AKHILESH BEOHAR
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HIGH COURT OF CHHATTISGARH AT BILASPUR

THE DATE WHEN THE CASE IS RESERVED	THE DATE WHEN THE Order IS PRONOUNCED	THE DATE WHEN THE JUDGMENT IS UPLOADED ON THE WEBSITE	
		Operative	**Full**
28.09.2026	14.10.2026	****	14.10.2026

CRA No. 1184 of 2026

- ABC (Details filed with closed envelope)

...Appellant

versus

1. State of Chhattisgarh, Through Police Station Sitapur District Surguja, Chhattisgarh.
2. X Y Z (Victim)(Details filed with closed envelope)

... Respondents

For Appellant	:	Mr. Sandeep Dubey and Ms. Khushi Agrawal, Advocates.
For Respondent No.1/State	:	Mr. Siddharth Sharma, Panel Lawyer.
For Respondent No.2	:	None.

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

C A V Judgment

1. This criminal appeal, preferred by the appellant under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, (in short, 'BNSS') is directed against the judgment of conviction and order of sentence dated 03.08.2022 passed by the learned Additional Sessions Judge, Fast Track Special Court (POCSO Act), Ambikapur, District Surguja (C.G.) (henceforth referred to as 'trial Court'), in Special Criminal POCSO Case No.14/2017, whereby the appellant has been convicted for the

offences punishable under Sections 363, 366 and 376(2)(n) of Indian Penal Code (in short, 'the IPC') and Section 5(l)/6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the Act, 2012'). However, in view of the provisions contained in Section 42 of the Act, 2012, the appellant has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 363 of IPC	Rigorous Imprisonment for three years and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for one month
Under Section 366 of IPC	Rigorous Imprisonment for five years and fine of Rs.1,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for one month
Under Section 376(2)(n) of IPC	Rigorous Imprisonment for ten years and fine of Rs.3,000/-, in default of payment of fine amount to undergo additional rigorous imprisonment for six months
All the sentences were directed to run concurrently	

2. Case of the prosecution, in brief, is that on 17.01.2017, PW-2, father of the victim, lodged a report at Police Station Sitapur stating that the accused/appellant, who was his relative uncle and a resident of Keshkal, Bastar, District Kondagaon, had stayed at his house for about four months and used to perform rituals and exorcism. About 20 days prior to the incident, due to his suspicious conduct, he was asked to leave the house, whereafter he started residing at the house of Farjan (DW-1) at Bishunpur. On the same day, at about 3:00 p.m., victim left the house and went missing. During the search, some villagers informed PW-2 that the accused/appellant was taking her towards Pathalgaon on a Passion Pro motorcycle. Suspecting that the

accused/appellant had enticed his minor daughter on the pretext of marriage and abducted her, he (PW-2) lodged the report. On the basis thereof, FIR (Ex.P-2) was registered against the present appellant at Police Station Sitapur, District Surguja at Ambikapur for the offences punishable under Sections 363 and 366 of IPC.

2-A. During investigation, victim was recovered from the possession of the appellant from Teetarvand Saraipara, Police Chowki, Baskot, Thana Vishrampuri, vide recovery memo Ex.P-13. Thereafter, statements of the victim under Sections 161 and 164 of the Cr.P.C. were recorded, wherein she revealed that, a few months prior to the incident, appellant, who was her distant relative, was residing in their house. During that period, he harboured ill intentions towards her, allured her and sexually exploited her on several occasions. When her parents came to know about the aforesaid fact, they ousted the appellant from their house. Thereafter, he started residing at some distance from their house, but he continued to talk to her over mobile phone, which had been provided to her by the appellant. She further stated that on 17.01.2017, the appellant abducted her on the pretext that he would keep her well and took her on a motorcycle towards Kanker via Kapu and Kharsia and kept her in a hut. During the period from 17.01.2017 till her recovery on 29.01.2017, appellant repeatedly sexually exploited her by beating her and threatening to kill her.

2-B. Thereafter, the Investigating Officer (PW-9) prepared the spot map vide Ex.P-4. Consent of the victim and her parents for her medical examination was obtained vide Ex.P-10 and Ex.P-3, respectively. After that, victim was medically examined by PW-4 Dr. Snehlata Tirkey, who submitted her MLC report (Ex.P-12). One Lava mobile phone belonging

to the father of the victim and her Class X mark-sheet were seized vide Ex.P-5 and Ex.P-6, respectively. Copy of *Dakhil-Kharij* Register of the victim was seized vide Ex.P-18C. A black-coloured Passion Plus motorcycle bearing registration No.CG-15-CC-2436 was seized from the accused/appellant vide Ex.P-19. Vaginal slides and the undergarment of the victim were seized vide Ex.P-26. Accused/appellant was arrested vide Ex.P-20 and was thereafter medically examined, and his medical examination report is Ex.P-1. Appellant's underwear was seized vide Ex.P-28. Seized articles were sent for chemical examination vide Ex.P-33, and the FSL report is Ex.P-34, wherein human spermatozoa and seminal spots were found on the seized vaginal slides and the undergarment of the victim. Primary certificate of the victim relating to the examination year 2010 was seized from her father vide Ex.P-9. Statements of the witnesses were recorded and, upon completion of investigation, charge-sheet for the offences punishable under Sections 363, 366 and 376(2)(n) of IPC and Sections 5(l)/6 of the Act, 2012 was filed before the trial Court.

