



CGHC010343862025

2026:CGHC:29923-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1609 of 2025

1 - Sanjay Jangade S/o Late Jethu Ram Jangade Aged About 25 Years R/o Kotwar Mohalla Kurda Police Station Malkharoda, District - Sakti (C.G.)

2 - Rajendra Jangade S/o Radheshyam Jangade Aged About 38 Years R/o Kurda Mahamaya Para Police Station Malkharoda, District - Sakti (C.G.)

3 - Nirmala @ Neha Jangade S/o Rajendra Jangade Aged About 27 Years R/o Kurda Mahamaya Para Police Station Malkharoda, District - Sakti (C.G.)

... appellant(s)

versus

1 - State Of Chhattisgarh Through Police Station Dabhara, District - Sakti (C.G.)

... Respondent(s)

(cause title taken from CIS)

For appellant (s) : Mr. Ishwar Jaiswal, Advocate

For Respondent(s) : Mr. Jitendra Shrivastava, Govt. Advocate

Hon'ble Mr. Ramesh Sinha, Chief JusticeHon'ble Mr. Ravindra Kumar Agrawal, JudgeOrder on BoardPer Ramesh Sinha, Chief Justice15.07.2026

1. Heard Mr. Ishwar Jaiswal, learned counsel for the appellants and Mr. Jitendra Shrivastava, Govt. Advocate for the Respondent/ State.
2. Vide order dated 25.09.2025, this Court directed for issuance of notice to PW-1, mother of the victim/ complainant regarding pendency of the

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appeal as well as application for suspension of sentence and grant of bail.

- 3. Learned counsel for the State would submit that the notice has been served to PW/1 (mother of the victim). Despite the service of notice, no one appears in the case to make submission on their behalf, therefore, we proceed to hear the matter.
- 4. Today, the matter has been listed for consideration on I.A. No. 01 which is an application for suspension of sentence and grant of bail. Considering the fact that the appellant is in jail since 15.07.2024, with the consent of the parties, the appeal itself has been heard finally. Accordingly, I.A No. 01 is disposed of.
- 5. The present criminal appeal has been filed under Section 415(2) of Bhartiya Nagrik Suraksha Sanhita, 2023 against the impugned judgment of conviction and sentence dated 25.07.2025 passed by learned Addl. Session Judge (FTC) Sakti, Dist- Janjgir- Champa (C.G.) in Special Criminal (POCSO) Case No. 11/2024 whereby the appellants have been convicted and sentenced as below:-

S.No	Conviction	Sentence
1.	Under Section 363 of IPC (all the appellants)	R.I. for 03 years and fine of Rs. 2000/- in default of fine additional R.I. for 2 months.
2.	Under Section 366 of IPC (all the appellants)	R.I. for 5 years and fine of Rs. 3000/- in default of payment of fine additional R.I. for 3 months.
3.	Under Section 06 of Protection of Children from Sexual Offences Act, 2012. (for appellant No. 1)	R.I. for 20 years and fine of Rs. 5000/-, in default of payment of fine further R.I. for 06 months (All the sentences shall run concurrently)

6. Brief facts of the case are that on 07.03.2024, the mother of the victim lodged a written complaint at Police Station Dabhara alleging that on 05.03.2024, her minor daughter, who had gone to the Anganwadi Centre for cooking work, did not return home. Despite searching for her at the houses of relatives and neighbours, her whereabouts could not be ascertained. On the basis of the said report, the Police registered a case under Section 363 of the IPC against an unknown person. During the course of investigation, the victim was recovered on 22.03.2024 and her statement under Section 164 of the Cr.P.C. was recorded, wherein she stated that she had voluntarily accompanied appellant No.1 Sanjay Jangade, that they had solemnized marriage, and that appellant No.1 had established sexual relations with her, while appellant Nos.2 and 3 had facilitated the commission of the alleged offence. Consequently, offences under Sections 366 and 376(2)(n)/34 of the IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, "POCSO Act") were added. During investigation, the victim was medically examined and her age was determined on the basis of the material collected by the Investigating Agency. Statements of the witnesses under Section 161 of the Cr.P.C. and the statement of the victim under Section 164 of the Cr.P.C. were recorded. After completion of the investigation, the Police filed a charge-sheet against the appellants for the offences under Sections 363, 366 and 376(2)(n) of the IPC and Section 6 of the POCSO Act before the learned trial Court.
7. The learned trial Court framed charges against appellant No.1 Sanjay Jangade for the offences punishable under Sections 363, 366 and

