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Reserved on : 07.08.2026

Delivered on : 17.08.2026

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 229 of 2023

1 - Mother Of X

2 - X

(Details of appellants No. 1 and 2 are provided separately in a sealed envelope)

... Appellants(s)

versus

1 - Prince Malik @ Chotu Malik S/o Vidhut Malik Aged About 26 Years R/o House No. E/14, Abhisekh Vihar, Mangla, Thana Civil Lines, District Bilaspur Chhattisgarh, Permanent Address - Mrc Training, Infront Of Main Bus Stand, Pathariya, District : Mungeli, Chhattisgarh

2 - State Of Chhattisgarh Through Aarkshi Kendra Civil Lines, District : Bilaspur, Chhattisgarh

... Respondent(s)

For Appellants : Mr. Vikash Kumar Pandey, Advocate

For Respondent No.1: Mr. Shashwat Mishra, Advocate

For State : Mr. Sachchidanand Yadav, Panel Lawyer

Hon'ble Shri Sanjay S. Agrawal, Judge and
Hon'ble Shri Justice Narendra Kumar Vyas, Judge

C.A.V. JUDGMENT

***Per* Narendra Kumar Vyas,J.**

1. The acquittal appeal has been filed by the appellant-

complainants against the judgment of acquittal passed by the First FTSC (POCSO)/ Additional Sessions Judge, Bilaspur (C.G.) dated 04.02.2023, in Special Criminal Case No. 138/2021, whereby respondent No.1/accused has been acquitted of the charges punishable under Sections 376(3), 376, 511 of the IPC and Section 5(M)/6 of the Protection of Children from Sexual Offences Act, 2012.

2. The prosecution case in brief:-

A) The mother of the victim lodged a written report (Ex.P/1) on 17.08.2021 at Police Outpost Civil Lines, Bilaspur, alleging that her husband had deserted her about 11 years back and she was residing with her 12-year-old daughter. On 16.08.2021 at about 20:15 hours, while the complainant was returning from the Gurudwara along with her daughter, the accused met them at Rajiv Gandhi Chowk and enquired where they were going. He offered them a lift on his motorcycle, which they accepted. The complainant and her daughter got down at the petrol pump and thereafter proceeded to their home. It is further alleged that on 17.08.2021, the accused again met the complainant and her daughter at the same place and enquired about her work apart from her work at the Gurudwara. She informed him that she had earlier been working with Herballife, but that firm was closed due to the lockdown. The accused told her that he is working with a trading company which is a good company which can provide a better future to her daughter.

B) He insisted that she should at least once see the company's file and assured her that he would drop them their home. Initially, the complainant refused, stating that it was already night therefore, she would visit on another day. However, the accused insisted that he would be going out of town the following day. Believing his assurance, the complainant accompanied the accused along with her daughter to his house. After reaching the house, the accused asked the complainant and her daughter to sit and himself went inside a room to change his clothes. After changing his clothes he came and asked the complainant to bring the file which, according to him, was kept in another room. When she went into the room and could not find the file, she called out, “Bhaiya, there is no file.” The accused then allegedly entered the room, pushed her onto the bed and locked the room from inside.

C) It is alleged that the accused tied the complainant's hands with clothes and gagged her mouth with a piece of cloth. He thereafter removed her leggings. The complainant raised an alarm and called out to her daughter for help. When her daughter knocked on the door, the accused opened it, locked the complainant inside the room from outside and took the daughter to the hall. The complainant stated that she heard her daughter crying and saying that she was in pain. Thereafter, her daughter managed to rescue the complainant, opened the door and removed the cloth from

her mouth. The complainant asked her daughter to flee from the house. When the accused attempted to stop her, the complainant allegedly kicked him. The accused then went inside another room to bring something, whereupon the complainant bolted the room from outside and ran out of the house along with the accused's mobile phone in the hand of the victim. According to the complainant, after coming outside, her daughter told her that the accused had inserted his finger into both of her private parts. She further noticed that her daughter's clothes had torn. It is further alleged that while the complainant and her daughter were fleeing from the spot, the accused intercepted them near a grocery shop and demanded that his mobile phone be returned. The daughter returned the mobile phone to him. In the meantime, several persons gathered at the spot and the police also arrived there. The complainant thereafter accompanied the police to the police station and lodged the report.

D) Based on her complaint, a First Information Report (Ex.P/2) was registered against the accused. During the course of investigation, statements of witnesses were recorded, articles were seized, the complainant was sent for medical examination. The accused was arrested on 22.08.2021. Spot map (Ex.P/6) was prepared. Memorandum of the accused (Ex.P-33) was recorded. The vehicle and undergarments of the accused were seized. The documents with regard to the date of birth of complainant's daughter (Ex.P/19 & 20) were

seized. Upon completion of the investigation, a charge-sheet was filed against the accused before the learned Chief Judicial Magistrate, Bilaspur. After committal, the case was allotted to FTSC (POCSO/Additional Sessions Judge, Bilaspur for trial.