3. Learned trial Court framed charges against the accused/appellant for the offences punishable under Sections 363, 366 and 376(2)(n) of IPC and Sections 5(l)/6 of the Act, 2012. The accused/appellant denied the charges and claimed to be tried.

4. In support of its case, the prosecution examined nine witnesses and exhibited 34 documents, along with Articles 'A' and 'A-1'. In his defence, the appellant examined one witness, namely, DW-1 Farjan Ali.

5. The learned trial Court, after hearing the parties and appreciating the evidence available on record, by the impugned judgment, convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment.

Aggrieved by the said judgment, the appellant has preferred the present appeal.

6. Learned counsel for the appellant submits that the learned trial Court has held the victim (PW-5) to be aged about 17 years and 6 months on the date of the incident, relying upon her date of birth, i.e. 01.07.1999, recorded in the admission and discharge register of Primary School, Badepotukela. He further submits that, as admitted by PW-7 Karlu Ram Painkara, Headmaster, the victim was admitted in the said school in Class V and, therefore, she had studied in another school prior to her admission in that school. However, the admission and discharge register of the said earlier school was neither seized nor proved by the prosecution. Thus, in view of the marginal difference in age, the finding of the learned trial Court that she was below 18 years of age on the date of the incident cannot be said to have been proved beyond reasonable doubt. He further submits that the medical and FSL reports do not support the prosecution case. There are also material contradictions and omissions in the statements of the victim and her parents regarding the alleged sexual exploitation. Even assuming that physical relations existed between the victim and the appellant, the mother of the victim (PW-3) admitted that she had seen the victim coming out of the appellant's room at about 12:00 midnight. Despite this, she neither objected to the alleged relationship nor informed any family member. It is also submitted that the victim remained away from her home for about seven days and visited different places with the appellant, but did not raise any alarm or seek help from anyone. According to learned counsel for the appellant, these circumstances show that, even if physical relations existed, the same were consensual. It is, therefore, submitted that the prosecution has failed to prove

beyond reasonable doubt that the victim was a minor on the date of the incident and, consequently, the alleged physical relationship cannot constitute the offence of rape. The learned trial Court, without properly appreciating the aforesaid evidence and circumstances, has convicted and sentenced the appellant, which is contrary to the evidence on record and suffers from perversity and illegality. He, therefore, prays that the appeal be allowed, the impugned judgment be set aside and the appellant be acquitted of the said charges. In support of his contention, learned counsel for the appellant has placed reliance upon the decisions of this Court in ***Shubham Chouhan v. State of Chhattisgarh,*** decided on ***07.12.2023*** in ***CRA No. 303 of 2022; Gyandas @ Nanu Koshle v. State of Chhattisgarh,*** decided on ***07.12.2023*** in ***CRA No. 1319 of 2023; Darasay Rajwade v. State of Chhattisgarh,*** decided on ***30.07.2024*** in ***CRA No. 527 of 2024; Satpal Banjare v. State of Chhattisgarh,*** decided on ***30.09.2024*** in ***CRA No. 623 of 2022; Nausad Khan @ Raja v. State of Chhattisgarh,*** decided on ***15.07.2026 in CRA No. 762 of 2025;*** and ***Manoj Kumar Chandane v. State of Chhattisgarh,*** decided on ***14.07.2026*** in ***CRA No. 1536 of 2019.***

7. Per contra, learned counsel for the State supports the impugned judgment and submits that the victim was below 18 years of age on the date of the incident, which is established from the documentary evidence produced by the prosecution. He submits that the victim, in her deposition, has clearly stated that the appellant, despite being a distant relative and having resided in her house, sexually exploited her by alluring her. According to learned counsel for the State, the learned trial Court has properly appreciated the oral and documentary evidence available on record and has rightly convicted and sentenced the

appellant. He, therefore, submits that the impugned judgment does not call for any interference and the appeal deserves to be dismissed.

8. I have heard learned counsel for the parties and perused the material available on record.

9. The first question for consideration before this Court is as to whether the finding recorded by the learned trial Court that the victim was a minor on the date of the incident is sustainable.

