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HIGH COURT OF CHHATTISGARH AT BILASPUR

SUMIT KUMAR Digitally signed by SUMIT KUMAR Date: 2026.10.28 17:01:32 +0530

ACQA No. 54 of 2022

State Of Chhattisgarh Through Station House Officer, Police Station Akaltara, District Janjgir Champa (Chhattisgarh)

... Appellant(s)

versus

1 - Sanjay Nirmalkar (Abated) As Per Honble Court Order Dated 29-07-2025.

2 - Amit Ratre S/o Shivkumar, Aged About 21 Years R/o. Village Khoad, Police Station Akaltara, District Janjgir Champa Chhattisgarh.

... Respondent(s)

For Appellant	**:**	Mr. Malay Jain, P.L. for the State
For Respondent(s)	**:**	Mr. Chandra Prakash Lahrey, Advocate

(Hon'ble Shri Justice Ravindra Kumar Agrawal, J.)

Order on Board

27/10/2026

1. Pursuant to the order dated 21.09.2026, the bailable warrant has been served upon the respondent No.2, Amit Ratre and he appeared in person before this Court. He has been identified by his counsel Mr. C. P. Lahare.

2. With the consent of the parties, the matter has been heard finally.

3. Present is an acquittal appeal filed by the appellant/State under

Section 378(1) of the Code of Criminal Procedure, 1973 against the impugned judgment of acquittal dated 04.04.2018 passed by learned Special Judge (POCSO Act), Janjgir, District – Janjgir-Champa (C.G.) in Special Criminal Case No. 28/2016, whereby the respondent No.2/ accused has been acquitted from the offence under Section 452 of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 in alternative Section 354/34 of the IPC.

4. The case of the prosecution in brief is that on 20.06.2016 at about 12:15 p.m., when the minor victim (PW-1) was alone in her house, the present respondent No.2/accused alongwith respondent No.1/accused (since deceased) trespassed her house with intention to outrage her modesty and asked about her mother. When she replied that her mother had gone to her work, they started outraging her modesty. The accused Sanjay caught hold her hand and touching her breasts. Somehow, she get herself separated from the accused persons and rushed to her maternal grandmother's house, who was residing at adjacent house. She immediately informed the incident to her mother and when she came back to her house, report has been lodged. The FIR (Exhibit P-1) was registered against the accused Sanjay Nirmalkar and his one friend for the offence under Section 452, 354-B, 34 of IPC and Section 8 of POCSO Act. Spot map (Exhibit P-2) was prepared by the police. Statement of the victim under Section 164 of CrPC (Exhibit P-3) was recorded by the Judicial Magistrate First Class, Pamgarh. With respect to age and date of birth of the victim, school record (Exhibit P-4C) has been seized by the police vide seizure memo (Exhibit P-5). The victim was sent for her medical examination to

Community Health Centre, Akaltara, where she was medically examined by PW-7, Dr. C.P. Singh. However, no injuries were noticed on her body and the doctor gave his report (Exhibit P-8). The accused persons were arrested on 21.06.2016. Statement of the witnesses under Section 161 of CrPC have been recorded and after completion of usual investigation, charge sheet was filed before the learned Judicial Magistrate First Class, Akaltara for the offence under Section 452, 354, 34 of IPC and Section 8 of POCSO Act. The case was committed to the learned trial Court for its trial.

5. The learned trial Court has framed charge against the accused persons for the offence under Section 452 of IPC and Section 8 of POCSO Act, in alternative Section 354/34 of the IPC. The accused persons denied the charge and claimed the trial. In order to prove the charge against the accused persons, the prosecution has examined as many as 10 witnesses. Statement of the accused persons under Section 313 of CrPC have also been recorded in which they denied the circumstances that appears against them, pleaded innocence and have submitted that they have been falsely implicated in the offence.

6. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial Court has acquitted the accused persons, holding that the prosecution has failed to prove its case beyond reasonable doubt, hence, this acquittal appeal.

7. Learned counsel appearing for the appellant/State would submit that the prosecution has proved its case beyond reasonable doubt but for minor omission or contradictions, the evidence of prosecution witnesses are sufficient and reliable to convict the respondent/accused

for the offence in question. Minor inconsistencies have been given weightage by the learned trial Court, which are trivial in nature. The victim (PW-1) have duly supported the prosecution's case and raised allegation against the respondent/accused that they have committed the offence of outraging her modesty. Her evidence is duly corroborated by the evidence of PW-2, her mother, who immediately came to the house and the victim disclosed the incident to her. Prompt report has been lodged by the victim, and therefore, the evidence of the victim alone is sufficient to hold the respondent accused guilty, yet he has been acquitted from the alleged offence by the learned trial Court. The impugned judgment passed by learned trial Court suffers from perversity and illegality, which is liable to be interfered and the acquittal appeal may be allowed.

8. On the other hand, learned counsel appearing for the respondent No.2/ accused supported the impugned judgment of acquittal and would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material inconsistencies in the evidence of prosecution witnesses, which has rightly been considered by the learned trial Court while acquitting the respondent/accused from the alleged offences. He would further submit that the victim allegedly informed the incident to her maternal grandmother. However, her maternal grandmother have turned hostile and has not supported the prosecution's case. Even the incident has not been disclosed to her father immediately, which is also a suspicious circumstance in the case, for which the learned trial Court has rightly extended the benefit of doubt to the respondent/accused. Therefore, the impugned judgment

of acquittal does not suffers from any illegality and the acquittal appeal is liable to be dismissed.

9. I have heard learned counsel for the parties and perused the record of the trial Court.

10. The age of the victim has not been seriously disputed by the respondent No.2/accused. The learned trial Court, after elaborately considered the evidence of the party evidence of the prosecution witnesses and the documentary evidence of school record (Exhibit P-4C), comes to conclusion that the victim's age was less than 18 years and in view of the evidence available on record, this Court is also of the view that the prosecution has able to prove that the victim was less than 18 years of age as there is no substantial challenge about the age of the victim.

11. So far as the involvement of the respondent/accused in the offence in question is concerned, this Court again examined the evidence of the victim (PW-1), her mother (PW-2) and other witnesses, that is, her maternal grandmother (PW-4) and her father (PW-5). PW-1 (victim) have stated in her evidence that she could not remember the date of incident. However, on the date of incident, her parents had gone to their work and she was alone in her house. The accused persons knocked the door of her house and when she opened the door, the accused Sanjay caught her hold and laid her down on her verandah and asked about her mother. When she disclosed that her mother had gone to her work and then she kicked him and get her separated from him and rushed to her maternal grandmother's house. She immediately informed the incident to her maternal grandmother, who came to her

house and scolded the accused persons. Through the mobile phone of her neighbour, she informed the incident to her mother and when her mother came, she had gone to police station for lodging of the report, where the report (Exhibit P-1) was lodged. In cross-examination, she denied that there was a dispute between the accused persons and the father of the victim with respect to the religious structure of Jaitkham and there was no conversation between them. She admitted that her house was adjacent to the houses of others but she did not disclose the incident to any of her neighbour. She rushed to her maternal grandmother's house and informed the incident to her.

12. When the victim allegedly suffered by an incident and rushed to her maternal grandmother's house and informed the incident to her, the evidence of her maternal grandmother is very relevant in the case, who has been examined as PW-4. PW-4 has not supported the prosecution's case and disclosed that she did not know anything. The victim has not disclosed any incident to her. When the leading question was being asked, she denied the entire incident. However, she voluntarily stated that the accused persons were present in the lane outside of the house. In cross-examination, she too have admitted that there was a dispute between the parties with respect to the religious structure of Jaitkham.

13. It is the case of the victim that she has not disclosed the incident to any of her neighbour and she immediately informed it to her maternal grandmother. However, her maternal grandmother has not supported her allegation. Even the victim has not disclosed the incident to any of her neighbour who are the adjacent householder at that time. The other

evidence which the prosecution relied is the PW-2, who is the mother of the victim. She stated in her evidence that on the date of incident, she had gone to her work and at about 12:00 in the noon, her daughter informed her about the incident through mobile phone. She too have stated that her daughter informed that the incident was informed to her maternal grandmother and then she had gone to lodge the report. She denied that the accused persons were outside of their house in the lane and they scolded for the reason that there was a dispute arose with respect to the religious structure of Jaitkham. She admitted that at the time of alleged incident, the persons of the vicinity were working in the nearby her house and her house is adjacent to the houses of others. However, there is no evidence led by the prosecution of any of the persons of the vicinity who saw the accused persons there committing the offence or entering into the house of the victim.

14. PW-5 is the father of the victim. He stated in his evidence that on the date of incident, he had gone to his work and returned in the night. In the next morning, when the Panch and Sarpanch of the village came to his house, he asked his wife about the happening and then his wife informed him about the incident. In cross-examination, he admitted that his daughter has not informed any incident to him. He denied that there was any dispute between him and the accused persons with respect to the Jaitkham. The evidence of the father of the victim (PW-5) also create a reasonable suspicion on the allegation against the accused persons for the reason that he, being the father of the victim, should have informed immediately about the incident but till the next morning, he has not been informed about the incident. From the FIR (Exhibit P-

1), it transpires that on 20.06.2016, the incident was occurred on 12:15 p.m. and on the same day at about 13:20 p.m., the FIR (Exhibit P-1) was lodged. However, from the evidence of the father of the victim (PW-5), it transpires that till the next morning, he has not been informed about the incident, which is against the natural conduct of a victim or her family members.

15. From perusal of the judgment passed by learned trial Court, it further transpires that the discrepancies between the evidence of the victim (PW-1), her mother (PW-2), her maternal grandmother (PW-4) and her father (PW-5) have been considered by the learned trial Court and there is no evidence available on record that the persons of the vicinity have seen the incident that the accused persons entering into the house of the victim or the victim had gone to her maternal grandmother's house immediately after the alleged incident. The defence is able to raise a reasonable and probable suspicion on the prosecution's case, which has rightly been considered by the learned trial Court while acquitting the respondent/accused.

16. Applying the law governing the scope of interference in an appeal acquittal, the Hon'ble Supreme Court in the case of *"**State of Rajasthan Vs. Kistoora Ram**"* reported in ***2022 SCC OnLine SC 984***, has held as follows:-

> *"8. The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all."*

17. The Hon'ble Supreme Court in the matter of ***Jafarudheen and Ors Vs. State of Kerala, (2022) 8 SCC 440***, has considered the scope of interference in appeal against acquittal in judgment at Para 25 which reads as under:

> *"25. While dealing with an appeal against acquittal by invoking Section 378 Cr.P.C. the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such as double presumption that ensures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."*

18. Further, in the case of **"Central Bureau of Investigation Vs. Shyam Bihari & Others", 2023 (8) SCC 197**, the Hon'ble Supreme Court has held in para 27 of its judgment that :-

> *"27- It is trite law that in an appeal against acquittal, the power of appellate court to reappreciate evidence and come to its own conclusion is not circumscribed by any limitation. But it is equally settled that the appellate court must not interfere with an order of acquittal merely because a contrary view is permissible, particularly, where the view taken by the trial court is a plausible view based on proper appreciation of evidence and is not vitiated by ignorance/misreading of relevant evidence on record."*

19. Considering the evidence available on record as well as law the laid down by Hon'ble Supreme Court in the aforesaid cases. This Court is of the considered opinion that the prosecution has failed to make out any ground to interfere with the impugned order of acquittal passed by

learned trial Court particularly in view of the aforesaid judgments passed by Hon'ble Supreme Court.

20. Accordingly, this Court does not find any merit in the acquittal appeal and the same is hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

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