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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 557 of 2024

1 - Pravin Chapa S/o Phooldas Aged About 20 Years R/o Patwari Colony,
Avapalli, P.S. Avapalli, Dist. Bijapur, C.G.

... Appellant

Versus

1 - State of Chhattisgarh Through PS Avapalli, Dist. Bijapur, Chhattisgarh.

... Respondent(s)

(Cause-title taken from Case Information System)

For Appellant	:	Shri Adhiraj Surana, Advocate.
For State	:	Shri Sumit Singh, Dy. Advocate General.

Hon'ble Shri Justice Ramesh Sinha, CJ

Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Judgment on Board

07.07.2026

Per, Ramesh Sinha, CJ.

1 Learned State counsel submits that in compliance of court's order dated 10.05.2024 & 18.06.2025, notice was tried to be served upon PW-3, the father of victim, but it could not be served as he (PW-3) is reported to be shifted to the State of Telangana alongwith his family members. Therefore, considering the fact that matter is of the year 2024 and since then the application of the applicant for suspension of his sentence is pending, with the consent of the parties, the matter is heard finally.

- 2** The present appeal under Section 374(2) CrPC has been filed against the impugned judgment of conviction and order of sentence dated 24.01.2024 passed by the Additional Sessions Judge FTC, Dantewada, in Special Sessions Case (POCSO) No.57 of 2022 whereby the appellant has been convicted and sentenced as under:

Conviction U/s	Sentence
363 of IPC	RI for 3 years and fine of Rs.500/-, in default of payment of fine amount, additional RI for one year.
366 of IPC	RI for 3 years and fine of Rs.500/-, in default of payment of fine amount, additional RI for one year.
6 of POCSO	RI for Life and fine of Rs.1,000/-, in default of payment of fine amount, additional RI for one year.

- 3** Brief facts of the case are that, on 26.11.2022 the father of victim, PW-3, lodged a written complaint to the police that some days back when they noticed the abdomen of her minor daughter bigger than its normal size and she started vomiting, she disclosed that the appellant, on the pretext of marriage, made physical relation with her repeatedly which continued since last two years by which she conceived pregnancy. Based on the written complaint Ex.P/3, an FIR Ex.P/4 was registered against the appellant for the offence under Sections 376,376(2)(n) and 376(3) IPC and Sections 4 & 6 of (Protection of Children From Sexual Offences Act (in short, POCSO Act). The victim was sent for her medical examination to Govt. Medical College Hospital, Dimrapal, Jagdalpur, where Dr. G.Padmavati, PW-4, medically examined her and gave her report Ex.P/8. While medically examined the victim, the doctor found full term pregnancy and on the next day the victim delivered a male child at Hospital. She took blood samples of victim

and her newly born child for FSL examination after obtaining consent from the victim and her family members. She also gave her report in the prescribed proforma of MLC report. Spot map Ex.P/5 was prepared by the police and Ex.P/15 by the Patwari. The consent letter for taking blood sample of victim for DNA test is Ex.P/7.

- 4 With respect to age and date of birth of the victim, the school register Ex.P/18 was seized by the police vide Ex.P/16 and after retaining attested true copy of the same vide Ex.P/18-C, the original was returned back to school. According to school register, the date of birth of victim is 21.11.2008. The blood sample collected by Dr. G.Padmavati for DNA test was seized vide Ex.P/20. The appellant was arrested on 01.12.2022 and he too was sent for his medical examination to Community Health Centre, Awapalli where he was medically examined by the doctor who found him capable to perform sexual intercourse. Blood sample of appellant was also collected by the doctor at District Hospital, Dantewada, which has been seized by the police vide Ex.P/10. With respect to age and date of birth of appellant, the police has seized school register Ex.P/14 vide seizure memo Ex.P/12 and after retaining its attested true copy, the original one was returned back to school. The blood samples collected from the victim, her newly born child and appellant were sent for its DNA test for its State FSL, DNA Unit, Raipur from where report Ex.P/41 was received, according to which, the appellant was not found to be the biological father of newly born child of victim.
- 5 The statement under Section 161 CrPC of the witnesses were recorded. The statement of victim under Section 164 CrPC was also

recorded and after completion of usual investigation charge sheet was filed before the trial court for the offence under Sections 376, 376(2)(n) and 376(3) IPC and Sections 4 and 6 of POCSO Act. The trial court framed charge against the appellant for the offence under Sections 363,366,376(AB) and 376(2)(n) IPC and Sections 5(l/m) and 6 of POCSO Act. The appellant denied the charge and claimed trial.

