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SAURABH YADAV Digitally signed by SAURABH YADAV Date: 2026.10.16 10:54:25 +0530

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 410 of 2025

Khilesh Sahu S/o Shri Chandal Sahu Aged About 19 Years R/o Village-Aamgaon, P.S. Jaijaipur, Distt. Sakti (C.G.)

... Appellant

Versus

State Of Chhattisgarh Through Police Station- P.S. Jaijaipur, Distt. Sakti (C.G.)

... Respondent(s)

(cause title downloaded from CIS Periphery)

For Appellant	:	Mr. Manoj Kumar Sinha, Advocate.
For State	:	Mr. Vivek Mishra, Panel Lawyer.

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

Order on Board

13/10/2026

1. This Criminal Appeal is preferred under Section 415 (2) of B.N.S.S. 2023 challenging the judgment of conviction and order of sentence dated 21.01.2025 passed by the Upper Sessions Judge (FTC), Sakti, District: Janjgir-Champa (C.G.) in Special Sessions Case (POCSO) No.12/2024 whereby, the appellant has been convicted and sentenced him in following manner:-

Conviction	Sentence
Section 354 (B) IPC	7 Years R.I. and Rs. 5000 Fine (In default,

	6 months R.I.)
Section 10 of POCSO	7 Years R.I. and Rs. 5000 Fine (In default, 6 months R.I.) (Both substantive sentences were ordered to run concurrently.)

2. The facts of the case, in brief, are that on 27.04.2024, PW-4, the father of the minor victim (PW-2), lodged a written complaint (Ex. P/1) alleging that the appellant had molested his minor daughter (PW-2), based on which FIR (Ex. P/2) was registered at Police Station Jaijaipur, District Sakti, for the offences punishable under Section 354 of the Indian Penal Code, 1860 (IPC), and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). During the course of investigation, the statements of the victim and other witnesses were recorded. A spot map was prepared, and the Dakhil-Kharij Register and the birth certificate of the victim were seized vide seizure memos (Ex. P/4 and Ex. P/5), respectively. The victim was medically examined by Dr. Umashankar Sahu (PW-6). After investigation, a charge-sheet was filed against the appellant for the offences punishable under Section 354 of the IPC and Sections 10 / 12 of the POCSO Act.

3. The learned Upper Sessions Judge (FTC) framed charges against the appellant for the offences punishable under Section 9(m) / 10 of the POCSO Act and Section 354-B of the IPC, as well as under Section 5(n) read with Section 6 of the POCSO Act and Section 376 of the IPC, alternatively under Section 5(n) / 6 read with Section 18 of the POCSO Act and Section 376 (a) (b) read with Section 511 of the IPC. The appellant denied the charges and claimed to be tried.

4. To bring home the charges, the prosecution examined as many as 11 witnesses and exhibited 17 documents. The defence also exhibited documents marked as Ex. D/1 to Ex. D/5. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (CrPC), wherein he denied all the incriminating circumstances appearing against him.

5. The learned trial Court, after considering the evidence adduced by the prosecution, acquitted the appellant of the alternative charges under Sections 376(a) and 376(b), read with Section 511 of the IPC, and Section 6, read with Section 18 of the POCSO Act. However, the learned trial Court convicted and sentenced the appellant as mentioned in the opening paragraph of this judgment. The appellant has assailed the said judgment of conviction and order of sentence in the instant appeal.

6. Learned counsel for the appellant would submit that there is material contradictions and omissions in respect of alleged charge of molestation as victim herself has stated in her statement recorded under Section 183 of BNSS that alleged obscene act was done by the appellant towards agricultural field, but in her deposition she has stated that appellant had taken her in her house where he had molested her. The allegation whether the appellant slept over her or not also suffers from grave contradictions and victim herself has admitted that her father had made to understand her and accordingly, she has deposed in her Court statement. He further submits that the FIR was lodged after two days of the incident and no plausible explanation has been offered. He further submits that appellant has been implicated in the said case only because of personal vengeance as both the

parties are neighbor. Hence he prays that appeal may be allowed and appellant be acquitted from the said charges.

7. Per contra, the learned State Counsel supports the impugned judgment and submits that appellant had molested minor girl aged below 11 years, he not only disrobed her rather he also slept upon her, hence he prays that the appeal deserves to be rejected.

8. I have carefully considered the rival submissions and perused the records with utmost circumspection.

9. The first issue to be considered by this Court is whether the victim was a minor on the date of the incident.

10. PW-1, the mother of the victim, states that her daughter (the victim) is 11 years old; however, she does not remember the year of birth of the victim. After being declared hostile by the prosecution and being further examined, she admits that the date of birth of the victim is 13.10.2013.

11. PW-2, the victim, states that she is 11 years old; however, in her cross-examination, she states that she does not remember her date of birth. According to PW-3, the grandmother of the victim, the victim is 9 years old. The father of the victim, PW-4, also states that the victim is 9 years old; however, he states that he does not remember her date of birth. In his cross-examination, he denies the suggestion that, at the time of admitting the victim to school, her date of birth was recorded on the basis of an assumption. He then volunteers that her date of birth is 13.10.2013. He further states that the police seized the birth certificate of the victim vide Ex. P/5.

