



CGHC010043832023



2026:CGHC:34099-DB

Digitally signed
by SAGRIKA
AGRAWAL
Date:
2026.08.07
12:13:31 +0530

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 370 of 2023**

Ramu Yadav S/o Govind Yadav Aged About 25 Years R/o Ambenagar Ward
No. 27, Police Station Heera Nagar, District : Indore, Madhya Pradesh

... Appellant(s)**versus**

State Of Chhattisgarh Through Station House Officer, Police Station Guroor,
District : Balod, Chhattisgarh

... Respondent(s)

(cause title taken from CIS)

For Appellant (s) : Mr. Siddharth Pandey, Advocate

For Respondent(s) : Mr. S.S. Baghel, Govt. Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice**Hon'ble Mr. Ravindra Kumar Agrawal, Judge****Order on Board****Per Ramesh Sinha, Chief Justice****05.08.2026**

1. Heard Mr. Siddharth Pandey, learned counsel for the appellant. Also heard Mr. S. S. Baghel, Govt. Advocate for the Respondent/ State.
2. The present criminal appeal has been filed by the appellant under Section 374(2) of Code of Criminal Procedure against the impugned

judgment of conviction and sentence dated 26.12.2022 passed by learned Special Judge (POCSO Act, 2012) Additional District and Sessions Judge, Balod, (FTSC) District- Balod (CG) in Special Sessions Case (POCSO) No. 55/2019 whereby the appellant has been convicted and sentenced in the following manner:-

S.No	Conviction	Sentence
1.	Under Section 376 (2)(अ) (ब) of IPC	Life Imprisonment & fine of Rs. 3000/- in default of fine additional R.I. for 03 months.
2.	Under Section 363 of IPC	R.I. for 3 years and fine of Rs. 1000/- in default of payment of fine additional R.I. for 1 month.
3	Under Section 366 of IPC	R.I. for 5 years and fine of Rs. 2000/-, in default of payment of fine further R.I. for 2 months. All the sentences shall run concurrently.

3. The case of the prosecution is that PW/2, the father of the victim, lodged a missing report on 27.02.2019 stating that on 26.02.2019, after returning from his agricultural field, he found that his minor daughter had not returned home. Despite searching for her in the neighbourhood, making enquiries from relatives, friends and her classmates, and attempting to contact her on her mobile phone, her whereabouts could not be traced. On the basis of the said report, the Police registered FIR (Ex.P/5) under Section 363 of the Indian Penal Code against an unknown person. During the course of investigation, on the basis of the mobile location of the appellant, the Police recovered the victim from the appellant's custody from a rented house situated at Ambedkar Nagar, Indore (Madhya Pradesh) on 02.06.2019,

where recovery panchnama (Ex.P/1) was prepared. The victim was thereafter sent for medical examination at the District Hospital, Balod, where she was medically examined by PW/7 Dr. Prabha Barman, who gave her medical reports (Ex.P/22 and Ex.P/23). During medical examination, no external injuries or injuries over the private parts of the victim were found; her hymen was found to be old ruptured and the doctor opined that there was no evidence of forceful sexual intercourse or of recent sexual intercourse. Two vaginal slides were prepared, sealed and handed over to the Police for chemical examination, and the underwear of the victim was also examined and sealed. With respect to the age of the victim, the Investigating Officer seized the school admission register vide seizure memo (Ex.P/17) and, after retaining its certified copy (Ex.P/19-C), returned the original register to the school. As per the admission register, the date of birth of the victim was 07.08.2005. The Investigating Officer also seized the Class-V marksheet of the victim vide seizure memo (Ex.P/7). The spot map (Ex.P/6) was prepared by the Investigating Officer and the spot map (Ex.P/9) was prepared by the Patwari. The appellant was arrested on 03.06.2019 and was medically examined by PW/6 Dr. Bhupendra Sonkar, who opined vide report (Ex.P/20) that the appellant was capable of performing sexual intercourse. The vaginal slides of the victim, her underwear and the underwear of the appellant were sent to the State Forensic Science Laboratory, Raipur, from where FSL Report (Ex.P/32) was received. As per the FSL report, semen and spermatozoa were detected on the appellant's underwear, whereas no semen or spermatozoa were detected on the vaginal slides or the underwear of the victim. The statement of the victim under Section 164

