



2025:CGHC:22809-DB

**NAFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 968 of 2021**

Keshav Sahu Alias Buntty S/o Ashok Sahu Aged About 19 Years R/o Village Kachandur Naalpara, Chowki Jeora Sirsa, Police Station Pulgaon, District Durg Chhattisgarh.

**... Appellant**

**versus**

State of Chhattisgarh, through Police Station Jamul, District Durg Chhattisgarh.

**... Respondent(s)**

---

For Appellant(s) : Mr. P. Chetan Kumar, Advocate

For Respondent(s) : Mr. Malay Jain, Panel Lawyer

---

**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Bibhu Datta Guru, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**10.06.2025**

1. This criminal appeal arises out of impugned judgment of conviction and order of sentence dated 07.08.2021 passed by the learned Additional Sessions Judge, 4<sup>th</sup> Fast Track Court, Durg (C.G.) in Special Session Case (POCSO) No. 272/2019 whereby, the appellant has been convicted and sentenced in the following manner :-

Conviction under Section	Sentence (Rigorous imprisonment)	Fine	In default of payment of fine additional simple imprisonment
Section 363 of the IPC	3 years	Rs.1000/-	01 month
Section 366 of the IPC	3 years	Rs.1000/-	01 month
Section 6 of the POCSO Act	Life Imprisonment	Rs.5,000/-	01 month
All sentences have been directed to run concurrently.			

2. The brief gist of the prosecution story is that the prosecutrix (PW-1), who lives with her mother at her maternal home and was studying in class 12<sup>th</sup>, used to go Madarsa, Kailash Nagar every day at 6.00 am to learn Urdu with her friend Ms. Shalu alias Salya Khatoon. She knew the accused for about 5-6 months before the incident. On 21.01.2017 in the morning, the accused called the prosecutrix (PW-1) over the phone and the prosecutrix (PW-1) and her friend Shalu went to Madarsa in village Kurud, where the accused, saying that he would marry the prosecutrix (PW-1), took her and her friend Shalu on his motorcycle to his house in village Kachandur and after a while, sent the prosecutrix's friend Shalu back to village Kurud and took the prosecutrix (PW-1) on his motorcycle to village Perda ahead of Raipur and took her to a rented house and on the pretext of marriage established physical relations with her from 21.01.2017 to 23.01.2017. On 22.01.2017, the accused took the prosecutrix (PW-1) to Chandi Mandir, Nevanara, where he put vermilion in her hair parting, but did not

marry her. On 24.01.2017, when the family members of the prosecutrix (PW-01) came to know about it, they went to the house of the accused in village Kachandur and brought the prosecutrix back to their house.

3. Mother of the prosecutrix / complainant (PW-06) lodged a missing person report on 21.01.2017 regarding disappearance of her minor daughter/victim and expressed apprehension that some unknown person may have lured and kidnapped the minor. On which, a case under Section 363 IPC was registered by Police Station-Jamul. During search by Police Station-Jamul, on 25.01.2017, the minor prosecutrix (PW-01) was recovered from the custody of the accused in presence of witnesses. On interrogation of the prosecutrix (PW-01), she told that the accused lured her by promising marriage and took her to village-Kanchadur on his motorcycle and from there took her to Raipur, Perada and kept her in a rented house and continuously had physical relations with her. On the basis of same, offences under Section 366A, 376 IPC Section 5 (d) and 6 of Protection of Children from Sexual Offences Act 2012 (for short, 'POCSO Act') were added.
4. During investigation, according to the statement of the complainant (PW-6), the spot map of the incident was prepared - (Ex.P-16). The prosecutrix (PW-1) was recovered from the possession of the accused as per Ex.P-1. The prosecutrix (PW-1) and the accused were given medical treatment. The properties

were confiscated, documents related to the age of the prosecutrix (PW-1) were seized and the statements of the witnesses were recorded and the remaining necessary investigation was completed.

5. After completion of investigation, the accused was duly arrested after finding evidence of crime against him. Thereafter, the charge-sheet was presented in the Court of Fifth Additional Sessions Judge (FTC) Durg and thereafter, it was transferred to the Court of Additional Sessions Judge, 4<sup>th</sup> Fast Track Court, Durg for trial on 23.12.2019.
6. The accused denied the charges and in his statement under section 313 B CrPC, he denied the entire prosecution story and has pleaded that he is innocent and has been falsely implicated.
7. In order to establish the charge against the appellant, the prosecution examined as many as 11 witnesses and exhibited the documents Exs.P-1 to P-34. After appreciation of evidence available on record, the learned trial Court has convicted and sentenced the appellant in the manner mentioned in the opening paragraph of this judgment, against which this appeal under Section 374(2) of the CrPC has been preferred by the appellant calling in question the impugned judgment
8. Learned counsel for the appellant argued that the impugned judgment dated 07.08.2021 passed by the learned trial Court is contrary to law, facts and circumstances of the present case. The