12. The birth certificate of the victim, marked as Article A/1, records her date of birth as 13.10.2013. In addition, the police seized the admission certificate (Ex. P/9) and a copy of the Dakhil Kharij Register (Ex. P/10-C), wherein the date of birth of the victim is also recorded as 13.10.2013.

13. PW-7, Anurudh Kumar Ratre, the Headmaster of the Government Primary School, Aamgaon, has proved the seizure of the admission certificate and the Dakhil Kharij Register by the police. However, he admits that the entry recording the date of birth of the victim in the aforesaid documents was not made by him.

14. PW-5, Manidas Mahant, the village Kotwar, states that the police seized the birth certificate of the victim, which was produced by her father, vide Seizure Memo Ex. P/5. Thus, upon consideration of the aforesaid oral and documentary evidence on record, which has remained unrebutted, this Court is of the opinion that the Trial Court has committed no illegality in holding that the victim was below 12 years of age on the date of the incident.

15. The next question that arises for consideration is whether the appellant used criminal force against the victim with the intent to disrobe her and also committed aggravated sexual assault.

16. PW-2, the victim, states that on the date of the incident, she was playing alone in front of the house of Hatta. At that time, the appellant forcibly took her to his house, removed her underwear, and lay on top of her. She states that the appellant had threatened her with consequences if she disclosed the incident to anyone. She states that, after returning to her house, she narrated the whole incident to her grandmother and also to her parents. In

cross-examination, she denied the suggestion that the appellant neither removed her underwear nor did lie on top of her.

17. PW-3, the grandmother of the victim, states that on the date of the incident, the victim came to her weeping and, upon being asked, told her that while she was playing near the canal, the appellant took her to his house, undressed her as well as himself, and lay on top of her. She also states that the appellant inserted his finger into the victim's vagina. She states that when her son and daughter-in-law returned from work, she informed them about the incident. They also inquired from the victim, who narrated the whole incident to them. Thereafter, the report was lodged by the victim's father. In cross-examination, she denied the suggestion that, as the father of the victim had abused the appellant and called his mother a Tonhi about 15 days prior to the lodging of the report, a false report had been lodged against the appellant out of enmity.

18. PW-4, the father of the victim, has supported the statement of PW-3 and stated that, upon being questioned, the victim told him that the appellant had taken her to his house on the pretext of giving her chocolate, where he removed both his own clothes and those of the victim and inserted his finger into her vagina. He also stated that his daughter, the victim, had told him that, prior to this incident, the appellant had also taken her to an agricultural field and outraged her modesty. However, in cross-examination he admits that this fact is not mentioned in his case diary statement (Ex.P/5).

19. Considering the statements of the aforesaid witnesses, though there are certain contradictions and omissions in the statements of the mother, grandmother, and father of the victim, but the victim's evidence to the effect that, on the date of the incident, while she was playing, the accused-

appellant took her to his house and, by using criminal force against her, disrobed her and committed non-penetrative sexual assault on her, finds due support from the statements of her mother, grandmother, and father. This is a sine qua non for attracting the offences under Section 354-B of the IPC and Section 10 of the POCSO Act. The omissions and contradictions in the statements of the father, mother, and grandmother of the victim are not of such a nature as to render the entire prosecution case doubtful against the appellant. Though the defence sought to establish that this was a case of false implication on the ground that, about 15 days prior to the date of the incident, the father of the victim had abused the appellant and called his mother Tonhi, the said suggestion was categorically denied by the witnesses.

20. Taking into consideration the facts and circumstances of the case and the evidence of the victim, which finds due corroboration from the evidence of her mother, grandmother, and father on all material particulars, this Court is of the opinion that the conviction of the appellant recorded by the learned Trial Court under Section 354B of the IPC and Section 10 of the POCSO Act is based on proper oral and documentary evidence available on record. Accordingly, the same cannot be faulted with.

21. As regards the sentence, the learned Trial Court has sentenced the appellant under Section 354-B of the IPC and Section 10 of the POCSO Act to undergo rigorous imprisonment (RI) for seven years and to pay a fine of Rs. 5,000/- on each count, with a default sentence in respect of each count. However, considering the totality of the facts and circumstances of the case, the age of the appellant at the time of the incident, i.e., 19 years, and the fact that he has no criminal antecedents, this Court is of the opinion that the

ends of justice would be served if the sentence of seven years' RI under the aforesaid sections is reduced to five years' RI, while keeping the fine imposed thereunder by the learned Trial Court, along with the default stipulations, intact.

22. In the result, the appeal is allowed in part. While maintaining the conviction of the appellant under Section 354-B of the IPC and Section 10 of the POCSO Act, the sentence of seven years' RI awarded thereunder by the Trial Court is hereby reduced to five years' RI on each count. However, the fine imposed under these sections, along with the default stipulations, by the learned Trial Court shall remain intact.

23. The appellant is reported to be in jail; therefore, no order regarding his arrest, surrender etc is required to be passed.

24. Let a copy of this judgment, along with the original records, be sent to the concerned Trial Court forthwith for necessary information and compliance.

Sd/-

(**Naresh Kumar Chandravanshi**)
JUDGE

Saurabh