376(2)(n) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. It also framed charges against appellant Nos.2 Rajendra Jangade and 3 Nirmala @ Neha Jangade for the offences punishable under Sections 363 read with Sections 109 and 114, 366 read with Sections 109 and 114, and 376(2) (n) read with Sections 109 and 114 of the Indian Penal Code and Section 6/17 of the Protection of Children from Sexual Offences Act, 2012. The appellants abjured their guilt and claimed trial.

8. In order to prove the charges, the prosecution examined as many as 12 witnesses and exhibited several documents in support of its case. The statements of the appellants under Section 313 of the Code of Criminal Procedure were also recorded, wherein they denied all the incriminating circumstances appearing against them, pleaded innocence, and stated that they had been falsely implicated in the case.
9. After appreciation of the oral as well as documentary evidence adduced by the prosecution, the learned trial Court found appellant No.1 guilty of the offences punishable under Sections 363 and 366 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012, and appellant Nos.2 and 3 guilty of the offences punishable under Sections 363 read with Sections 109 and 114 and 366 read with Sections 109 and 114 of the Indian Penal Code. Consequently, the learned trial Court convicted and sentenced the appellants as mentioned in the earlier paragraph of this judgment. Hence, this appeal.

10. Learned counsel for the appellants would submit that the appellants are innocent and have been falsely implicated in the case. He would contend that the prosecution has failed to establish its case beyond reasonable doubt and that the learned trial Court has erred in holding the victim to be a minor solely on the basis of the school records, without any reliable proof regarding the source of the date of birth recorded therein. It is argued that the Headmaster admitted in his cross-examination that he was not aware of the basis on which the date of birth of the victim was entered in the school records, and no birth certificate issued by the competent authority or medical age determination test was produced to conclusively establish her age. Learned counsel would further submit that the evidence on record clearly demonstrates that the victim voluntarily accompanied appellant No.1 Sanjay Jangade, solemnized marriage with him, and stayed with him of her own free will. It is further argued that there is no medical evidence suggestive of forcible sexual intercourse and the victim herself admitted her love relationship with appellant No.1. So far as appellant Nos.2 and 3 are concerned, it is submitted that there is no cogent evidence to establish that they had either abducted the victim or abetted the commission of any offence, and they have been implicated merely because they are relatives of appellant No.1. It is, therefore, contended that the prosecution has failed to prove the charges beyond reasonable doubt and the appellants are entitled to acquittal.

11. On the other hand, learned State counsel supported the impugned judgment and submitted that the prosecution has successfully established its case beyond reasonable doubt by adducing cogent oral as well as documentary evidence. It is contended that the prosecution

has duly proved that on the date of the incident, the victim was below 18 years of age. For determination of her age, reliance has been placed upon the school admission register, admission certificate and Class 10th marksheet, which were duly proved through the Headmaster of the concerned school. As per the school records, the date of birth of the victim is 28.11.2006, establishing that she was a minor on the date of occurrence. It is further submitted that the testimony of the victim, duly corroborated by her statements under Sections 161 and 164 of the Cr.P.C., as well as the medical and other documentary evidence, clearly establishes that appellant No.1 Sanjay Jangade had taken the victim away from the lawful guardianship of her parents and established physical relations with her. Since the victim was a minor, her consent, if any, is wholly immaterial in the eyes of law, and the acts committed by appellant No.1 squarely fall within the ambit of the offences punishable under Sections 363 and 366 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. It is, therefore, submitted that the learned trial Court has rightly appreciated the evidence on record and recorded the conviction, which warrants no interference by this Court.