3. The prosecution to prove its case examined as many as 20 witnesses and exhibited 37 documents. The accused was examined under Section 313 of the Cr.P.C. wherein he has taken plea of false implication and did not adduce any evidence. In his statement recorded under Section 313 of the Cr.P.C., the accused stated before the learned Trial Court that, on the occasion of Raksha Bandhan, he was present at his house in the afternoon. At that time, a woman claiming to be associated with a Gurudwara came to his house and demanded money and certain articles. He stated that he had kept his mobile phone for charging, which was allegedly taken away by the woman and her daughter, and the door of the house was closed from outside. According to the accused, after opening the door, he went outside and snatched his mobile phone back from them. He further stated that he has been falsely implicated in the present case.

4. On the basis of the evidence and material available on record, the learned Trial Court did not place reliance upon the FSL report. Although the age of the victim was duly proved to be minor, the learned Trial Court, upon appreciation of the evidence and material on record, recorded a finding that the

prosecution has failed to prove the charges against the accused beyond reasonable doubt. Consequently, the learned Trial Court acquitted the accused of the charges framed against him. Being aggrieved by the aforesaid judgment of acquittal, the victim and her mother have preferred the present acquittal appeal.

5. Learned counsel for the appellants would submit that the learned trial court has failed to appreciate the evidence available on record and wrongly acquitted the accused. He would further submit that learned trial Court has erred in disbelieving the statement of the victim and her mother wherein they have categorically narrated the incident. He would further submit that the learned Trial Court failed to appreciate that, the prosecution has proved its case beyond all reasonable doubts. The learned Trial Court failed to appreciate the evidence recorded in the case in its true and correct prospective and succumbed to conjectures and surmises in recording the impugned judgment. The learned Trial Court failed to take into consideration the statement of the witnesses who had categorically stated that on the date of incident they had seen the accused coming out of his house and chasing the complainants, who had locked him inside his house to run away from the place of incident. The learned Trial Court erred in not appreciating the statement of the complainant who had stated that in the pretext of searching the files, the accused forcefully pushed her to a bed and disrobed her with an intention to

commit rape. The accused also molested the minor girl, who had also supported the case of the prosecution, still it has acquitted the accused. Thus, findings are perverse, as such, the judgment of acquittal deserves to be set aside by this Court and would pray for allowing the appeal.

6. Per contra, learned counsel appearing for respondent No.1/accused would oppose the appeal and submit that the learned Trial Court, after appreciating the entire evidence available on record, has rightly acquitted the accused. He would submit that the findings recorded by the learned Trial Court are based upon proper appreciation of evidence and are neither perverse nor contrary to the material available on record. He would further submit that though the victim was admittedly a minor, mere proof of her age would not by itself establish the commission of the alleged offence by the accused. The prosecution was required to prove, by reliable and cogent evidence, the occurrence as alleged and the involvement of the accused therein.

7. Learned counsel would further submit that the statements of the complainant and the victim suffer from material contradictions, omissions and inconsistencies on material particulars concerning the manner in which the alleged incident took place. The prosecution story, particularly regarding the conduct of the accused, the sequence of events and the circumstances in which the complainant and the victim allegedly escaped from

the house, does not inspire confidence. The learned Trial Court has rightly examined these discrepancies and, upon proper appreciation of the evidence, found that the prosecution version was not free from doubt. He would submit that the alleged incident was not supported by any reliable independent evidence. The prosecution witnesses examined in support of its case do not establish the commission of the alleged offence in a manner which would inspire confidence. It is further submitted that the medical and forensic evidence do not lend the necessary corroboration to the prosecution case. The learned Trial Court has considered the FSL report and, for cogent reasons, has not found the same sufficient to connect the accused with the alleged offence.

8. He would further submit that in an appeal against acquittal, the accused continues to enjoy the presumption of innocence, which stands further strengthened by the judgment of acquittal passed by the learned Trial Court, unless the findings recorded by the Trial Court are shown to be manifestly erroneous, perverse, or wholly contrary to the evidence on record. Learned counsel would therefore submit that the appellants have failed to demonstrate any perversity, illegality or material misappreciation of evidence in the impugned judgment. The learned Trial Court has assigned cogent and plausible reasons for extending the benefit of doubt to the accused. Accordingly, the impugned judgment of acquittal does not warrant any interference and the appeal preferred by the victim and her

mother deserves to be dismissed.