Cr.P.C. and the statements of the witnesses under Section 161 Cr.P.C. were recorded. After completion of the investigation, the Police filed a charge-sheet against the appellant for the offences punishable under Sections 363, 366 and 376(2)(j) and (n) of the Indian Penal Code and Sections 5(I)/6 of the Protection of Children from Sexual Offences Act, 2012 before the learned trial Court.

4. The learned trial Court framed charges against the appellant for the offences punishable under Sections 363, 366 and 376(2)(j) and (n) of the Indian Penal Code and Section 5(I) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012. The appellant abjured his guilt, denied the charges, and claimed to be tried.
5. In order to prove the charges against the appellant, the prosecution examined as many as 11 witnesses. The statement of the appellant under Section 313 of the Code of Criminal Procedure was also recorded, wherein he denied all the incriminating circumstances appearing against him, pleaded innocence and stated that he had been falsely implicated in the case.
6. After appreciation of the oral as well as documentary evidence adduced by the prosecution, and upon hearing the parties as well as perusing the material available on record, the learned trial Court recorded a finding that the victim was a minor and below 18 years of age on the date of the incident. Consequently, the learned trial Court found the appellant guilty of the offences punishable under Sections 363, 366 and 376(2)(j) and (n) of the Indian Penal Code and Section 5(I) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, and convicted and sentenced him

accordingly, as mentioned in the earlier part of this judgment. Hence, the present appeal.

7. Learned counsel for the appellant would submit that the appellant is innocent and has been falsely implicated in the present case. It is contended that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt and the findings recorded by the learned trial Court are contrary to the evidence available on record. It is argued that the prosecution has failed to prove the age of the victim in accordance with law. The learned trial Court has relied upon the school admission register, though neither the person who made the relevant entry in the register nor the document on the basis of which the date of birth was recorded was produced before the Court. No birth certificate, Kotwari register or ossification test was brought on record to conclusively establish that the victim was below 18 years of age on the date of the incident. It is further submitted that the evidence of the victim itself shows that she was in regular telephonic contact with the appellant for several months prior to the incident, that she voluntarily met the appellant at Bus Stand, accompanied him to Raipur and thereafter to Indore of her own free will, and remained with him for more than three months without raising any alarm or making any complaint to any person, despite having several opportunities to do so. It is further contended that the victim was carrying her mobile phone throughout the period and was often left alone in the rented house when the appellant had gone for work, yet she neither informed her family nor approached the police or any other person, which probabalises the defence case that she had voluntarily accompanied the appellant. Learned counsel would further submit that the medical

evidence does not support the prosecution case, as PW/7 Dr. Prabha Barman found no external or genital injuries on the victim and specifically opined that there was no evidence of forceful or recent sexual intercourse. The FSL report also does not detect semen or spermatozoa on the vaginal slides or underwear of the victim. It is further argued that the prosecution witnesses have made material improvements and contradictions in their statements, which have not been properly appreciated by the learned trial Court. In these circumstances, it is submitted that the prosecution has failed to prove the essential ingredients of the offences alleged against the appellant beyond reasonable doubt and, therefore, the impugned judgment of conviction and sentence deserves to be set aside and the appellant deserves to be acquitted of all the charges.