12. We have heard learned counsel for the parties and perused the material annexed with the appeal.

13. The first question arose in the case as to whether the victim was minor and less than 18 years of age on the date of incident or not.

14. The prosecution has mainly relied upon the document (Ex-P/39 C) which is the school register of the victim, which is sought to be proved by PW/12. PW/12 is the Headmaster of the school, he stated in his evidence that the Police has seized the school register vide seizure

memo (Ex-P/11) with respect to the age and date of birth of the victim and after retaining its attested true copy, the original register was returned back to the school which he brought today with him. The said school register is Ex-P/39 and its attested true copy is (Ex-P/39 C). As per the school register, the date of birth of the victim is 28.11.2006. He also issued a certificate (Ex-D/41) with respect to her date of birth. In cross-examination, he admitted that he is not the author of the school register. He also did not brought the original Tatimma Register with him and even he has not made any entry in Tatimma register. He could not tell as to on what basis the date of birth of the victim is recorded in the school register. He also admitted that who has taken the victim in the school for her admission, he could not tell. From the evidence of this witness, it is quite vivid that he neither the author of the school register nor the basis on which the date of birth of the victim is recorded in the school register has been produced by the prosecution. The another piece of evidence with respect to age and date of birth of the victim is her Class 10th mark-sheet which is Article-1, which has been proved by the victim (PW/2). In cross-examination, she stated that she could not know as to whether her birth certificate has been prepared or not. She admitted that she had not seen her birth certificate. She could not know the date of birth of her brother and sisters. Her date of birth has got recorded in the school by her parents.

15. 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."

16. 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.

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XXXX
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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."

17. 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
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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."

18. Reverting to the facts of the present case, though the high school mark-sheet of the victim has been seized by the Police, however, the said high school mark-sheet is based on school record (Ex-P/39C) and the (Ex-P/39C) have not been proved by the prosecution in accordance with law by examining its author or producing the relevant material on the basis on which her date of birth was recorded in the school register. Therefore, the school register alone cannot be determined the age of the victim.

19. PW/1 is the mother of the victim, she stated that her daughter is aged about 13 years. She did not disclose about any date of her birth. In cross-examination, she stated that her all children have been born in

the house and she has got recorded their date of birth on assumption. She also admitted that she disclosed the age of the victim on assumption.

20. PW/10 is the elder sister of the victim, she stated that victim is presently aged about 17 years. In cross-examination, she herself has unable to disclose her date of birth and she stated that she is aged about 30 years. The victim is her youngest sister. All of her brother and sisters are in the difference of age of 1-1 and ½ years.

21. From the aforesaid evidence, it is quite vivid that there is no cogent evidence with respect to the age of the victim that she was minor and less than 18 years of age when school record has not been proved in accordance with law, her mother has stated that victim is 13 years of age at present, her sister is stated that the victim is 17 years of age at present and there is no other documentary evidence like Ossification test report or any birth certificate, it cannot be said that the prosecution has proved the age of the victim that she was minor on the date of incident. Yet, the learned trial Court has held her minor.

22. So far as, the offence of kidnapping and rape are concerned, they again examined the evidence of the prosecution witnesses.

