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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1933 of 2025

Judgment Reserved on 30.07.2026

Judgment Delivered on 13.08.2026

- Ashlam Sharif @ Achchhu, S/o Haji Isha Sharif, aged about 48 Years, R/o Near Baijnath Para Dargah, P.S. City Kotwali, District- Raipur (C.G.) **...Appellant**

versus

- State of Chhattisgarh, Through Police Station City Kotwali Raipur District Raipur (C.G.) **... Respondent**

For Appellant	:	Mr. Hemant Kumar Agrawal along with Ms. Surbhi Yadav, Advocates.
For Respondent/State	:	Mr. Dharmesh Shrivastava, Deputy Advocate General and Ms. Supriya Upasane, Government Advocate.

Hon'ble Shri Justice Radhakishan Agrawal

CAV Judgment

1. This criminal appeal under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred against the judgment of conviction and order of sentence dated 02.09.2025 passed by the learned Additional Sessions Judge, Second Fast Track Special Court (POCSO), Raipur, District Raipur (C.G.) in Special Criminal Case No.68/2019, whereby the appellant has been convicted for the offences punishable under Section 354 of Indian Penal Code, 1860 (for short, “IPC”) and Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short, “the POCSO Act”). However, in view of the provisions contained in

Section 42 of the POCSO Act, the appellant has been convicted for the offence under Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for five years along with a fine of Rs.500/- and in default of payment of fine amount to undergo simple imprisonment for one month.

2. As per the prosecution case, on 25.03.2019 at about 7:30 a.m., the prosecutrix had gone outside her house to drop her younger sister to the school van. It is alleged that while she was returning, the appellant intercepted her, kissed her repeatedly and touched her chest with sexual intent. On the basis of a written complaint (Ex.P-2) submitted by the father of the prosecutrix on 29.03.2019, FIR (Ex.P-3) was registered against the appellant. During investigation, the statement of the prosecutrix was recorded. Spot map was prepared vide Ex.P-5. The school records and birth certificate relating to the age of the prosecutrix were seized vide Ex.P-6. After completion of investigation, charge-sheet was filed before the competent Court.

3. The learned Special Court framed charges against the appellant under Section 354 of IPC and Section 10 of POCSO Act. The appellant abjured the guilt and pleaded false implication.

4. In order to prove its case, the prosecution examined seven witnesses and exhibited eleven documents. The defence examined two witnesses, namely, Syed Rahmat Ali (DW-1) and Kamil Ahmad Rashid (DW-2), in support of the plea that there existed previous enmity between the appellant and the father of the prosecutrix on account of a parking dispute and that no such incident had taken place.

5. The learned trial Court, after appreciating the oral and documentary evidence available on record, convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment. Hence, this appeal.

6. Learned counsel appearing for the appellant submits that the learned trial Court has committed grave illegality in convicting and sentencing the appellant solely on the basis of the testimony of the prosecutrix without properly appreciating the evidence available on record. He further submits that no offence has been committed by the present appellant. It is argued that the alleged incident is said to have taken place at a busy public place adjoining a *Dargah*, residential houses and public roads where there is constant movement of people during the morning hours, rendering the prosecution story highly improbable. It is further submitted that the mother and aunt of the prosecutrix, who were material witnesses, have not been examined by the prosecution. It is also contended that the FIR was lodged after four days without any satisfactory explanation. He also submits that the evidence of the defence witnesses probabilises the previous dispute between the appellant and the father of the prosecutrix and, therefore, the possibility of false implication cannot be ruled out. It is, therefore, prayed that the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted of the charges levelled against him.

7. On the other hand, learned State counsel supports the impugned judgment and submits that the learned trial Court, after evaluating the evidence available on record, rightly convicted and sentenced the appellant, which needs no interference by this Court.

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

9. The first question which arises for consideration is whether the prosecutrix was a minor on the date of the alleged incident.

10. The prosecutrix (PW-1), in her deposition, has stated that her date of birth is 18.02.2009. Her father (PW-2) has also corroborated the same. The prosecution has further produced the school progress report (Article-A), admission register (Ex.P-8C), and birth certificate (Article-B), all of which record the date of birth of the prosecutrix as 18.02.2009. PW-4, A.D., Principal of Angels School of Excellence, has also deposed that as per the school admission register (Ex.P-8C), the date of birth of the prosecutrix is 18.02.2009 and that she was admitted to Class III on 10.03.2017. Thus, from the aforesaid unrebutted oral as well as documentary evidence available on record, this Court finds that on the date of the incident, the prosecutrix was below 18 years of age. The learned trial Court has, therefore, rightly held that the prosecutrix was a minor at the time of the incident, and the said finding is hereby affirmed.

11. Now, the next question is whether the appellant is the author of the crime in question.

12. The entire prosecution case mainly rests on the testimony of the prosecutrix (PW-1). She has deposed that on the date of the incident, she had gone outside to see whether the school van of her younger sister had arrived. At that time, several dogs entered the lane and she got frightened. According to her, the appellant came behind the dogs, drove them away, asked her not to be afraid, kissed her and thereafter brought his hand from behind and pressed her chest. She has further stated that the appellant again kissed her on her lips and thereafter caught hold of her from behind and rubbed himself against her. However, these facts regarding the

presence of the dogs and the manner in which the incident took place do not find mention either in the written complaint (Ex.P-2) or in the First Information Report (Ex.P-3). These are material omissions, as they relate to the manner in which the incident allegedly occurred, and therefore amount to material improvements made for the first time before the Court.