8. Per contra, learned State counsel supports the impugned judgment of conviction and sentence and submits that the prosecution has proved the guilt of the appellant beyond all reasonable doubt by leading cogent, convincing and reliable oral as well as documentary evidence. It is contended that the age of the victim has been duly established from the School Admission Register (Ex.P/19-C), which records her date of birth as 07.08.2005 and stands duly proved through the testimony of PW/5 and PW/9, the Investigating Officer. On the date of the incident, the victim was below 16 years of age and, therefore, any alleged consent on her part is of no legal consequence. It is further submitted that the testimony of the victim (PW/1) is natural, consistent and inspires confidence. She has categorically stated that the appellant contacted her over the phone, met her at Bus Stand, took her to Indore and repeatedly established physical relations with her while keeping

her in rented accommodation. Her testimony is duly corroborated by the evidence of PW/2, her father, the recovery witnesses, the medical evidence and the investigating officers. Learned State counsel further submits that the victim was recovered from the custody of the appellant at Indore pursuant to the mobile location of the appellant, which lends further assurance to the prosecution case. It is argued that the absence of external injuries or the doctor's opinion that there was no evidence of recent forceful sexual intercourse does not demolish the prosecution case, particularly when the victim had remained with the appellant for a considerable period and the medical evidence only corroborates the ocular evidence. The FSL report and the medical evidence are not inconsistent with the prosecution version. It is, therefore, submitted that the learned trial Court has correctly appreciated the entire evidence on record and has rightly convicted the appellant for the alleged offences, therefore, no interference with the impugned judgment is called for and the appeal deserves to be dismissed.

9. We have heard learned counsel for the parties and perused the record of the learned trial Court.
10. The first and the foremost question arises for consideration would be as to age of the victim whether she was minor and less than 18 years of age on the date of incident or not.
11. The prosecution has mainly relied upon Ex.P/19(C), which is the certified copy of the Admission Register (Dakhil Kharij Register) of Government Primary School, to establish the age of the victim. The said document has been sought to be proved by PW/5 Assistant Teacher of the said school. PW/5 deposed that, pursuant to the

requisition issued by the Police (Ex.P/16), he produced the original Admission Register before the Investigating Officer, who seized the same vide seizure memo (Ex.P/17). After retaining its certified copy (Ex.P/19-C), the original register was returned to the school under Supurdnama (Ex.P/18). As per the entry of the Admission Register, the date of birth of the victim is recorded as 07.08.2005. However, during his cross-examination, PW/5 admitted that the handwriting in the Admission Register was not his and that he was not the person who had made the relevant entry. He further admitted that he was unaware as to which document had been produced at the time of admission of the victim for recording her date of birth, though he stated that ordinarily the date of birth is entered after verifying the birth certificate. Admittedly, neither the person who had made the relevant entry in the Admission Register nor the person who had admitted the victim in the school was examined by the prosecution. Further, no birth certificate, Kotwari Register or any other foundational document on the basis of which the date of birth was allegedly recorded in the Admission Register has been brought on record. Thus, except the certified copy of the Admission Register, there is no documentary evidence relating to the initial source of the victim's date of birth.

12. The Hon'ble Supreme Court has considered the admissibility and evidentiary value of the school register with respect to the age of the victim. In paragraphs 40,42,43,44 and 48 of its judgment in **Alamelu and Another Vs. State, represented by Inspector of Police, 2011(2) SCC 385**, the Hon'ble Supreme Court has observed as under:

"40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be

above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined.

42. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of *Birad Mal Singhvi Vs. Anand Purohit*¹, observed as follows:-

"The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined....Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents 1988 (Supp) SCC 604 have no probative value and the dates of birth as mentioned therein could not be accepted."

43. The same proposition of law is reiterated by this Court

in the case of *Narbada Devi Gupta Vs. Birendra Kumar Jaiswal*², where this Court observed as follows:-

"The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue".

44. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.

48. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of *Ravinder Singh Gorkhi Vs. State of U.P.*⁴ held as follows:-

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a (2006) 5 SCC 584 party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the victim although might have

consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted."

13. In case of **Rishipal Singh Solanki Vs. State of Uttar Pradesh & Others, 2022 (8) SCC 602**, while considering various judgments, the Hon'ble Supreme Court has observed in para 33 as under:

"33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

XXXX

XXXX

XXX

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before

the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7 This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance

with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

33.11. Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015."