- 6 To prove the guilt of appellant, the prosecution has examined 11 witnesses. The statement of appellant under Section 313 CrPC was recorded in which he admitted that he had taken the victim with him, but denied the commission of rape with her, pleaded innocence and submitted that he has been falsely implicated in the offence.
- 7 After appreciation of oral as well as documentary evidence, the Trial Court has convicted and sentenced the appellant for the offence as stated in the earlier paragraph of this judgment. Hence this appeal.
- 8 Learned counsel appearing for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of the prosecution witnesses which cannot be made basis for conviction of the appellant. There are material omissions and contradictions in the evidence of the prosecution witnesses. The most important evidence i.e. the DNA test report Ex.P/41 supported the appellant as the appellant is not found to be the biological father of newly born child of victim. The DNA test report is a scientific evidence based on the blood samples duly collected by the qualified medical doctor and since the relationship between appellant and victim have not been establish as per DNA test report, he cannot be convicted for the alleged offence of

rape. The commission of rape is alleged to be continued since last two years, but the victim has not informed her parents about the commission of offence till birth of her child. There is no cogent and clinching evidence with respect to age and date of birth of victim that she was minor on the date of incident and less than 12 years of age. School register has not been proved by its author in accordance with law. Further, no birth certificate or Kotwari register or even ossification test report has been filed by the prosecution with that respect. There are material inconsistencies in the evidence of prosecution witnesses. Therefore, the appellant is entitled for acquittal.

- 9** On the other hand, learned counsel for the State opposes the submissions made by the counsel for the appellant and would submit that prosecution has proved its case beyond reasonable doubt, but for minor omissions or contradictions, the evidence of prosecution witnesses are sufficient and reliable to hold conviction of the appellant for the alleged offence. The victim was sexually exploited by the appellant for which he has rightly been convicted. Although the DNA report does not support the prosecution's case and the appellants is not found to be the biological father of newly born child of victim, but that itself is not sufficient to disbelieve the evidence of victim that the appellant has committed rape upon her. The medical and scientific evidence are only an opinionative. The age of victim is also proved by school record in which she was found to be minor and below 12 years of age. It is not a case where the victim was at the verge of majority, but one cannot record her date of birth by reducing such a huge difference. The appellant has admitted in his 313 CrPC statement that

he has taken the victim along with him which corroborates the allegation of victim that he committed rape upon her repeatedly since last two years. There are sufficient and overwhelming evidence against the appellant that he committed the offence and the trial court has rightly convicted the appellant which needs no interference.

- 10** We have heard the counsel for the parties and perused the records of the trial court.
- 11** The first and foremost question arises for consideration would be the age of victim as to whether from the evidence accused by the prosecution the victim was proved to be minor or not?
- 12** The prosecution has mainly relied upon the school register Ex.P/18-C which is sought to be proved by PW-9 who is the Superintendent of School where the victim studied. She stated in her evidence that the police seized school register vide seizure memo Ex.P/16 with respect to age of victim and after retaining its attested true copy, the original was returned which she brought today. As per school register, the date of birth of victim is 02.11.2008 and she was admitted in Class-Vth in the school.

In cross examination though she admits that she is not the author of school register and the basis on which the entry made were not available, but looking to tender age of victim her evidence is not sufficient to hold that victim attained the age of majority. No suggestion was given to her that date of birth of victim was wrongly recorded in the school record. The other evidence produced by the prosecution is also relevant to consider her age.

