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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 2186 of 2026

Gupto Yadav S/o Kanto Yadav Aged About 24 Years R/o Village- Pujarimunda, Police Station Malkangiri, District- Malkangiri (Odisha)

... Appellant.

Versus

State Of Chhattisgarh Through- The Station House Officer, Police Station Chhindgarh, District- Sukma (C.G.)

... Respondent.

For Appellant	:	Mr. Vikas Singh (Legal Aid)
For Respondent	:	Mr. Vinod Tekam, Govt. Advocate.

(Hon'ble Shri Justice Naresh Kumar Chandravanshi)

Order on Board

30/10/2026

1. This appeal under Section 415(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is directed against the judgment of conviction and order of sentence dated 28.07.2026 passed by the learned Additional Sessions Judge (Fast Track Special Court), South Bastar, Dantewada (C.G.) in Special Sessions (POCSO) Case No. 13/2025. By the impugned judgment, the appellant has been convicted and sentenced as follows:-

Conviction	Sentence
Section 137(2) of the BNS	Rigorous imprisonment for 5 years and fine of Rs.5,000/-; in default of payment of fine, rigorous imprisonment for 6 months.

2. The prosecution case, in brief, is as follows. On 13.02.2025, the prosecutrix, minor at that time, went to the Chhindgarh Hospital with her cousin brother (PW-5) to take an injection, as she had been bitten by a pet dog. After the injection, her cousin left her at the bus stand and went to fill petrol in the motorcycle. When he returned, she was not there. Despite a search among relatives and nearby villages, she could not be traced. On 17.02.2025, her father (PW-4) lodged a report at Police Station Chhindgarh, on which Crime No.10/2025 was registered against an unknown person (Ex.P/6). During investigation, the prosecutrix was recovered on 27.02.2025 from the house of the appellant at Village Pujarimunda, District Malkangiri (Odisha), vide recovery memo (Ex.P/2). After her statement, Sections 87, 65(1) and 64(2)(m) of the BNS and Section 6 of the POCSO Act were added. After investigation, the charge-sheet was filed.

3. The appellant was charged, however, he denied the charges and demanded for trial. The prosecution examined 11 witnesses and exhibited 26 documents, including the recovery memo (Ex.P/2), the First Information Report (Ex.P/6), the spot map (Ex.P/9), the medical report of the prosecutrix (Ex.P/22) and the proof of her date of birth (Ex.P/26). In his statement recorded under Section 351 of the BNSS, the appellant pleaded innocence and false implication. He examined no witness in his defence.

4. By the impugned order, the learned trial Court held that the prosecutrix was below sixteen years of age on the date of the incident and was a “child” within the meaning of Section 2(1)(d) of the POCSO Act. Giving

the benefit of doubt on the charges of sexual assault, it acquitted the appellant of the offences under Sections 87, 65(1), 64(2)(m) of the BNS and Section 6 of the POCSO Act. It further held that the appellant had taken away the minor girl from the lawful guardianship of her parents, without their consent, and convicted him under Section 137(2) of the BNS and sentenced as mentioned in initial paragraph of this judgment. Hence, this petition.

5. Learned counsel for the appellant does not press the appeal against the conviction and confines his submissions to the question of sentence. He submits that the appellant is a young boy of about 24 years and a first offender, with no criminal antecedents. He further submits that he has been acquitted of the other serious charges by the trial Court. The appellant has been in jail continuously since 28.02.2025 till date, i.e., for about 1 year and 8 months. In these circumstances, he prays that the sentence may be reduced to the period already undergone and higher amount of fine of Rs.5,000/- be suitably reduced.

6. Learned counsel for the State supports the impugned judgment and submits that the impugned judgment of conviction and sentence is based on well appreciation of record and does not call for any interference.

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

8. Although the conviction is not pressed by the appellant, however, this Court has re-examined the record to ascertain the correctness, legality, or propriety of the impugned judgment of conviction.