- 14.** In case of **P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 (SCC Online) SC 846**, Hon'ble Supreme Court has held in para 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.* 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* that:

"Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 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*, 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."

- 15.** Reverting to the facts of the present case, when we examine the testimony of the victim (PW/1), we find certain aspects of her evidence relating to her age and date of birth. The victim (PW/1) stated in her examination-in-chief that her date of birth is 07.08.2005 and that she was studying in Class IX at the time of her deposition. In her cross-examination, she admitted that she was stating her date of birth on the basis of the school certificate. She did not state that she had any personal knowledge of her date of birth. She also did not produce any document relating to her admission in Class-I or any birth certificate in support of the date of birth recorded in the school records. The prosecution has also not examined the person who admitted the victim to the school or the person who made the relevant entry in the

Admission Register, nor has it produced the foundational document on the basis of which the date of birth was entered in the school records. Thus, the testimony of the victim itself shows that her knowledge regarding her date of birth is derived only from the school record, which is not supported by the primary document forming the basis of such entry.

16. PW-2, the father of the victim, also stated that the date of birth of the victim is 07.08.2005 and at the time of incident she was the student of Class- 8th. In his cross-examination, he admitted that the birth of the child is to be recorded by the villagers in the Kotwari Register and birth certificate was also got prepared, however, he neither obtained any Kotwari Register or birth certificate of the victim. He further admitted that he has not gone to school for admission of the victim.

17. From the evidence available on record, it is apparent that the prosecution has relied primarily upon the school admission register to establish the age of the victim. The victim (PW-1) herself has stated in Para 19 of her evidence that she disclosed her date of birth on the basis of her marksheet. The Assistant Teacher (PW/3) is not the author of the school register and he could not produce any document on which the date of birth of the victim is recorded in the school register. The father of the victim (PW/2) has also admitted that he has not gone to school for her admission and has not got any birth certificate or kotwari register with respect to the date of birth of the victim. Thus, although there is no contradiction inter se amongst the prosecution witnesses regarding the date of birth, the evidence on record clearly reveals that the school entry is not founded upon any primary or document evidencing the birth of the victim. The prosecution has failed

to produce any birth certificate, hospital record, Gram Panchayat/Municipal record or any other independent document to substantiate the date of birth recorded in the school register. It has also not resorted to any medical age determination, such as an ossification test. Therefore, the school register, being based merely upon the information supplied by the guardian without supporting documentary proof, cannot by itself be treated as conclusive evidence of age. Consequently, the prosecution has failed to adduce cogent and reliable evidence to conclusively establish that the victim was below 18 years of age on the date of the incident.

18. So far as the offences under Sections 363, 366 and 376(2)(j)(n) of the IPC are concerned, we have carefully examined the evidence of the victim (PW-1).

19. The victim (PW-1) stated in her evidence that she was acquainted with the appellant prior to the incident and they were in a love relationship. She deposed that on 27.02.2019, she herself accompanied the appellant from her village to Dhamtari, thereafter to Raipur and then to Indore. They stayed together at different places and during their stay the appellant established physical relations with her on several occasions. She further stated that they lived together for about three months before they were apprehended by the Police. In her cross-examination, she admitted that she had voluntarily accompanied the appellant and had not raised any alarm or sought help from any person during the entire journey, although they travelled through public places and by public transport. She also admitted that she had several opportunities to leave the appellant but did not do so. She further admitted that she had not made any complaint to any person, including

the hotel staff, passengers or local residents, alleging that she had been forcibly taken away or wrongfully confined by the appellant. She also admitted that she did not sustain any injury during the period she remained with the appellant and that she did not disclose the alleged sexual acts to any person until after her recovery by the Police.

20. From the testimony of the victim, it is evident that she was acquainted with the appellant prior to the incident and had voluntarily accompanied him from her village to different places where they resided together for a considerable period. During the entire period of their travel and stay, despite having ample opportunity to seek assistance or disclose any alleged coercion, she neither raised any alarm nor lodged any complaint before any independent person or authority. Her conduct, as emerging from her own testimony, indicates that she remained in the company of the appellant of her own volition throughout the relevant period.

