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AKHILESH BEOHAR
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HIGH COURT OF CHHATTISGARH AT BILASPUR

THE DATE WHEN THE CASE IS RESERVED	THE DATE WHEN THE JUDGMENT IS PRONOUNCED	THE DATE WHEN THE JUDGMENT IS UPLOADED ON THE WEBSITE	
		Operative	**Full**
16.10.2026	27.10.2026	****	27.10.2026

CRA No. 787 of 2025

- Jagdish Kewat, S/o Shri Johan Kewat, aged about 20 Years, R/o Ward No.-19, Akaltara, P.S. - Akaltara, Dist. Janjgir-Champa (C.G.)

...Appellant

versus

- State of Chhattisgarh, Through - S.H.O., P.S. - Akaltara, Dist. Janjgir-Champa (C.G.)

... Respondent

For Appellant	:	Mr. Ravindra Sharma, Advocate.
For Respondent	:	Mr. Ashutosh Shukla, Panel Lawyer.

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

C A V Judgment

1. This criminal appeal, preferred by the appellant under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS'), is directed against the judgment of conviction and order of sentence dated 08.04.2025 passed by the learned Upper Sessions Judge

(POCSO), Janjgir, District Janjgir-Champa, C.G. (henceforth referred to as the 'Special Court'), in Special Sessions Case No. 138/2024, whereby the appellant has been convicted and sentenced as under:

Conviction	Sentence
Under Section 64(1) of Bhartiya Nayaya Sanhita, 2023 (in short, 'BNS')	Rigorous Imprisonment for ten years and fine of Rs.500/-, in default of payment of fine amount to undergo additional simple imprisonment for one month
Under Section 4 of Protection of Children From Sexual Offences, Act, 2012 (for short, 'the POCSO Act')	Rigorous Imprisonment for ten years and fine of Rs.500/-, in default of payment of fine amount to undergo additional simple imprisonment for one month
Both sentences were directed to run concurrently	

2. Case of the prosecution, in brief, is that on 10.10.2024, victim (PW-2) made a written complaint (Ex.P-1) at Police Station Akaltara, District Janjgir-Champa, alleging therein that the appellant took her on the pretext of marriage and sexually exploited her. Based on that complaint, an FIR (Ex.P-2) was registered against the appellant for the offences under Section 64(1) of the BNS and Section 4 of the POCSO Act. Thereafter, the victim was medically examined by PW-3, Dr. Lalita Toppo, who, vide MLC report (Ex.P-7), opined that no sign of recent sexual exploitation was found on the person of the victim. Statements of the victim under Sections 180 and 183 of the BNSS were recorded. Statements of other witnesses were also recorded. Spot maps were prepared by the police and the *Patwari* vide Exs.P-4 and P-5, respectively. *Dakhil Kharij* Register was seized vide Ex.P-10C. Undergarment of the victim, along with her vaginal slides, was seized vide Ex.P-14. Appellant was arrested on 11.10.2024 vide Ex.P-15 and

his undergarment was seized vide Ex.P-13. Undergarment of the victim, along with her vaginal slides, was sent to the FSL for chemical examination. As per the FSL report (Ex.P-20), semen and spermatozoa were not reported to have been found in any of the articles.

3. After completion of investigation, charge-sheet for the offences under Section 64(1) of the BNS and Section 4 of the POCSO Act was filed against the appellant before the Special Judge (POCSO Act), Janjgir, District Janjgir-Champa.

4. Learned Special Judge framed charges under Section 64(1) of the BNS and Section 4 of the POCSO Act against the appellant, who abjured his guilt and claimed to be tried.

5. To bring home the charges, the prosecution examined 7 witnesses and exhibited 22 documents along with Article-1. Statement of the accused/appellant under Section 351 of the BNSS was recorded, in which, he denied the incriminating circumstances appearing against him, claimed himself to be innocent and alleged false implication. He stated that since the victim used to talk to him, which was not liked by her father, therefore, he had been falsely implicated in the instant case. He did not examine any witness in his defence.

6. After considering the evidence adduced by the prosecution, the learned Special Court convicted and sentenced the appellant as mentioned in the opening paragraph of this judgment. Being dissatisfied, the appellant preferred the instant appeal.