10. According to the prosecution, the victim was below 18 years of age on the date of the incident, i.e., 17.01.2017. The learned trial Court, in paragraph 21 of the impugned judgment, determined the age of the victim to be 17 years and 6 months on the said date.

11. Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the JJ Act, 2015'), prescribes the procedure for determination of age of child/juvenile and reads as follows:

> "**94. Presumption and determination of age.—**
>
> xxx xxx xxx
>
> (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -
>
> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order."

12. The Hon'ble Supreme Court in the case of ***P. Yuvaprakash v. State represented by Inspector of Police, 2023 (SCC OnLine) SC 846***, while considering the aforesaid provision, has held in paragraphs 14 to 17 as under:-

> "14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.
>
> 15. In a recent decision, in Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors., *2022 (8) SCC 602*, this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with Section 94 of the JJ Act, and held as follows:

> “20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (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. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors, 2019 (12) SCC 370, that:

> “Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

> 17. In Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal, 2012 (10) SCC 489, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference."

13. In the light of Section 94(2) of the JJ Act, 2015, and the principles laid down by the Hon'ble Supreme Court, it is necessary to examine the evidence adduced by the prosecution regarding the age of the victim. Although the victim (PW-5) and her mother (PW-3) have not stated the exact date of birth of the victim in their depositions, but both have categorically stated that victim was below 18 years of age on the date of the incident. Further, PW-2, father of the victim, has stated that date of birth of victim is 01.07.1999. In paragraph 9 of his cross-examination, he admitted that he had himself admitted his daughter/victim to the school and got the aforesaid date of birth recorded therein. Similarly, PW-3, mother of the victim, has also stated that PW-2 had admitted the victim to the school. Furthermore, Ex.P-18(C) is a copy of the Admission and Discharge Register of the victim, seized from PW-7 Karlu Ram Painkara, Headmaster of Government Primary School, Badeputukela. Although PW-7 Karlu Ram Painkara, Head Master, has deposed that the victim was admitted to the aforesaid school in Class V and had studied up to Class IV in another school prior to that, but he has also stated that the victim's date of birth was recorded in the Admission and Discharge Register on the basis of her Class IV Transfer Certificate.

14. Learned counsel for the appellant, relying upon the decisions of this Court in *Shubham Chouhan, Gyandas @ Nanu Koshle, Darasay Rajwade, Satpal Banjare, Nausad Khan @ Raja* and *Manoj Kumar Chandane (supra)*, has submitted that the date of birth recorded in the

school register on the basis of a transfer certificate issued by another school cannot be relied upon unless it is proved from the original record of the school in which the victim was first admitted. It is, therefore, contended that the finding of the learned trial Court that the victim was a minor, based on the school record, is not sustainable.

15. The aforesaid contention raised by learned counsel for the appellant is not sustainable in the facts of the present case. In the instant case, not only the victim (PW-5) and her mother (PW-3) have stated that the victim was a minor on the date of the incident, but her father (PW-2), who had himself admitted the victim to the school, has specifically stated that he got her date of birth recorded as 01.07.1999. Further, the date of birth of the victim, i.e., 01.07.1999, is recorded not only in the Admission and Discharge Register (Ex.P-18C) relating to Class V, but also in her Class V mark-sheet, marked as Article A-1, and her Class-X mark-sheet, marked as Article A, issued by the Chhattisgarh Board of Secondary Education, Raipur. Thus, the aforesaid documentary records consistently reflect the date of birth of the victim as 01.07.1999.

16. It is also relevant to note that, in paragraph 4 of her examination-in-chief, victim (PW-5) has stated that the appellant was aware that she was a minor on the date of the incident. She has further stated that the appellant used to tell her that she had not attained the age of 18 years and that about four months were still left for her to attain majority. This statement supports the prosecution case that the appellant was aware of the victim’s age.

17. Thus, the date of birth of the victim to be 01.07.1999 is not only proved from the Admission and Discharge Register (Ex.P-18C) of Class

V of the victim, but it has also been proved by her father (PW-2) and, particularly, from her Class-X marksheet issued by the Chhattisgarh Board of Secondary Education, Raipur, which is a reliable document to determine the age of the victim, as provided under Section 94(2)(i) of the J.J. Act, 2015, and in view of the law laid down by the Apex Court in the case of ***P. Yuvaprakash*** *(supra).* Therefore, the contention raised by learned counsel appearing for the appellant that the date of birth of the victim has been held proved only on the basis of the Admission and Discharge Register of the victim is not sustainable and in view of the above discussion, the case laws cited by him are not helpful to the appellant in the instant case.

18. The next question which arises for consideration is as to whether the prosecution has been able to establish that the appellant abducted the victim and thereafter subjected her to repeated sexual exploitation.