23. The victim (PW/2) has stated in her evidence that on the date of incident, the appellant called her through mobile phone near canal and when she had gone there, he took her by his motor-cycle towards Sakti railway station, where the accused Rajendra Jangade and his wife Neha present. Her mobile phone was being taken by the appellant Sanjay and switched it off. All of them took her towards Jammu by train. At Jammu, the accused persons kept her in a brick clean and the appellant Sanjay engaged her in as labourer. The appellant made

physical relation with her after consuming liquor repeatedly. The appellant Sanjay was also used to talk to his wife but she was not in knowledge that he is having with his wife. When the accused persons taking her back from Jammu by train, they tried to sale her to another lady who met them in the train. They changed the train on the way and by another train, they were coming to Kharsia. The other accused Rajendra and Neha debordered the train at Sakti railway station and asked the appellant Sanjay to drop her at railway station Kharsia. She and accused Sanjay deboarded at Khasrsiya railway station, then appellant Sanjay left her there and fled away. She started crying there and then the persons who present there asked her about reason of her crying, then she disclosed that about the incident. Thereafter, they called her family members and then she came to her parents' house. She disclosed about the incident to her parents and then she was being taken to Police Station, where the recovery panchanama (Ex-P/3) was prepared. She was sent for her medical examination. At this stage, she has been declared hostile on some points then she was being cross-examined by prosecution. She stated that the Police has recorded her statement. She admitted that she came to know at Jammu that the appellant Sanjay has already married and having children from his marriage. The appellant Sanjay took her to Jammu on 05.03.2024 and engaged her as a labourer in brick clean. She also admitted that she gave her mobile number to the sister-in-law of the appellant Sanjay. In the commission of the offence, his brother Rajendra and his sister-in-law Neha assisted him. She also admitted that after applying vermilion on her head, the appellant Sanjay made physical relation with her.

24. In cross-examination, she admitted that she had a telephonic conversation with the appellant Sanjay daily. She accompanied him on his motor-cycle and had gone through Kharsiya road high-way. She had not made any complaint to the Police through mobile phone or dial 112. She also had not made any report to railway police at Sakti railway station. She also admitted that there were number of persons in the railway station and she met various persons there. She also admitted that she has not made any complaint to anyone that the appellant Sanjay is kidnapping her. She travelled along with the appellant Sanjay for about two days to reach at Jammu. Up to Jammu, number of railway stations were crossed but she neither made any complaint to any of the police persons nor have made any complaint to any co-passengers. Even, she has not made any complaint to the contractor of brick clean. The house where she and the appellant Sanjay were residing was separate than the house of co-accused Rajendra and Neha. She further admitted that she visited the market of Jammu to purchase the grocery items along with the appellant Sanjay but she has not made any complaint to anyone that the appellant Sanjay kidnapped her. She also admitted that on the day when she had gone to Jammu along with the appellant Sanjay, the accused Shaukhi Lal was also there with them, but she had not lodged any complaint against him. She also admitted that when she came back to Kharsiya railway station, she has not made any complaint to any Police Station there also. To brought her back to her village, the accused Rajendra and Neha had taken money from the owner of brick clean. In her further cross-examination, she stated that when she left her house, she was having her mobile phone, she left her house without informing her family members and without

any difficulty she reached there at Jammu. She stayed at Jammu for about 15 days but she has not informed her parents through mobile phone. They used to talk with each other daily and having long conversation of about one an hour. She came to know at Jammu that appellant Sanjay has already married. She further admitted that if the appellant Sanjay was not already married, she would not have lodged any report against him.

25. From the evidence of the victim, it clearly reveals that she travelled up to Jammu along with the appellant Sanjay without raising any alarm or without making any complaint to anyone on the way. Even, throughout the journey, she has not made any complaint to any co-passenger or the police station at railway station about the conduct of the appellant Sanjay. She stayed there for about 15 days but have not raised any complaint that the appellant kidnapped her. Even, when the appellant making physical relation with her, she has not raised any alarm and has not protested and the conduct of the victim clearly shows that she was a consenting party in eloping with the appellant Sanjay, making physical relation consensually. She herself stated that she came to know about the fact that the appellant Sanjay has already married at Jammu.

26. 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".

27. 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 enticiting 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.”

28. Since, the victim was not proved to be minor and from her evidence, it is established that she herself on her own will accompanied the appellant Sanjay up to Jammu and engaged in making physical relation without any objection or protest, it can be said that she was the consenting party in eloping with the appellant and making physical relation with him.