21. In the case of ***S. Varadarajan Vs. State of Madras***, AIR 1965 SC 942, the Hon'ble Supreme Court has considered the taking and allowing a minor to accompany a person and has held in Para 9 and Para 10 of its judgment that:-

“9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the

keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

22. In the matter of *Tilku Alias Tilak Singh V. The State Of Uttarakhand*, reported in 2025 INSC 226, the Supreme Court has held that the victim, who is between 16 to 18 years of age is very much in the age of understanding as to what was right and wrong for her. Relevant para of the said judgment states as under:-

“16. Even if the finding of the learned Single Judge of the High Court that the victim was between 16 to 18 years of age is to be accepted, in our view, the offence under Sections 363 and 366 IPC would still not be made out.

17. This Court in the case of *S. Vardarajan v. State of Madras*, reported in 1964 SCC OnLine SC 36 had an occasion to consider almost similar facts that arise for consideration in the present case. This Court has observed thus:

“7. It will thus be seen that taking or enticement away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with

enticement but what we have to find out is whether the part played by the appellant amounts to “taking” out of the keeping of the lawful guardian of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law “taking”. There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishments or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both the appellant and Savitri lived as man and wife and visited different places. There is no suggestion in Savitri's evidence, who, it may be mentioned had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with Savitri's own desire to be the wife of the appellant in which the desire of accompanying him wherever he went was course implicit. In these circumstances we find nothing from which an inference could be drawn that the appellant had been guilty of taking away Savitri out of the keeping of her

father. She willingly accompanied him and the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was good and what was bad for her.....”

18. It is thus clear that the victim, who according to the learned Single Judge of the High Court, was between 16 to 18 years of age was very much in the age of understanding as to what was right and wrong for her.

19. From the evidence of the victim itself, it will be clear that she had voluntarily gone along with the appellant herein, travelled to various places and also resided as husband and wife at Dehradun.”

23.In the matter of ***Dola @ Dolagobinda Pradhan Vs. State of Odisha***,

reported in **(2018) 18 SCC 695**, the Hon'ble Supreme Court has held in

Para 9 :-

9. However, as is also evident from the observations above, such reliance may be placed only if the testimony of the victim appears to be worthy of credence. In this regard, it is also relevant to note the following observations of this Court in *Raju v. State of M.P.* 4, which read thus: (SCC p. 141, paras 10-11)

"10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a victim should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at

the same time a false allegation of rape can cause equal distress, humiliation and damage to the In the matter of ***Dola @ Dolagobinda Pradhan Vs. State of Odisha***, reported in ***(2018) 18 SCC 695***, the Hon'ble Supreme Court has held in Para 9 :-

9. However, as is also evident from the observations above, such reliance may be placed only if the testimony of the victim appears to be worthy of credence. In this regard, it is also relevant to note the following observations of this Court in *Raju v. State of M.P.* 4, which read thus: (SCC p. 141, paras 10-11)

24. "10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a victim should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

Having due regard in our mind to the abovementioned settled position in law, we have assessed the entire material on record meticulously.

25. PW-2, who is the father of the victim, and the other family witnesses have deposed only on the basis of the information subsequently received from the victim and are not witnesses to the alleged occurrence. PW-3 proved the missing report lodged after the victim

could not be found at her house and also proved the documents relating to her age. However, his evidence regarding the alleged kidnapping and commission of rape is entirely hearsay, as he had no personal knowledge of the events that transpired after the victim left her house. The victim (PW-1), in her own testimony, has admitted that she was acquainted with the appellant, voluntarily accompanied him to different places, remained with him for about three months and did not raise any alarm or make any complaint to any person during the entire period despite having several opportunities to do so. In such circumstances, the evidence of her father and other family members, being based solely on what was disclosed to them by the victim after her recovery, does not materially advance the prosecution case on the question of kidnapping or forcible sexual intercourse. Nevertheless, since the victim has consistently alleged that the appellant established physical relations with her during the period they remained together, the crucial issue would ultimately depend upon whether the prosecution has satisfactorily established that she was a minor on the date of the incident. If the prosecution fails to prove her minority by legally admissible and reliable evidence, then her voluntary conduct, as emerging from her own testimony, assumes significance while appreciating the ingredients of the offences alleged against the appellant.