7. Learned counsel appearing for the appellant submits that the appellant was working with the father of the victim in selling fish, therefore, the appellant and the victim used to talk to each other, which was not liked

by the victim's father. He further submits that the victim was not minor on the date of the incident, rather, she was an adult. He also submits that, as per the case of the prosecution itself, the date of birth of the victim was 31.03.2008. Hence, on the date of the incident, i.e., 09.10.2024, she was above 16 years and 6 months of age, which is close to the age of adulthood. Therefore, the prosecution ought to have proved the date of birth of the victim by adducing reliable evidence, as contemplated under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. However, no documentary evidence, as contemplated under the said provision, has been proved. Therefore, merely on the basis of the *Dakhil Kharij* Register, the victim's minority on the date of the incident cannot be established beyond reasonable doubt. He further contends that the allegation that the appellant had taken away the victim has also not been proved. He also submits that the allegation of sexual exploitation is highly contradictory in view of the victim's statement recorded under Section 183 of the BNSS, her statement before the Court, and her cross-examination. The medical report and the FSL report also do not support the said allegation. Despite these discrepancies, the appellant has been convicted by the learned Special Court, which is not sustainable in the eyes of law. Hence, he prays that the appellant be acquitted of the charges levelled against him.

8. Per contra, learned counsel for the State supports the impugned judgment and submits that the learned Special Court, after appreciating the evidence available on record, has rightly convicted and sentenced the appellant, which calls for no interference by this Court.

9. Heard learned counsel for the parties and perused the material available on record.

10. The first question for consideration before this Court is whether the finding recorded by the learned Special Court that the victim was a minor on the date of the incident is sustainable.

11. According to the prosecution, the victim was minor on the date of the incident. Victim (PW-2) has stated her date of birth to be 31.03.2008, which has also been supported by her father (PW-1). However, no birth certificate or matriculation or equivalent certificate is available to prove the said fact. An ossification test of the victim has also not been conducted. Thus, there is no evidence to determine the age of the victim as provided under Section 94 of the JJ Act, 2015. Although the victim (PW-2) and her father (PW-1) have stated the date of birth of the victim to be 31.03.2008, but her father (PW-1) has not stated in his deposition who got the victim admitted to the school, that on the basis of which document her date of birth was recorded as 31.03.2008.

12. Furthermore, Ex.P-10C is the *Dakhil Kharij* Register of the victim's primary school, namely, *Mahaveer* English Medium School, which is a private school. The same date of birth of the victim, i.e., 31.03.2008, has been mentioned in the *Dakhil Kharij* Register (Ex.P-10C). However, as stated above, it has not been proved by the victim (PW-2), her father (PW-1), or any other witness, who got the aforesaid date of birth of the victim recorded in the school record. PW-4 Pramod Choudhary, In-charge Headmaster of *Mahaveer Bal* English Medium School / *Mahaveer Bal Sanskar Kendra*, Akaltara, admitted in his cross-examination that he had not entered the date of birth of the victim in the

Dakhil Kharij Register. He also admitted that he was unaware of the document on the basis of which the said date of birth was mentioned in the said *Dakhil Kharij* Register.

13. The Hon'ble Supreme Court, in ***Suresh v. State of Uttar Pradesh*****,** reported in ***AIR 2025 SC 3570***, has observed that, in absence of a matriculation or equivalent certificate, the date of birth mentioned in the school records of a private school cannot be relied upon, as the said document cannot be treated as a public document.

14. When the facts of the present case are examined in the light of the aforesaid decision of the Hon’ble Supreme Court, it is evident that there is no legally admissible evidence to prove that the victim’s date of birth was 31.03.2008, as mentioned in the private school record. Therefore, merely on the basis of the statements of the victim and her father, and in the absence of legally admissible evidence, particularly considering the marginal age of the victim in relation to the age of majority, her said date of birth cannot be held to be reliable. Consequently, it cannot be held beyond reasonable doubt that the victim was minor on the date of the incident, i.e., 09.10.2024. Hence, the finding recorded by the learned Special Court in this regard is not sustainable.