In her cross-examination, PW-1(Prosecutrix) admitted that the alleged place of occurrence is situated adjacent to a *Dargah* where people visit every morning for offering *Fatiha*. She further admitted that there is a cooler repair shop near the place of occurrence, residential houses are situated in the vicinity and the place is connected by three public roads where people generally keep moving during the relevant time. However, PW-2 father of the prosecutrix admitted that the prosecutrix had not informed him that the alleged incident had occurred near the main road, beside the *Dargah* and in front of the cooler shop. These admissions materially contradict the version narrated by PW-1 prosecutrix before the Court and strike at the root of the prosecution case. More importantly, she (PW-1) admitted in paragraph 27 that immediately after the alleged occurrence, she accompanied her mother to drop her younger sister to the school van, she remained completely normal and did not disclose the alleged incident to her mother. It is pertinent to note that ordinarily, in such circumstances, a victim would be expected to inform her mother immediately, particularly when she was in her company soon after the incident. However, she failed to do so and her conduct remained normal without any noticeable change, which creates a serious doubt regarding the prosecution version. In paragraph 36 of her cross-examination, PW-1 prosecutrix admitted that the alleged place of occurrence was an open place and further admitted that at such an open place, it was not possible

to kiss a person, touch her chests or rub against her from behind. This admission, coming from the prosecutrix herself, materially affects the credibility of the prosecution version. When the prosecution alleges commission of the incident at the very same place, the aforesaid admission creates a serious doubt regarding the truthfulness and probability of the prosecution story. Such an important admission could not have been ignored while appreciating the evidence on record.

13. This apart, the evidence of PW-2, father of the prosecutrix, also does not inspire confidence so as to corroborate the testimony of PW-1 Prosecutrix. In paragraph 16 of his cross-examination, he also admitted that the alleged place shown in the spot map is a common public road having residential houses nearby. He further admitted that at such place people continuously move and that the alleged acts of kissing, touching the chest or rubbing against the victim were not possible. These admissions materially weaken the prosecution case and create further doubt about the prosecution story.

14. In defence, the appellant examined Syed Rahmat Ali (DW-1), who deposed that the father of the prosecutrix (PW-2) used to park his vehicle in front of the appellant’s house, which led to frequent disputes between them. According to this witness, on the date of the incident, there was only a quarrel between the appellant and the father of the prosecutrix regarding parking of the vehicle, and no incident of molestation had taken place. He further stated that the locality is a crowded area where such an incident was not possible.

15. The appellant also examined Kamil Rashid (DW-2), who corroborated the testimony of DW-1, Syed Rahmat Ali. He stated that there was a dispute between the appellant and the father of the prosecutrix over parking of the

vehicle, after which local persons intervened and the matter was pacified. He further deposed that after about three to four days, a report alleging molestation of the prosecutrix was lodged. He also categorically stated that no girl or woman was present at the place at the relevant time and that no such incident had occurred.

16. The testimony of DW-1 Syed Rahmat Ali and DW-2 Kamil Rashid has remained substantially unshaken in cross-examination. It is well settled that the defence is not required to prove its case beyond reasonable doubt. If the defence succeeds in creating a reasonable probability consistent with the innocence of the accused, such evidence has to be taken into consideration while appreciating the prosecution case.

17. Thus, from the foregoing discussion, it is evident that there are material contradictions and omissions in the testimony of the prosecutrix (PW-1) and her father (PW-2) and their statements do not corroborate with each other nor with the contents of the written complaint (Ex.P-2) and the First Information Report (Ex.P-3). On the contrary, the admissions made by both the witnesses during their cross-examination materially weaken the prosecution case. Further, PW-3 Dr. S.L.S., who medically examined the prosecutrix, did not notice any external injury on her person. It is also pertinent to note that the alleged incident is stated to have occurred on 25.03.2019, whereas the written complaint (Ex.P-2) was lodged only on 29.03.2019 and no satisfactory explanation has been offered by the prosecution for such delay in lodging the report. Moreover, the prosecution failed to examine the mother and aunt of the prosecutrix, who were material witnesses, for the reasons best known to it. Apart from this, the defence evidence suggests that there was prior enmity between the

appellant and the prosecutrix's father due to a parking dispute. When this circumstance is considered along with the material infirmities in the prosecution evidence, it creates a reasonable doubt regarding the truthfulness of the prosecution case.

18. It is well settled that though conviction can be based on the sole testimony of the prosecutrix, but such testimony must be wholly reliable and inspire confidence. In the present case, the testimony of the prosecutrix does not inspire the confidence of the Court for the reasons discussed hereinabove. Consequently, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The appellant is, therefore, entitled to the benefit of doubt.

19. Accordingly, the appeal deserves to be and is hereby allowed. The impugned judgment of conviction and order of sentence dated 02.09.2025 passed by the learned Additional Sessions Judge, Second Fast Track Special Court (POCSO), Raipur, District Raipur (C.G.) in Special Criminal Case No.68/2019 are hereby set aside. The appellant is acquitted of the aforesaid charges, by extending him the benefit of doubt.

20. The appellant is reported to be in jail. He be released forthwith, if not required in connection with any other case.

21. Let the original record of the trial Court along with a copy of this judgment be transmitted forthwith to the trial Court concerned as well as to the Superintendent of the concerned Jail for information and necessary compliance.

Sd/-
(Radhakishan Agrawal)
Judge

Akhilesh