- 13** The victim PW-1 have stated her date of birth to be 21.11.2008. In cross examination, she states that her mother got her admitted in the school. Her birth certificate was not prepared and her parents were illiterate. She disclosed her date of birth on the basis of her marksheet, however, in cross examination, the defence was unable to rebut the date of birth as disclosed by victim. She was examined on 18.01.2023 before the trial court and at that time her age was 14 years and the alleged date of incident as per FIR was two years prior to the date of lodging report i.e. two years prior from 26.11.2022.
- 14** PW-2, mother of victim was also examined on 18.01.2023 and she too have stated that age of her daughter (victim) is 14 years. She studied at Ashram. In cross examination she admits that she went to school for admission of her daughter. She admits that there is no birth certificate of her daughter. Even if it is considered that Teacher has recorded her date of birth on assumption, one cannot expect that it was recorded after reducing such a huge difference of age.
- 15** PW-3, father of victim, also gave similar evidence about the age of victim as has been given by the victim and her mother.
- 16** PW-4, Dr. G.Padmavati, who medically examined the victim, have also stated that the victim, aged about 14 years, was brought before her for her medical examination. In her cross examination, the defence could not put any question about determination of age of victim.
- 17** While recording evidence of victim PW-1, the trial court has also observed that victim appears to be very tender aged girl and seems to be physically weak.

18 The Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Preetam, 2018(17)SCC658***, in paragraph 10 & 11 observed as under :

“10.....It is to be relevant to note that before the trial court the prosecution has examined Bhaulal (PW-8), Head master/Head teacher of Primary School Chor Pind Ke Par, District Balaghat. In his evidence, Bhaulal (PW-8) has stated that the date of birth of the prosecutrix (PW-1) was 16th May, 1981 which means that on the date of the occurrence i.e. 6th March, 1993, the prosecutrix (PW-1) was only aged about 12 years. The trial court has neither acted upon the evidence of Bhaulal (PW-8) nor on the school certificate on the ground that the person who has admitted the prosecutrix in the school was not examined.

11. In our considered view, the approach of the trial court was not correct. In each and every case the prosecution cannot be expected to examine the person who has admitted a student in the school. The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise. In our view, considering the evidence of head master, Bhaulal (PW-8), and the school certificate produced by him i.e. Ex.P/13-A, age of the victim has to be taken as 12 years at the time of occurrence.”

19 In view of aforesaid consideration of the trial court with respect to age of victim, we do not find any infirmity or perversity in the consideration of the age of victim by the trial court and we concur with the said findings.

20 So far as the offence of kidnapping and rape is concerned, we again examine the evidence of victim, PW-1. She has stated in her evidence that on the date of incident when she was returning from bus stand along with her friend, on the way, her brother in law (Jeeja) met them to whom they asked to drop them to her Aunt's house, to which her brother in law asked his friend Praveen (appellant herein) to drop them to her Aunt's house. The appellant, took the victim and her friend to her Aunt's house and while returning they left the friend of victim at ilmidi chowk and she went towards hostel. Thereafter, she was alone with appellant. The appellant asked the victim to visit his house and took her

to his house. As it was late night, the appellant asked her to stay at his house and assured that he will leave her in the morning. She further states that in the night the appellant started threatening her and after giving allurements that he will marry her, he made physical relation with her. On the next day he left her to her house. Thereafter, repeatedly he committed rape upon her, on account of which, she conceived pregnancy and started vomiting. She went to Hospital along with her mother where doctor disclosed that victim is pregnant. She informed about her pregnancy to the appellant and then the appellant took her with him and kept her in his house for about two months. Despite her pregnancy, he continued physical relation with her and thereafter she started residing with her parents. Her parents took her to Bijapur hospital from where she was shifted to District College Hospital, Dimrapal, Jagdalpur where she gave birth to a male child on 26.11.2022. Her father lodged a report and then the blood samples of both, the victim and her newly born child, were collected for DNA test.

In cross examination she admits that whenever she remained with appellant, she did not make any complaint to anyone and have not raised any alarm. She denied the suggestion that appellant has not committed forcible sexual intercourse with her. She denied the suggestions given by the defence that she voluntarily and consensually made physical relation with the appellant. She also denied the suggestion that appellant has not made physical relation with her and the child born from her is not of the appellant's side.

