The evidence of the father PW-1, the evidence of the teacher PW-9 and the school admission register seized under Ext.P-11 and marked by PW-9, inspires confidence in us to hold that the victim as on the date of the incident, namely, 14.05.2018 was a minor. We have no reason to disbelieve the finding of the trial Court and the High Court having

independently considered the evidence and perused the trial court records

19. In ***State of Chhattisgarh*** Vs. ***Lekhram***[4], this Court held as under: -

> "12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.
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> 13. The prosecutrix took admission in the year 1977. She was, therefore, about 6-7 years old at that time. She was admitted in Class I. Even by the village standard, she took admission in the school a bit late. She was married in the year 1985 when she was evidently a minor. She stayed in her in-laws' place for some time and after the "gauna" ceremony, she came back. The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."
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> 14. Only because PW 3 the father of the prosecutrix could not state about the date of birth of his other

[4] (2006) 5 SCC 736

> children, the same, by itself, would not mean that he had been deposing falsely. We have noticed hereinbefore, that he, in answer to the queries made by the counsel for the parties, categorically stated about the year in which his other children were born. His statement in this behalf appears to be consistent and if the said statements were corroborative of the entries made in the register in the school, there was no reason as to why the High Court should have disbelieved the same. We, therefore, are of the opinion that the High Court committed a serious error in passing the impugned judgment. It cannot, therefore, be sustained. It is set aside accordingly.

MEDICAL EVIDENCE:-

20. Dr. Suchita Nirmala Kindo (PW-10) was examined on behalf of the prosecution. She examined the victim on 16.05.2018. She clearly deposes that there was a cut injury on hymen of victim at 6 O' clock position and fresh blood was coming. In her opinion, that would indicate that forceful intercourse was committed. She prepared two slides of vaginal discharge and handed them over to the constable. She also deposed that on the same day, the constable produced one green colour underwear and finding semen like strains, she handed over the underwear to the lady constable. In cross-examination, she was asked about the

time when the hymen injury was caused. In answer to that, she stated that repeated sexual intercourse was committed with the victim and hence the time of the hymen injury cannot be determined. She denied the suggestion that bleeding would stop if sexual intercourse is not committed with the victim for 4-5 days. She deposed that no external injury was found on the body of the victim. Vide Ext.P-14, the sealed packet containing the underwear and the slide were seized. Vide Ext.P-20, the prosecution claimed that the underwear of skyblue colour owned by the accused with semen stains were seized. Under Ext.P-22, the Superintendent wrote a letter to the Joint Director, Regional Forensic Laboratory enclosing the slides, the green underwear of the prosecutrix and the skyblue underwear of the accused-appellant. The report Ex-P-24 of the Joint Director indicated presence of semen and human sperm in all the three seized material. We have also seen the evidence of PW-14, PW-15, PW-16, PW-17 and PW-18 and we are satisfied with regard to the chain of custody of the above-seized material.

APPLICABILITY OF SC/ST ACT:-

21. PW-13 clearly deposes to the effect that the victim belongs to Scheduled Caste and produced Ext.P-7 in proof of the caste certificate. PW-2, the victim has clearly deposed that she belongs to Scheduled Caste and the accused knew about her caste before the incident. The incident is of 14.05.2018, i.e. after the amendment to Section 3(2)(v) on 26.01.2016. The amended Section 3(2)(v) reads as under:-

> "3. (2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe-
> ****
> (v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine."

22. In ***Patan Jamal Vali*** vs. ***State of A.P.***[5], this Court noticed the amendment made to the Act and held that post the amendment, the threshold of proving that the crime was

[5] (2021) 16 SCC 225

committed on the basis of the caste identity was decreased and mere knowledge of the caste of the victim was sufficient to sustain the conviction.

23. Further, Section 8 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 reads as under:-

> "**8. *Presumption as to offences***.—In a prosecution for an offence under this Chapter, if it is proved that—
>
> (*a*) the accused rendered any financial assistance in relation to the offences committed by a person accused of, or reasonably suspected of, committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence;
>
> (*b*) a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.
>
> (*c*) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved."

24. Section 8(c) of the SC/ST Act clearly indicates that the acquaintance of the accused with the family of the victim is enough to presume that the accused was aware of the caste

and identity of the victim, unless proved otherwise. In the present case, the evidence on record clearly establishes that the accused was well acquainted with the victim and her family prior to the incident and was fully aware of their caste status. PW-1 categorically stated that the accused was their neighbour and used to frequently visit their house, which initially made him suspicious that he might have been involved in the abduction of his daughter. PW-2 (Victim) further affirmed that the accused knew her caste even before the incident. Similarly, PW-4 (Grandfather) in cross-examination confirmed that the accused used to come to their village and work as a labourer. These consistent statements of the prosecution witnesses collectively demonstrate that the accused had prior familiarity with the family and knowledge of their caste, which satisfies the requirement under Section 3(2)(v) of the SC/ST Act. Nothing has been brought on record to rebut the presumption and as such, we are fully convinced that even Section 3(2)(v) of the SC/ST Act is clearly attracted.

25. The above discussion clearly brings out the fact that the victim was kidnapped (Section 363 IPC), for the purpose of illicit intercourse (Section 366 IPC), was subjected to forcible intercourse (Section 376 of IPC and Section 4 of the POCSO), criminal intimidation (Section 506 IPC) and all this with the knowledge that the victim was a member of the Scheduled Caste (Section 3(2)(v), of the SC/ST Act).

26. In view of the above, we find no good reason to interfere with the concurrent judgments convicting the accused and sentencing him for the various offences, details of which have been set out hereinabove. The appeal is hence dismissed.

.....J.
[**B.V. NAGARATHNA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
14th October, 2025