19. Victim (PW-5) has categorically stated in her deposition that the appellant was her distant relative and, while residing in their house, he used to allure her and established physical relations with her repeatedly. When her parents came to know about the same, they ousted the appellant from their house. Thereafter, the appellant used to talk to her over mobile phone, which had been provided to her by the appellant through *Ruksana*, daughter of Farjan (DW-1). She has further stated that the appellant abducted her on the pretext of taking her to meet his family members and took her to *Kanker* on a motorcycle via *Karabel, Sitapur, Kapu, Kharsia* and *Champa.* She has also stated that at an unknown place in Kondagaon District, the appellant kept her in a hut-like house and repeatedly subjected her to sexual exploitation. Appellant also used to beat her and threaten to kill her. She has further

stated that on 29.01.2017, she was recovered by the police and PW-8-her uncle (*Bade Papa*) from the possession of the appellant vide recovery memo Ex.P-13.

20. The testimony of the victim is supported by the evidence of PW-2 her father, PW-3 her mother and PW-8 her uncle. These witnesses have also supported the prosecution case that the appellant abducted and sexually exploited the victim and that she was recovered from the appellant's possession in Bastar. The recovery of the victim is further proved by PW-9 Manish Yadav, Investigating Officer, who recovered her from the appellant's possession and prepared the recovery memo (Ex.P-13).

21. During the cross-examination of the victim (PW-5), her father (PW-2), her mother (PW-3) and her uncle (PW-8), learned defence counsel suggested that they intended to get the victim married to the appellant because she had eloped several times with other persons. However, all these witnesses categorically denied this suggestion. Nothing material has been elicited in the cross-examination of PW-5 victim, PW-2 her father, PW-3 her mother and PW-8 her uncle to discredit their testimony regarding the abduction of the victim by the appellant on 17.01.2017 and her recovery from his possession on 29.01.2017. The allegation of sexual exploitation made by the victim and supported by the aforesaid witnesses has also not been rebutted in their cross-examination. Although the victim's mother (PW-3) stated that the victim had told her about the sexual exploitation by the appellant, however, no complaint was made in this regard, but she has specifically explained that they had not disclosed the incident to anyone due to fear of social stigma. As such, the contention of learned counsel for the

appellant that the relationship between the appellant and the victim was consensual, therefore, the parents of the victim had no objection to their relationship does not absolve the appellant of the said charges. Even otherwise, assuming the victim to be a consenting party, her consent has no legal value, as she was a minor, i.e., 17 years, 6 months and 16 days of age on the date of the incident.

22. So far as the defence evidence is concerned, appellant examined Farjan Ali as DW-1, who stated that the appellant had informed him that the victim's father wanted/proposed the appellant to sell his land situated at *Keshkal* and marry the victim. According to DW-1, appellant refused to agree that proposal, due to which, appellant has been falsely implicated in the present case. But, the victim and her parents have categorically denied the suggestion regarding the alleged proposal. Moreover, the evidence on record shows that the appellant was a married person aged about 45 years and had children also, whereas the victim was below 18 years of age at the time of the incident. Having regard to the substantial age difference between the appellant and the victim, the defence version put forward by DW-1 does not appear to be natural or probable. Had the parents of the victim wished for her marry to the appellant, they would not have lodged a report, when the appellant and the victim eloped. The statement of defence witness being unsupported by any other reliable evidence, does not create any reasonable doubt regarding the prosecution case or discredit the consistent evidence of the prosecution witnesses.

23. Upon an overall appreciation of the evidence available on record, this Court finds that the testimony of the victim is cogent, consistent and trustworthy. Her testimony is duly corroborated by the evidence of her

parents (PW-2 & PW-3), her uncle (PW-8) and the Investigating Officer (PW-9) with regard to the material particulars of the incident. The defence has failed to elicit any material contradiction or omission, or to bring on record any circumstance that would render the testimony of the victim unreliable or create doubt regarding the prosecution case.

24. Thus, in view of the foregoing discussion, this Court is of the considered view that the prosecution has proved beyond reasonable doubt that the victim was below 18 years of age on the date of the incident and that the appellant had abducted her and repeatedly subjected her to sexual exploitation. The learned trial Court has rightly convicted and sentenced the appellant for the aforesaid offences. The impugned judgment of conviction and order of sentence do not suffer from any illegality, perversity or infirmity warranting interference by this Court.

25. Accordingly, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

26. Appellant is reported to be in jail. Therefore, no order regarding his arrest or surrender is required.

27. Record of the concerned trial Court along with a copy of this judgment be sent back forthwith to the concerned trial Court for information and necessary compliance.

Sd/-

(Naresh Kumar Chandravanshi)
Judge

Akhilesh