9. Learned State counsel, supporting the appeal, would submit that the learned Trial Court has committed a serious error in appreciating the evidence available on record and has erroneously acquitted the accused. Learned State counsel would further submit that the learned Trial Court has failed to appreciate the evidence in its proper perspective and has considered the alleged discrepancies in isolation instead of examining the prosecution evidence as a whole. The core of the prosecution case, namely, the presence of the accused with the complainant and the victim, their entry into the house of the accused, the subsequent conduct of the accused and the immediate escape of the complainant and the victim, remains substantially intact. He would also submit that the learned Trial Court has erred in disbelieving FSL report. Learned State counsel would submit that the conduct of the victim immediately after the occurrence is also a relevant circumstance supporting the prosecution case. The fact that the complainant immediately approached the police and lodged the report on the same day, without any unreasonable or unexplained delay, lends assurance to the prosecution version. Thus would pray for allowing the appeal.

10. We have heard learned counsel for the appellants and perused the record with utmost circumspection.

11. After considering the submission of the learned counsel for the

parties and perusal of the record the point emerged for consideration is, “Whether the findings recorded by the learned Trial Court, resulting in acquittal of the respondent/accused, are contrary to the evidence on record and perverse, warranting interference by this Court?”.

12. To appreciate point of determination, it is expedient for this Court to examine the evidence brought on record by the prosecution.

13. **Evidence of mother of the victim (PW/1) : -** The witness reiterated the prosecution case in her examination-in-chief. In her cross-examination, she admitted that the accused had tied her hands, gagged her mouth, thrown her onto the bed and committed rape upon her, however, she has not sustained any injury on her body. She further stated that the victim has informed her that she had kept the mobile phone of the accused to which she told her to hand-over the same to the police. When they were resting at the Shop, the accused allegedly came there and snatched the mobile phone. Upon her hue and cry, a crowd gathered. The witness further admitted in her cross-examination that she refused to get the victim medically examined, as according to her, nothing had happened to the victim. She also admitted that the spot map (Ex.P/7) has not been prepared in her presence and she signed the same at the police station as directed by the police. She further admitted that the shop where she had stopped was situated at a distance

of about two to three minutes from the place of occurrence.

14. **Evidence of the victim (PW/2) : -** In her examination-in-chief, the witness reiterated the prosecution case. However, she specifically stated that the accused had removed her underwear but did not insert his finger into her private parts, only attempted to insert his finger into her private parts. In her cross-examination, the witness admitted that the accused intercepted them near the shop and taken back his mobile phone. She further admitted that she could not say what has happened to her mother inside the room.

15. **Evidence of Dr. Reena Sande (PW/8) :-** The witness has stated that the victim's mother refused to get the victim medically examined. She examined the victim's mother and gave her opinion vide Ex.P/4, stating that no definite opinion regarding the commission of rape could be given and given an opinion that no injury was found on the body of the victim. The prosecution sent the undergarments of the victim, her mother and the accused for forensic examination. As per the FSL report, human spermatozoa were found on the undergarments of the victim's mother and the accused. However, no human spermatozoa were detected on the undergarment of the minor victim. Thus, the forensic examination did not reveal the presence of human spermatozoa on the undergarment of the minor victim, as such, no matching could be done even for the matching sperm of the victim’s mother it was not sufficient,

therefore, matching could not be done.

16. The learned trial Court on the basis of evidence and material adduced by the prosecution has recorded its finding that there is vast contradiction and omission in the statement recorded under Section 164 Cr.P.C. and the statement recorded before the trial Court. Learned trial Court has also raised doubt over the incident by recording a finding that if the victim has visited the house for the first time, how can she search the file. The learned trial Court has also taken into consideration the statement of the accused recorded under Section 313 Cr.P.C. wherein he has narrated the incident of theft of mobile phone which was affirmed by the minor victim also. The trial Court has taken into consideration the effect of non-examination of the independent witness with regard to the wearing of clothes by the victim's mother as so many persons were gathered on account of hue and cry made by the mother.

17. Even the independent witnesses namely Ravi Prakash, Ashish Singh and others have not supported the case of the prosecution. Similarly, non-examination of the minor victim by the doctor, as well as no definite opinion given by the doctor regarding commission of rape over the victim's mother led to record a finding by the trial Court that the prosecution case is doubtful.