- 21** From the cross examination of victim it transpires that the appellant gave suggestion to the victim that their relationship was consensual,

which the victim denied. Even otherwise, the victim was found to be minor and therefore her consent, if any, is immaterial. It is necessary to reproduce the relevant part of the evidence of victim, which reads as under :

“6. अभियुक्त ने मुझसे कहा कि घर दिखाकर लाता हूँ और अभियुक्त जिस कॉलोनी में रहता था वहां लेकर गया। अभियुक्त ने मुझसे कहा कि रात हो गयी है यही रुक जा तब मैंने कहा कि मुझे घर जाना है। इसके बाद अभियुक्त ने कहा कि खाना खाकर यहीं सो जाओ। मैं खाना खाकर अभियुक्त के घर में ही अकेले कमरे में सो गयी थी।

07. अभियुक्त मेरे बिस्तर में आकर मुझे डराने लगा और कहने लगा कि वह मुझसे प्यार करता है शादी करेगा कहकर मेरे साथ जबरदस्ती शारीरिक संबंध स्थापित किया था।

08. दूसरे दिन अभियुक्त मुझे मेरे घर छोड़ दिया था। अभियुक्त मेरे बस्ती में आकर मुझे बहला फुसला कर मोटर सायकल में बैठाकर अपने घर ले जाता था और वहां मेरे साथ जबरदस्ती शारीरिक संबंध बनाता था।

09. अभियुक्त के शारीरिक संबंध बनाने के कारण मैं गर्भवती हो गयी थी तब मुझे उल्टी हो रही थी। मैं अपनी मां के साथ अस्पताल गयी थी तब वहां पर मेरा चेकअप करने पर बताया गया कि मैं गर्भवती हूँ।

10. मैंने गर्भवती होने की जानकारी अभियुक्त को दिया था। अभियुक्त मुझे पत्नि बनाकर रखूंगा कहकर मुझे अपने साथ अपने घर ले गया था और मुझे दो माह तक अपने पास रखकर छोड़ दिया।

11. अभियुक्त मेरे गर्भवती होने के बाद भी दो माह तक मेरे साथ शारीरिक संबंध स्थापित करता था।”

22 The said part of the evidence of victim has been admitted by the appellant in his 313 CrPC statement. In question Nos.7,9,10,11 and 12 the appellant admitted that he was with the company of the victim. It is also relevant here to reproduce these questions and answer of the appellant in his 313 CrPC statement which are as follows:

“प्रश्न:-07 इसी साक्षी का यह भी कहना है कि इस पर इसके जीजाजी ने आपको कहा कि पीड़िता और इसकी सहेली को घर छोड़कर आना तब वे दोनों लोग आपके साथ मोटरसायकल में बैठ गये, क्या आप इस संबंध में कुछ कहना चाहते हैं?

उत्तर:-सही है।

प्रश्न: 09 इसी साक्षी का यह भी कहना है कि इन लोगों ने बताया था कि बीजापुर अपने चाची के घर जाने वाले थे तब आपने कहा कि आपको भी बीजापुर जाना है और इन लोगों को इसकी चाची के यहां लेकर गये, क्या आप इस संबंध में कुछ कहना चाहते हैं ?

उत्तर:-सही है।

प्रश्न 10 इसी साक्षी का यह भी कहना है कि आप इन लोगों को घुमाकर वापस गांव ले आए थे, इसकी सहेली ईलमिड़ी चौक में ही उतर गयी थी और होस्टल चली गयी थी, क्या आप इस संबंध में कुछ कहना चाहते हैं ?

उत्तर:- सही है।

प्रश्न:-11 इसी साक्षी का यह भी कहना है कि तब वह आपके साथ अकेली थी, क्या आप इस संबंध में कुछ कहना चाहते हैं ?

उत्तर:- सही है।

प्रश्न:-12 इसी साक्षी का यह भी कहना है कि आपने इससे कहा कि घर दिखाकर लाता हूं और आप जिस कॉलोनी में रहते थे वहां लेकर गए, क्या आप इस संबंध में कुछ कहना चाहते हैं?

उत्तर:- सही है।"

- 23** PW-2 & PW-3, the mother & father of the victim, have deposed on the basis of disclosure made by the victim that appellant committed rape upon her by which she conceived pregnancy. The incident was disclosed by the victim to her parents that when she was with her friend and going to her Aunt's house, the appellant took her to his house and committed rape upon her which was repeated time and again by which she conceived pregnancy. In cross examination of these witnesses nothing could be substantiated by the defence to disbelieve their evidence.
- 24** The delivery of child by the victim is also not in dispute and PW-4, Dr. G.Padmavati have also proved the same that victim delivered a male child when she was sent for her medical hospital at Medical College Hospital, Dimrapal, Jagdalpur and she proved the MLC report Ex.P/8.
- 25** PW-5 is the maternal uncle of victim. He stated in his evidence that on the date of incident the appellant came to his house and he was in drunken condition. Both of them went to market where they met with victim and then the appellant left him to his house and went back. When he was declared hostile and cross examined by the prosecution, he admitted that victim was being taken by the appellant in his

motorcycle. In cross examination he admits that along with his niece, another girl was with there and both of them took lift in the motorcycle of appellant.