9. The prosecutrix (PW-1) stated that she had been bitten by a dog and had gone with her cousin brother to the Chhindgarh Hospital at about 10 a.m. for an injection. After the injection, her brother left her at the bus stand and went to fill petrol in the motorcycle. At that time, the appellant made her sit on a motorcycle, took her to a village, and from there to his own village, where he kept her in his house. She further stated that when her father came to that house, the appellant hid her and did not allow her to meet him. In cross-examination, she admitted that she did not call out to anyone on the way and that she did not tell the neighbours, she, however, firmly denied the defence suggestions that the appellant was not at home when the police came and that she had refused to go with her father. Her version is supported by the other witnesses. Her cousin brother (PW-5) stated that after the injection he left her at the hospital premises to fill petrol, and that when he returned she was missing, despite a search, she could not be found, and he informed her father. Her father (PW-4) stated that he went with villagers to Pandripani in search of his daughter, but the police there turned him away, saying that the girl was young and the report should be lodged at the police station, he then lodged the report (Ex.P/6), and about two weeks later the prosecutrix was found at the appellant's house. The mother (PW-2) also stated that the prosecutrix did not return from the hospital, and that her husband later brought her home, whereupon the prosecutrix told her that the appellant had enticed her away to his village, Pujarimunda. The father admitted in cross-examination that he had not himself seen the prosecutrix going about with the appellant, but his evidence on the recovery of his daughter from

the appellant's house remained unshaken. The suggestion of the defence that there was a dispute between the two families over a share in property was denied by the mother.

10. The official evidence is consistent with the above. Sub-Inspector P.R. Paikra (PW-7) proved the registration of Crime No. 10/2025 on the report of the father (Ex.P/6), the preparation of the spot map (Ex.P/9) on 18.02.2025 in the presence of the cousin brother, and the recovery of the prosecutrix on 27.02.2025 from the house of the appellant at Village Pujarimunda, District Malkangiri (Odisha), vide the recovery memo (Ex.P/2). Taken together, the sequence of events established by these witnesses – the disappearance of the girl from the bus stand on 13.02.2025, the report of 17.02.2025, and her recovery from the appellant's house on 27.02.2025 – leaves no reasonable doubt that she was taken away by the appellant and kept at his house in another State.

11. The father and mother of the prosecutrix stated that she left for the hospital with her cousin brother and never returned, and that her parents searched for her and lodged a report. Their conduct is wholly inconsistent with any consent on their part. It is well settled law that, it is the consent of the lawful guardian that matters, and the consent of a minor is immaterial. Hence, even if any acquiescence on the part of the prosecutrix were assumed, it would not avail the appellant, as she was minor at the relevant time.

12. In view of the above evidence, the learned trial Court rightly held that the prosecution had proved beyond reasonable doubt that the appellant took away the minor prosecutrix from the keeping of her lawful guardians

without their consent. This Court finds no illegality or perversity in that finding. The conviction of the appellant under Section 137(2) of the Bharatiya Nyaya Sanhita, 2023 is, therefore, affirmed.

13. As regards sentence, the offence under Section 137(2) of the BNS is punishable with imprisonment of either description which may extend to 7 years, and also with fine. The trial Court imposed rigorous imprisonment for 5 years with fine of Rs.5,000/-, and, in default, rigorous imprisonment for 6 months.

14. In **Mohammad Giasuddin v. State of Andhra Pradesh, (1977) 3 SCC 287**, the Hon'ble Supreme Court emphasised that the criminal law must lean towards the reformation and rehabilitation of the offender, and that, as observed in the words of George Bernard Shaw quoted therein, men are not improved by injuries. Sentencing must therefore be proportionate to the gravity of the offence and must take into account the circumstances of the offender as well.

15. In view of above discussion and considering the detention period of the appellant, this Court is of the considered view that the period of imprisonment already undergone by the appellant is adequate to meet the ends of justice. The fine of Rs.5,000/- also appears to be on the higher side, and deserves to be reduced.

16. Accordingly, the appeal is **partly allowed**. The conviction of the appellant under Section 137(2) of the Bharatiya Nyaya Sanhita, 2023 is maintained, however, the substantive sentence of rigorous imprisonment for 5 years is reduced to the period already undergone by him, i.e., 1 year, 8 months and 2 days (from 28.02.2025 to 31.10.2026), and the fine of Rs.5,000/- is

reduced to Rs.500/-, in default of payment of which he shall undergo further rigorous imprisonment for 15 days. Ordered accordingly. The fine amount if paid be adjusted/refunded in accordance with law.

17. The appellant is reported to be in jail. He be released forthwith if not required in any other case and if not required to be detained in default of the fine amount.

18. The appellant shall also furnish a personal bond of Rs.25,000/- of the like amount before the trial court which shall be effective for six months, in view of the provisions of Section 481 of the BNSS, 2023.

19. Record of the trial Court along with a copy of this judgment be sent back forthwith for compliance and necessary information and compliance. A copy of the judgment shall also be sent to the concerned Jail Superintendent wherein the appellant is suffering the jail sentence.

20. Pending application(s), if any, stands disposed of.

Sd/-
(Naresh Kumar Chandravanshi)
Judge

Ajay