18. Similarly, the defence taken by the accused in his statement under Section 313 of the Cr.P.C., particularly with regard to the

theft of his mobile phone and pleading of false implication, creates a doubt over the prosecution case. The accused has specifically explained the circumstances in which the complainant and the victim came to his house and the manner in which he recovered his mobile phone from them. The defence raised by the accused under Section 313 of the Cr.P.C. constitutes a material and substantive part of defence and cannot be discarded lightly. The same is required to be considered along with the prosecution evidence and the surrounding circumstances while determining whether the prosecution has succeeded in establishing the guilt of the accused beyond reasonable doubt. The Hon'ble Supreme Court in case of **Reena Hazarika vs. State of Assam {2019 (13) SCC 289** has examined the importance of the statement recorded under Section 313 and its value and held as under:-

> 19. Section 313, Cr.P.C. cannot be seen simply as a part of audi alteram partem. It confers a valuable right upon an accused to establish his innocence and can well be considered beyond a statutory right as a constitutional right to a fair trial under Article 21 of the Constitution, even if it is not to be considered as a piece of substantive evidence, not being on oath under Section 313(2), Cr.P.C. The importance of this right has been considered time and again by this court, but it yet remains to be applied in practice as we shall see presently in the discussion to follow. If the accused takes a defence after the prosecution evidence is closed, under Section 313(1)(b) Cr.P.C. the Court is duty bound under Section 313(4) Cr.P.C. to consider the same. The mere use of the word 'may' cannot be held to confer a discretionary power on the court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice, and the likelihood of the prejudice that may be caused thereby. Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available

> is an entirely different matter. If there has been no consideration at all of the defence taken under Section313 Cr.P.C., in the given facts of a case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under Section 313 Cr.P.C. and to either accept or reject the same for reasons specified in writing.
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> 20. Unfortunately neither Trial Court nor the High Court considered it necessary to take notice of, much less discuss or observe with regard to the aforesaid defence by the appellant under Section 313 Cr.P.C. to either accept or reject it. The defence taken cannot be said to be irrelevant, illogical or fanciful in the entirety of the facts and the nature of other evidence available as discussed hereinbefore. The complete non consideration thereof has clearly caused prejudice to the appellant. Unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt. The accused has only to raise doubts on a preponderance of probability as observed in Hate Singh Bhagat Singh vs. State of Madhya Bharat, AIR 1953 SC 468 observing as follows :"26. We have examined the evidence at length in this case, not because it is our desire to depart from our usual practice of declining to the assess, the evidence in an appeal here,but because there has been in this case adeparture from the rule that when an accused person but for the word a reasonable defence which is likely to be true,…… then the burden on the other side becomes all the heavier because a reasonable and probable story likely to be true friend pitted against AV and vacillating case is bound to raise a reasonable doubts of which the accused must get the benefit…."

19. The learned trial Court by critically examining the evidence of the victim, victim's mother, the medical evidence and other circumstances, has recorded its finding that the victim's evidence is not of a sterling quality therefore, it is not safe for the trial Court to convict the accused. The reasoning and recording of acquittal on evidence which is not of sterling quality is accordance with law laid down by the Hon'ble Supreme Court in **Santosh Prasad Vs. State of Bihar {2020 (3) SCC 443}**

wherein the Hon'ble Supreme Court has held as under :-

> 6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5 -prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix – PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.*"*

20. Again Hon'ble Supreme Court in case of **Nirmal Premkumar vs. State Represented by Inspector of Police {(2024) 20 SCC 293}** has examined the issue and recorded its finding as under:-

> "24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The

> statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistences excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

21. Even otherwise, it is well settled position of law that if one view has been taken by the prosecution which is in favour of the accused, normally the appellate Court should not interfere in the case of acquittal, unless the finding is so perverse that only one view of conviction is possible for the appellate Court. Hon'ble Supreme Court in case of **Constable 907 Surendra Singh and Anr vs. State of Uttarakhand {2025 INSC 114}** dealt with the issue when an appellate Court can interfere in the order of acquittal passed by the trial Court and held in paragraph 12 as under:-

> "12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

22. Considering the aforesaid law on the subject and looking to the facts and circumstances of the case, we find that the finding of acquittal recorded by the learned trial Court is neither perverse, nor illegal. The findings recorded by the learned Trial Court do not suffer from any patent illegality, misappreciation of evidence, or manifest error of law warranting appellate Court

interference. Consequently, the order acquitting the respondent of the charges levelled against him is fully justified and calls for no interference by this Court in exercise of its appellate jurisdiction.

23. In view of the foregoing discussion, this Court finds no merit in the appeal. Accordingly, the appeal is dismissed.

Sd/- Sd/-

(Sanjay S. Agrawal) **(Narendra Kumar Vyas)**
JUDGE **JUDGE**

KISHORE KUMAR DESHMUKH
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Date: 2026.08.17 16:51:02 +0530
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