15. So far as the allegation of rape is concerned, victim (PW-2) has stated in her deposition that the appellant used to harass her, due to which, her father sent her to the village of her maternal uncle (*Mama*). However, the appellant continued to harass her. She has further stated that while she was residing in the village of her maternal uncle, appellant called her to accompany him for marriage. Accordingly, she went near the toll gate, from where the appellant took her to Crocodile Park, *Kotmisonar*,

and made physical relations with her. Thereafter, the appellant brought her back to the village, again made physical relations with her near the *Mandi* and left her near her house. However, in paragraph 10 of her cross-examination, the victim admitted that she was stating for the first time that the appellant had made physical relations with her at *Mandi* and Crocodile Park, *Kotmisonar*. She also admitted that, while going to and returning from *Kotmisonar*, she did not complain to anyone, although the places through which they travelled were public places.

16. Furthermore, Ex.P-6 is the statement of the victim (PW-2) recorded under Section 183 of the BNSS, wherein she has specifically stated that no physical relations were made between her and the appellant, rather, she stated that she had implicated the appellant at the instance of her father. Thus, there is a material contradiction between the victim's statement recorded under Section 183 of the BNSS and her deposition before the Court, regarding the alleged physical relationship. That apart, on the next day of the alleged incident, i.e., 11.10.2024, PW-3 Dr. Lalita Toppo medically examined the victim, but did not find any sign of rape on her person. She prepared two vaginal slides and also obtained the victim's underwear. However, the FSL report (Ex.P-20) was also negative.

17. Thus, in view of the aforesaid material contradictions in the statement of the victim, particularly her admission in paragraph 10 of her cross-examination and her statement recorded under Section 183 of the BNSS, her statement in examination-in-chief regarding the alleged physical relationship with the appellant, does not appear to be reliable and trustworthy. The medical evidence also does not lend support to her

allegation, as the medical examination did not reveal any sign of rape and the FSL report was negative. Further, the statement of the victim's father on this count is based on what the victim herself had told him. Since the victim's deposition regarding the alleged physical relationship is not found to be reliable and trustworthy, the statement of her father (PW-1) on this count remained worthless.

18. Besides above, as per the prosecution case, the appellant was working with the victim’s father in selling fish and, therefore, the appellant visited the victim’s house, where the victim and the appellant used to talk to each other, which was not liked by the victim’s father. Considering the aforesaid facts and the statement of the victim under Section 183 of BNSS that the report against the appellant was lodged at the instance of her father, the allegation of sexual exploitation against the appellant becomes doubtful.

19. It is well settled that though a conviction can be based on the sole testimony of the victim, but such testimony must be wholly reliable and inspire confidence. In the present case, the testimony of the victim and other witnesses, as well as the medical and forensic evidence, does not inspire the confidence of the Court for the reasons discussed hereinabove and it has also not been proved by the prosecution beyond reasonable doubt that victim was minor on the date of incident. Consequently, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The appellant is, therefore, entitled to the benefit of doubt.

20. Resultantly, the appeal is allowed. The impugned judgment of conviction and order of sentence dated 08.04.2025 passed by the learned Upper Sessions Judge (POCSO), Janjgir, District Janjgir-Champa (C.G.) in Special Sessions Case No.138/2024 are hereby set aside. Consequently, the appellant is acquitted of the charges under Section 64(1) of BNS & Section 4 of the POCSO Act, 2012.

21. The appellant is reported to be in jail, therefore, he be released forthwith, if not required in connection with any other case. However, keeping in view the provisions of Section 481 of the BNSS, the appellant is directed to furnish a personal bond in terms of Form No. 45 prescribed under the Code of Criminal Procedure for a sum of Rs.25,000/- with one surety in the like amount before the concerned trial Court, which shall remain effective for a period of six months, along with an undertaking that, in the event of filing of a Special Leave Petition against this judgment or seeking leave to appeal, the appellant, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

22. Let the original record of the trial Court along with a copy of this judgment be transmitted forthwith to the trial Court concerned as well as to the Superintendent of the concerned Jail for information and necessary compliance.

Sd/-

(Naresh Kumar Chandravanshi)
Judge

Akhilesh