- 26** The main objection raised by the appellant is that DNA test report does not support the prosecution case as he was not found to be biological father of newly born child of the victim, and therefore, he is entitled for acquittal.
- 27** The accused has placed considerable reliance upon the DNA report which excludes him as the biological father of the child delivered by the victim. Undoubtedly, the DNA profile is a scientific piece of evidence. However, the report merely establishes that the accused is not the biological father of the child. It does not ipso facto establish that the victim was never subjected to sexual assault by him. The offence of rape is complete upon proof of the ingredients constituting the offence and does not depend upon conception or the birth of a child.
- 28** It is well settled that expert evidence is only an opinion and is advisory in nature. The Court is not bound to accept such opinion in isolation and is required to evaluate it along with the entire evidence available on record. In ***State of Himanchal Pradesh Vs. Jai Lal & Others, (1999)7SCC280***, the Hon'ble Supreme Court held that expert evidence is advisory and that the Court must independently assess its evidentiary value in the light of other material on record. In para 18, it has been held as under :

“18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the

facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.”

- 29 In the present case, the victim has consistently supported the prosecution version. Her testimony has remained substantially unshaken in material particulars. The accused himself admits that he had taken the victim with him, though he denies committing rape. Such admission constitutes a relevant circumstance corroborating the prosecution case regarding the company of the victim with the accused.
- 30 The victim was admittedly about 11 years of age at the relevant time. Therefore, her consent, even if assumed, is wholly immaterial in law. The Court is required to examine whether the prosecution has proved the commission of the offence beyond reasonable doubt on the basis of the evidence as a whole.
- 31 It is equally settled that conviction for rape can be recorded solely on the trustworthy testimony of the victim without any independent corroboration, as held in ***State of Punjab v. Gurmit Singh, (1996)2SCC384***, and consistently reaffirmed in subsequent decision of ***Phool Singh v. State of Madhya Pradesh, (2022)2SCC74***.
- 32 Consequently, the DNA report excluding the accused from biological paternity of the child cannot, by itself, outweigh the otherwise reliable and convincing ocular evidence of the victim if the Court finds her testimony trustworthy and credible.

- 33** Accordingly, this Court is of the considered opinion that the negative DNA report is only one circumstance to be appreciated along with the entire evidence and cannot, in the facts of the present case, dilute or demolish the prosecution case if the testimony of the victim inspires confidence and otherwise proves the charge beyond reasonable doubt.
- 34** Considering the overall evidence produced by the prosecution, the trial court found that the minor victim was being allured and taken by the appellant to her Aunt's house and thereafter he took her to his house and kept her away from her lawful guardianship in the night where he committed rape upon her on the pretext of marriage and on the next day he left her to her house and thereafter he continued in physical relation with her repeatedly by which she conceived pregnancy. The victim was found to be minor and even if she could not raise any alarm and could not make any protest, that does not absolve the appellant from his liability for keeping away the victim from her lawful guardianship and made physical relation with her against her will and consent, which does amount commission of offence of kidnapping and rape upon victim. Therefore, the trial court has rightly considered the evidence available on record and came into conclusion that appellant has committed the alleged offence of rape with the minor victim and convicted him for the offence under Sections 363,366,376(AB) and 376(2)(n) IPC and Section 6 of POCSO Act and accordingly he has been sentenced, in which we do not find any illegality or perversity and there is no scope for any interference in the impugned judgment passed by the trial court.

- 35** Accordingly, the appeal is **dismissed**. The appellant is reported to be in jail since 01.12.2022. He shall serve the entire sentence as awarded by the trial court.
- 36** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this court by preferring an appeal before the Hon'ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.
- 37** The Trial court records 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

inder