29. From the evidence of (PW/7), who medically examined the the victim, it no injuries were notice on the body of the victim at the time of examination. The doctor has proved her MLC report (Ex-P/5). There was no sign of any protest or physical violence have been noticed on her body, which also a circumstance in favour of the appellant Sanjay.

30. PW/1, who is the mother of the victim, she stated in her evidence that her daughter was being taken by co-accused Nirmala @ Neha and her brother in law Rajendra. A day before the date of incident, all the three accused persons came to her house and she inquired about them. On the next day, when her daughter went missing, she lodged missing report (Ex-P/1). After about 15 days, her relative took the victim to her house and when she asked about her, she disclosed the entire incident that the appellants took her to Jammu, employed her in brick clean and the appellant Sanjay made physical relation with her. When her daughter asked him to send her back, then the accused persons taking her back towards their village. However, on the way, the accused persons tried to sale the victim to another lady who was the co-passenger in the train. They came back to Kharsiya railway station and then, the appellant Sanjay left her alone and fled away. Thereafter, her daughter made a telephonic call to her elder daughter and then she was brought back to her house. In cross-examination, various discrepancies have been taken out by the defence from her 161 CrPC statement, which was omission in the said statement even otherwise this witness is deposed on the basis of information given by the victim. In her further cross-examination, she admitted that she also knew the appellant and he used to come to her house. She also knew that there was conversation between the appellant Sanjay and her daughter. She further admitted that there was love affair between the appellant Sanjay and victim and when they came to know that the victim was with the appellant Sanjay and Sanjay is already married, they sent Rs. 1000/- to her daughter for coming back to her village. She further admitted that if

the appellant Sanjay would not have married earlier, they would have not lodged any report against him.

31. From these evidences, it cannot be said that the victim was kidnapped by the appellant Sanjay and forcefully made physical relation with her rather the evidence clearly suggests that the victim on her own will left her house and eloped with the appellant and both of them were travelled up to Jammu and stayed there for some time and on the request of the victim, she was brought back to her village.

32. PW/10, who is the elder sister of the victim, she stated in her evidence that the accused Nirmala @ Neha developed friendship with her sister and shared with other accused persons and all of them had telephonic conversation with her. All of three accused persons took her sister to Jammu and confined her there. After about 15 days when the mobile phone of her sister switched on, she had conversation with her sister and then she advised her to come back to her village. She advised her sister to come back and they will get them married. After about two months, they came back however, the appellant left her sister to Kharsiya railway station alone and fled away. Her sister informed her in mobile phone and then she was brought back. Her sister has also disclosed about the incident which she suffered up to the Jammu. In cross-examination, various discrepancies have been taken out by the defence in her police statement (Ex-D/3) and she is also a hearsay witness and deposed on the basis of the information disclosed by the victim.

33. From the aforesaid evidence, the prosecution has failed to prove by leading cogent and clinching evidence that the victim was kidnapped

by the appellant Sanjay and all the three accused persons, took her towards Jammu and appellant Sanjay had committed rape upon her.

34. 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.

35. In view of the foregoing reasons, we do not find any sufficient ground to uphold the conviction of the appellants for the alleged offence of kidnapping and rape upon the victim.

36. Accordingly, the appeal filed by the appellants are hereby **Allowed**. The impugned judgment of conviction and sentences passed against the appellant are **set aside**. The appellants are **acquitted** from all the charges.

37. The appellant Sanjay is reported to be in jail since 29/03/2024 and the appellants Rajendra Jangade and Nirmala @ Neha Jangade are reported to be in jail since 10.04.2024. They shall be released forthwith if not required in any other case.

- 38.** Keeping in view the provisions of Section 481 of Bharatiya Nagrik Suraksha Sanhita, 2023, the appellants are directed to furnish a personal bond for a sum of Rs. 25,000/- each 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 appellants, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.
- 39.** 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