26. PW-7, Dr. Prabha Barman, who medically examined the victim, proved the medical examination report and deposed that on examination, the hymen of the victim was found to be old ruptured. However, she did not find any fresh external or internal injuries on the body or private parts of the victim suggestive of recent forcible sexual intercourse. The

doctor did not give any definite opinion regarding recent sexual intercourse and preserved the vaginal slides and other samples for forensic examination. The vaginal slides of the victim, her underwear and the underwear of the appellant were sent to the State Forensic Science Laboratory, Raipur for chemical examination. As per the FSL Report (Ex.P-32), no semen stains or human spermatozoa were detected on the vaginal slides or the underwear of the victim. Thus, neither the medical evidence nor the forensic report provides any corroboration regarding recent sexual intercourse with the victim.

27. PW-4, the uncle of the victim, deposed that the victim was the daughter of his younger brother and was about 15 years of age at the time of the incident. He stated that when the victim did not return home after leaving for school, her family searched for her but could not trace her, whereafter a missing report was lodged at Police Station Gurur. He further stated that after about three to four months, on the basis of location information, he accompanied the police and the victim's father to Indore, where the victim was recovered from the company of the appellant, and the recovery memo (Ex.P/1) was prepared. He also proved his signatures on the seizure memo of the appellant's underwear (Ex.P/10) and the seizure memo relating to the school attendance register (Ex.P/12). He stated that after the victim returned, he came to know from her that the appellant had taken her to Indore and kept her with him. Thus, his testimony is confined to the formal aspects of the investigation and does not provide any independent corroboration regarding the alleged offences committed by the appellant.

28. The version of the victim commands great respect and acceptability, but if there are some circumstances which cast some doubt in the mind of the court on the veracity of the victim's evidence, then it will not be safe to rely on the said version of the victim. There is contradiction and omissions in the statement of the victim and her parents. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the victim. However, there is an important caveat which is that the testimony of the victim must inspire confidence. Even though the testimony of the victim is not required to be corroborated, if her statement is not believable, then the accused cannot be convicted. The prosecution has to bring home the charges levelled against the appellant beyond any reasonable doubt, which the prosecution has failed to do in the instant case.

29. Upon a careful consideration of the entire oral and documentary evidence available on record, we are of the considered opinion that the prosecution has failed to establish its case against the appellant beyond reasonable doubt. The testimony of the victim itself reveals that she voluntarily accompanied the appellant and remained with him for a considerable period without raising any alarm or making any complaint despite having ample opportunities to do so. The medical evidence does not disclose any fresh injuries suggestive of forcible sexual intercourse, and the FSL report also does not provide any corroborative evidence connecting the appellant with the alleged sexual assault. The remaining prosecution witnesses are either formal witnesses or have deposed on the basis of what was subsequently disclosed to them by the victim and, therefore, do not furnish any independent corroboration on the material aspects of the prosecution

case. In these circumstances, the prosecution has failed to prove the charges against the appellant beyond reasonable doubt and, consequently, the conviction and sentence recorded by the learned Trial Court cannot be sustained in the eyes of law.

30. Accordingly, the appeal filed by the appellants are hereby **Allowed**.

The impugned judgment of conviction and sentences dated 26.12.2022 passed against the appellant are **set aside**. The appellant is **acquitted** from all the charges.

31. The appellant is reported to be in jail since 03.06.2019. He shall be released forthwith if not required in any other case.

32. Keeping in view the provisions of Section 481 of Bharatiya Nagrik Suraksha Sanhita, 2023, the appellant is directed to furnish a personal bond for a sum of Rs. 25,000/- in the like amount before the Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

33. The trial court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice