CGHC010119782019 2026:CGHC:43536

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 593 of 2019

Rajkumar Nirmalkar S/o Dwarika Prasad Nirmalkar Aged About 22 Years Devaribija, Police Station Bemetara, District- Bemetara, Chhattisgarh., District : Bemetara, Chhattisgarh **... Appellant(s)**

versus

State Of Chhattisgarh Through Station Bemetara, District- Bemetara, Chhattisgarh., District : Bemetara, Chhattisgarh ... **Respondent(s)**

(Cause title taken from Case Information System)

For Appellant	:	Shri Suresh Tandan, Advocate
For Respondent/State	:	Shri Rajkumar Sahu, PL

Hon'ble Shri Justice Ravindra Kumar Agrawal

Judgment on Board

07.10.2026

1. Present appeal under section 374(2) of the Criminal Procedure Code (CrPC) filed by the appellant against the impugned judgment of conviction and order of sentence dated 08.03.2019 passed by the learned Special Judge POCSO Act, Bemetara, District-Bemetara in CIS Special Case- 39 of 2017 (FTC No.31 of 2017), whereby the appellant has been convicted and sentenced in the following manner with default stipulation:

Conviction	Sentence
u/s 354 of the IPC	RI for 3 years and fine of Rs.1,000/-

u/s 354 (घ) of the IPC	RI for 3 years and fine of Rs.1,000/-
u/s 8 of the POCSO Act	RI for 3 years and fine of Rs.1,000/-

2. Case of the prosecution in brief is that on 03.07.2017, victim, PW2 made a written complaint Ex.P1 to the Police that the present appellant is talking to her since last week and making vulgar comments on her and asked her to meet alone in an isolated place. On 02.07.2017, at about 7.30 pm, when the victim along with her younger sister were passing by the road, appellant caught hold of her hand, dragged her and tried to kiss her. He made vulgar comments upon her, abused her and family members. By act of the appellant, she was afraid of, and lodged the report. Based on the written complaint Ex.P1, FIR Ex.P2 for the offence under Sections 354, 354D of the IPC and Sections 7 and 8 of the Protection of Children from Sexual Offence Act, 2012 (for short, 'POCSO Act') has been registered against the appellant. Spot Map Ex.P3 was prepared by the Police and Ex.P6 was prepared by the Patwari. With respect to age and date of birth of the victim, Police seized the School Register from the School. After retaining its attested true copy, Ex.P3c the original School Register was returned to the School. The Middle School Progress Report card, Article A1 has also been seized by the Police. Appellant was arrested on 04.07.2017.

3. Statement of the witnesses under Section 161 CrPC and statement of the victim under section 164 CrPC, Ex.P4 have been recorded and after completion of usual investigation, charge-sheet was filed against the

appellant before the learned trial court for the offence under Sections 354, 354D of the IPC and Sections 7 and 8 of the POCSO Act. Charge-sheet against the other co-accused, who is juvenile in conflict with law was also filed before the Juvenile Justice Board.

4. Learned trial court framed charges against the appellant for the offence under Sections 354, 354D of the IPC and Sections 7 and 8 of the POCSO Act. Appellant denied the charges and claimed trial.

5. In order to prove the charges against the appellant, prosecution has examined as many as 09 witnesses, statement of the appellant under section 313 of the CRPC has been recorded, in which he denied the circumstances appearing against him, pleaded innocence and submitted that he has been falsely implicated in the offence. He would further submit that on 02.07.2017, at about 1.30-2pm, father and family members of the victim committed *marpit* with him by lathi and *danda*, by which he received injuries. To save themselves from this, they lodged report against him through their daughter. Appellant also examined one defense witness (DW1).

6. After appreciation of oral as well as documentary evidence led by the parties, learned trial court has convicted the appellant and sentenced him as has been mentioned in the earlier part of the judgment. Hence this appeal.

7. Learned counsel for the appellant would submit that prosecution has failed to prove the case beyond reasonable doubt. There are material omissions and contradictions in the evidence of the prosecution witnesses which cannot be made basis to convict the appellant for the offence in question. The evidence of the victim suffers from material inconsistency, which has not been supported by any other evidence. The victim has admitted in her evidence that there was dispute between the appellant and her father, which culminated into lodging report against the appellant. He would further submit that the defense witness has also stated that prior to the incident, appellant was being assaulted by father and family members of the victim by lathi, *danda* and knife. The allegation levelled by the victim in her evidence does not inspire the ingredients under Sections 354, 354D of the IPC and Sections 7 and 8 of the POCSO Act. The judgment passed by the learned trial Court is based on misappropriation of evidence, which suffers from perversity and illegality. Appellant is, atleast entitled for benefit of doubt and therefore, by giving him the benefit of doubt, he may be acquitted.

8. On the other hand, learned counsel appearing for the State opposes the submissions made by the learned counsel for appellant and submitted that prosecution has proved its case beyond reasonable doubt. But, for minor omissions and contradictions the evidence of the prosecution witnesses is reliable and sufficient to hold the appellant guilty for commission of alleged offence. Prompt report has been lodged by the victim and she duly supported the prosecution case, which she

suffered by the act of the appellant. But for minor omissions and contradictions, her evidence is duly corroborated by the other witness, her younger sister, PW5, who was with the victim at the time of alleged incident. There is no reason for false implication of the appellant in the offence and that the defense taken by the appellant has not been supported by any documentary evidence that any report has been lodged by him against victim or her family members, or by any medical evidence, that he has been treated at any hospital. Barring the oral evidence of the defense witness, there is no other material brought by the appellant in his defense. Therefore, the learned trial Court after due appreciation of evidence produced by the prosecution, convicted and sentenced the appellant, which does not suffer from any perversity and the appeal filed by the appellant is liable to be dismissed.

9. Heard learned counsel for the parties and perused the record of the trial court with utmost circumspection.

10. Age of the victim has not been disputed by the appellant. Victim was aged about 15 years and two months on the date of alleged incident. Age of the victim is sought to be proved by the prosecution by her school record Ex.P3c, which is proved by PW7, Head Master of the School and also the oral testimony of the witnesses, which has not been challenged in their cross-examination.

11. PW7, Pravin Kumar Verma, who is Head Master of the School has stated in his evidence that with respect to date of birth of the victim, he

received a memo from the Police to submit school record, Ex.P2. He produced attested true copy of the School Register Ex.P3c to the Police and as per the School record, the date of birth of the victim is 04.04.2002. He gave necessary details of the School record in his evidence.

In cross-examination, he had stated that he is the author of School Register and has recorded date of birth of the victim on the basis of her Transfer Certificate the victim was admitted in Class VI in his school. Though he admitted that in the School Register Ex.P3c, the basis on which date of birth was recorded, has not been mentioned but in the earlier part of the evidence, he clearly stated that the basis of her Transfer Certificate he admitted the victim in Class VI. It is not suggested to this witness that wrong date of birth of the victim has been recorded in the School Register and he is not the author of the same.

12. From the evidence of this witness, prosecution is able to prove that date of birth of the victim is 04.04.2002. She was aged about 15 years and two months on the alleged date of incident. Further piece of evidence of her date of birth is, evidence of victim herself, who stated in her evidence that her date of birth is 04.04.2002, she was studying in Class XI. The Police has seized her Middle School Progress Report card, Article A1.

In her cross-examination, the date of birth as disclosed by the victim has not been challenged by the appellant. In her entire cross-examination, not a single suggestion was given to the victim that she has

not disclosed her correct date of birth. The date of birth disclosed by the victim has been corroborated by the School Register, Ex.P3c and Middle School Progress Report card, Article A1.

13. PW4, Suresh Sharma, is father of victim, who also disclosed her date of birth as 04.04.2002. In his cross-examination also, the defense has not given any suggestion about her date of birth that it was wrongly stated by him. The date of birth as disclosed by the victim, PW2 and her father, PW4 remain unrebutted in their evidence, which is duly corroborated by the School Register, Ex.P3c and Middle School Progress Report card, Article A1. The prosecution is able to prove that the victim was aged about 15 years two months on the alleged date of incident, in which this Court does not find any perversity in the consideration of the learned trial Court.

14. With respect to the offence of use of Criminal force to the victim with an intention to outrage her modesty, talking to her and also the sexual assault upon her are concerned, this Court again examine the evidence of victim, PW2. She stated in her evidence that she knew the appellant, who is resident of the same village. On the date of incident, at about 7 pm, she along with her younger sister, PW5, were returning from a marriage function. On the way, appellant came from their backside on his motorcycle and asked her to accompany him. When she protested, he used force against her and caught hold of her and tried to pull her towards his motorcycle. Somehow, she snatched her hand and started

running towards her house along with her younger sister, and then the appellant followed her on the way. When she asked him not to talk to her, he threatened her that she and her family members cannot do anything against him. She further stated that before the present incident also, appellant followed her when she was going to the school on many occasions. On the next day, she made written complaint Ex.P1 to the Police and then FIR Ex.P2 was registered. When the learned trial Court asked the question from her, she stated that along with the appellant, his friend also talked her and sometime, they used to go inside the school, for which also, she lodged another report against them. Appellant while pulling her towards him, asked her to kiss, which she narrated in her written complaint.

In her cross-examination, though she admitted that in her written complaint she has not mentioned the time as to at what time the appellant followed her, then she voluntarily explained that there was no any fixed time and whenever he saw her alone, he stopped her. She further admitted that she has not made any complaint against the appellant before the present incident. She denied that she made written complaint on the instance of Police persons and admitted that after writing the written complaint, she read over it and after satisfying herself, she made her signature on it. She further admitted that she has not mentioned the motorcycle number in the written complaint, Ex.P1, and further admitted that in her written complaint, she also has not mentioned that from which end the appellant was dragging her. She further denied

that she made written complaint against the appellant on the instance of her mother. From a detailed cross-examination of the victim, the defence could not able to bring out any material to create any doubt upon her evidence that she levelled a false allegation against the appellant. Rather, her evidence before the Court is quite natural and the allegation against the appellant found established by her evidence. It is also necessary to note here that the alleged incident is on 02.07.2017 at 7.30 pm. She made complaint on the very next day, i.e. on 03.07.2017, at about 9.10 am. Therefore, prompt report has been lodged against the appellant. Contents of FIR (Ex.P2), as well as the statement made by her under Section 164 CrPC (Ex.P4) have been duly corroborated by her evidence given in the Court. Thus, there is no any material of discrepancy in the evidence of the victim, PW2.

15. PW5 is the younger sister of victim, who was with the victim at the time of alleged incident. She stated in her evidence that on the date of incident, when they were returning from the marriage function, on the way, the appellant outraged modesty of her elder sister, which she witnessed. Appellant tried to pull her sister by holding her hand with bad intention, it was at about 7 pm. When they were returning towards their house, on the way, appellant also threatened them that she along with her family members could not do anything. Even the Police could not do him anything. They returned to their house and informed the incident. Her sister also informed that along with the appellant, his friend was also there, who also made vulgar gestures upon her.

She was also put to detailed cross-examination by the defense. However, in cross-examination, she too remained firm in the allegation levelled by the appellant that on the way along with her elder sister returning from marriage function, the appellant outraged modesty and torture them. Nothing could be elicited from her evidence also so that her evidence also could be disbelieved.

16. PW3, mother of the victim stated in her evidence that on the date of incident at about 7.30 pm, victim was returning from the marriage function and informed that appellant was harassing her, talking her since so many days and while returning to her house, he caught hold of her hand. She wanted to lodge report in the Police Station and on the next day, she went to the Police Station and lodged report against him.

In cross-examination, nothing substantial could be extracted from this witness. Even otherwise, she has not witnessed the incident, but she deposed on the basis of information given by the victim. She denied the suggestion given by the defense that there was dispute between the appellant and her daughter, and her husband.

17. PW4, father of the victim has also stated in his evidence that his daughter has informed him that on the date of incident, when his daughter was returning from the marriage function, near *talab*, the appellant outraged modesty of his daughter. He tried to pull her towards him with bad intention.

In cross-examination, he stated that he, along with his family members had gone to the marriage function which was in the village itself. The victim has informed him about the incident at about 7 pm. Though he has not informed the incident to any of his neighbors, but in the next morning, he had gone to register complaint in the Police Station. He also denied that he demanded Rs.3 Lakh from the appellant for compromise in the matter. Though he admitted that mother of the appellant has lodged a report against him at Police Station Bemetara, however, there is no other details as to what was the report and on what context report was lodged by mother of the appellant. The evidence of father of the victim is with respect to disclosure of incident by the victim and lodging of the report to the Police.

18. From all these evidences, the alleged offence of using criminal force to outrage modesty of the victim, talking to her and also sexual assault as defined under Sections 354, 354D of the IPC and Sections 7 of the POCSO Act have been found proved against the appellant.

19. So far as the evidence of defense witness is concerned, he made oral statement that the appellant was being assaulted by the father and brothers of victim on 02.07.2017 at about 1.30-2 pm by danda, hands and fists, by which the appellant received injuries. However, there is no report lodged by the appellant nor any treatment was being taken by him from any hospital. Barring the oral statement of this witness, there is no

other evidence produced by the defense to prove the probable defense in the prosecution witnesses.

In cross-examination defense witness admitted that he could not tell as to whether the appellant outraged the modesty of the victim or not. Thus, the evidence of defense witness does not extend any benefit to the appellant.

20. With respect to the allegations constituting the offences under Sections 354 and 354D of the IPC and Sections 7 and 8 of the POCSO Act, the testimony of the victim (PW2) is natural, consistent and inspires confidence. She has categorically stated that the appellant followed her on several occasions while she was going to school and, on the date of the incident, caught hold of her hand, attempted to pull her towards his motorcycle an d asked her to kiss him. Her testimony finds material corroboration in the evidence of her younger sister (PW5), who was accompanying her at the time of the incident and witnessed the appellant attempting to pull the victim by holding her hand. The prompt lodging of the written complaint, Ex.P1, on the following morning, further lends assurance to the prosecution case. The omissions regarding the motorcycle number, the precise direction from which the appellant approached her and the absence of an earlier complaint are not of such a nature as to discredit the otherwise reliable testimony of the victim.

21. In the case of **State of Punjab v. Gurmit Singh**, (1996) 2 SCC 384, the Supreme Court held that minor contradictions and insignificant

discrepancies in the testimony of a victim of sexual assault should not be permitted to defeat an otherwise reliable prosecution case, and that her credible testimony can form the basis of conviction without independent corroboration. In para 21, it has been held that:- para 21

> “21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background

of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

22. Further, in **Attorney General for India v. Satish**, (2022) 5 SCC 545, the Hon'ble Supreme Court explained that the essential consideration under Section 7 of the POCSO Act is the existence of sexual intent accompanying physical contact, and that the provision is not confined to skin-to skin contact. In paras 34 to 36, it has been held that:

"34. Now, from the bare reading of Section 7 of the Act, which pertains to the "sexual assault", it appears that it is in two parts. The first part of the section mentions about the act of touching the specific sexual parts of the body with sexual intent. The second part mentions about "any other act" done with sexual intent which involves physical contact without penetration. Since the bone of contention is raised by the learned Senior Advocate Mr Luthra with regard to the words "touch", and "physical contact" used in the said section, it would be beneficial first to refer to the dictionary meaning of the said words.

35. The word "touch" as defined in the Oxford Advanced Learner's Dictionary means "the sense that enables you to be aware of things and what are like when you put your hands and fingers on them". The word "physical" as defined in the Advanced Law Lexicon, 3rd Edn., means "of or relating to body...." and the word "contact" means "the state or condition of touching; touch; the act of touching...". Thus, having regard to the dictionary meaning of the words "touch" and "physical contact", the Court finds much force in the submission of Ms Geetha Luthra, learned Senior Advocate appearing for the National Commission for Women that both the said words have been interchangeably used in Section 7 by the

legislature. The word "touch" has been used specifically with regard to the sexual parts of the body, whereas the word "physical contact" has been used for any other act. Therefore, the act of touching the sexual part of body or any other act involving physical contact, if done with "sexual intent" would amount to "sexual assault" within the meaning of Section 7 of the Pocso Act.

36. There cannot be any disagreement with the submission made by Mr Luthra for the accused that the expression "sexual intent" having not been explained in Section 7, it cannot be confined to any predetermined format or structure and that it would be a question of fact, however, the submission of Mr Luthra that the expression "physical contact" used in Section 7 has to be construed as "skin-to-skin" contact cannot be accepted. As per the rule of construction contained in the maxim "ut res magis valeat quam pereat"', the construction of a rule should give effect to the rule rather than destroying it. Any narrow and pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted. It is also needless to say that where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. Restricting the interpretation of the words "touch" or "physical contact" to "skin-to-skin contact" would not only be a narrow and pedantic interpretation of the provision contained in Section 7 of the Pocso Act, but it would lead to an absurd interpretation of the said provision. "Skin to skin contact" for constituting an offence of "sexual assault" could not have been intended or contemplated by the legislature. The very object of enacting the Pocso Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act,

> inasmuch as in that case touching the sexual or non-sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault under Section 7 of the Pocso Act. The most important ingredient for constituting the offence of sexual assault under Section 7 of the Act is the "sexual intent" and not the "skin-to-skin" contact with the child."

23. In the present case, the act of forcibly holding and pulling the minor victim, considered along with the appellant's conduct and his demand for a kiss, establishes the requisite sexual intent and physical contact. The evidence regarding the appellant's repeated following of the victim and his conduct despite her unwillingness also supports the finding of stalking under Section 354D IPC. Accordingly, this Court finds no reason to interfere with the finding of guilt recorded by the learned trial Court.

24. The defence of the appellant that he was assaulted by the father and other family members of the victim prior to the alleged incident, and that the present case was instituted to shield them from the consequences of such assault, does not inspire confidence. Except for the oral testimony of DW1, no contemporaneous complaint, medical record or other reliable material has been produced to substantiate the alleged assault or to establish that the victim was falsely implicated on account of any pre-existing enmity. Even DW1 admitted that he could not state whether the appellant had outraged the modesty of the victim or not. The alleged dispute between the appellant and the victim's family,

even if assumed to exist, cannot by itself outweigh the consistent and corroborated testimony of the victim and the eyewitness account of PW5.

25. On an overall appreciation of the evidence, this Court finds that the prosecution has established the charges beyond reasonable doubt and that the findings recorded by the learned trial Court are based on a proper appreciation of the evidence and do not suffer from any perversity, illegality or material infirmity warranting appellate interference.

26. Consequently, the appeal, being devoid of merit, is liable to be and is hereby dismissed. The conviction and sentence imposed upon the appellant by the learned trial Court are affirmed.

27. The appellant is reported to be on bail. He shall be taken into custody to serve the sentence as awarded by this Court. The appellant is directed to surrender before the concerned trial Court within a period of 04 weeks from today, to serve the sentence imposed upon him by this Court, failing which the trial Court shall take him into custody for execution of the sentence. The appellant is entitled for set-off of his undergone period during the trial as well as during the present appeal, if any.

28. Record of the trial court be sent back immediately to the trial Court concerned along with copy of this judgment for compliance and necessary action.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

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Digitally signed by V PADMAVATHI
Date: 2026.10.14 10:26:45 +0530