learned trial Court ought to have seen that if the entire prosecution case is taken as it is, then also no case under Section 363, 366 of the IPC and Section 6 of POCSO Act will be made out against the appellant. Further, the learned trial Court ought to have seen and appreciated that the prosecutrix and the appellant were having long standing love affair with each other and the physical relationship was also developed with the consent of the prosecutrix as the appellant had no intentions to ditch her because the appellant got married to the prosecutrix at Chandi Mandir, Narnewa. Also, as per the evidences available on record, the date of birth of the prosecutrix was 18/09/1999 and as such on the date of incident i.e. 21/01/17, she was aged about 17 years and 4 months reaching majority and she was mature enough to think what she was doing after going along with appellant. The prosecutrix had ample opportunity to run or either fled away from the company of the appellant but she didn't made any effort or protest when she used to live along with the appellant. He further submitted that in para 16 of the evidence, the Prosecutrix had admitted that she went along with the appellant on 6 to 7 occasions and further the trial court ought to have considered that the prosecutrix never shouted when she went along with the appellant to Raipur nor made any complaint against the appellant to the neighbours where they were residing. There are number of omissions and contradictions in the statement of prosecution witnesses, and this fact has been totally overlooked by the

learned Special Judge. He also submitted that if the entire case of the prosecution is taken as it is, then also the alleged offences are not made out against the appellant and he is entitled for acquittal.

9. On the other hand, learned State counsel opposed the submissions made by learned counsel for the appellant and submitted that the prosecutrix was minor and below 18 years of age at the time of incident, which is proved by the Dakhil Kharij Register (Ex.P-23C), and the Progress Sheet of High School of the prosecutrix (Ex.P-07) which contains the date of birth of the prosecutrix as 18.09.1999. The mutation Register (Ex.P-23C) is admissible piece of evidence to determine the age of the prosecutrix. He further submitted that the prosecution has proved its case beyond reasonable doubt and the prosecutrix (PW-1) has clearly deposed about the conduct of the appellant in her statement recorded under Section 164 CrPC and in the Court statement and the learned trial Court after considering the material available on record has rightly convicted and sentenced the appellant, in which no interference is called for.
10. We have heard the learned counsel for the parties and perused the record of the trial Court with utmost circumspection.
11. In order to consider the age of the prosecutrix, we have examined the evidence available on record produced by the prosecution.

- 12.** In this regard, the prosecutrix (PW-1) has stated her date of birth as 18.09.1999. In the cross-examination, the prosecutrix has stated that she does not remember what her age was when she went to school for the first time. But she has rejected the suggestion that she does not know who got her admitted to the school. The witness has clarified in her own statement that her mother got her admitted in the year 2004.
- 13.** Similarly, mother of the prosecutrix (PW-06) also stated the date of birth of the prosecutrix (PW-01) as 18.09.1999 and that she was studying in 12th standard and on giving class 10th certificate to the police regarding the date of birth of victim (PW-01), as per seizure memo (Ex.P-07), the witness has confirmed the seizure of the admission and dismissal register from the teacher of Saraswati Shishu Mandir Kailash Nagar as per seizure sheet (Ex.P-18). This witness has stated in cross-examination that she had got the admission of the victim (PW-01) done in Saraswati Shishu Mandir, she does not know in which year, the birth certificate of the victim (PW-01) is not there. The maternal uncle of the victim (PW-02) has confirmed the seizure of the mark-sheet of Chhattisgarh Secondary Education, Raipur of the victim (PW-01) as per seizure sheet (Ex.P.07).
- 14.** In this regard, Principal Mrs. Shail Tiwari (PW-09) has stated in her evidence that on 30.01.2017, when she presented Dakhil Kharij register in the context of the application Ex.P-22, the police seized the same vide Ex.P-23 as per seizure sheet Ex.P-18. The

witness has admitted in cross-examination that the name of the victim (PW-01) is recorded in admission No. 2460 dated 16.11.2004, which entry has been made by the former in-charge Principal Devendra Verma. It is also admitted that in Ex.P-23, it is not mentioned who got the victim (PW-01) admitted in the school. The witness has stated in her own statement that it must have been done by the guardian of the victim (PW-01).

- 15.** In the Dakhil Kharij register, there is no any document mentioned to prove the date of birth of the victim produced at the time of her admission. No other evidence of birth certificate or Kotwari register or ossification report are produced by the prosecution to prove the actual age of the prosecutrix.
- 16.** After considering the entire facts and circumstances of the case and evidence available on record, it emerges that the prosecution could not produce the clinching and legally admissible evidence with respect to the date of birth or age of the prosecutrix so as to hold that on the date of incident she was minor and below 18 years of age. Only on the basis of mutation register it would not be safe to hold that the prosecutrix was minor on the date of incident. The statement of the prosecutrix (PW-1), mother of the prosecutrix (PW-06) and uncle of the prosecutrix (PW-2) as also the statement of Mrs. Shail Tiwari (PW-09), Principal of Saraswati Shishu Mandir Kailash Nagar are contradictory to each other and does not inspire confidence upon this Court to hold that the date of birth of the prosecutrix is 18.09.1999.



17. In the matter of **Ravinder Singh Gorkhi Vs. State of UP, (2006) 5 SCC 584**, relying upon its earlier judgment in case of **Birad Mal Singhvi Vs. Anand Purohit, 1988 supp. SCC 604**, the Hon'ble Supreme Court has held as under :

"26. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded."

18. In the matter of **Alamelu and Another Vs. State, represented by Inspector of Police, (2011) 2 SCC 385**, the Hon'ble Supreme Court has held that the transfer certificate which is issued by government school and is duly signed by the Headmaster would be admissible in evidence under Section 35 of the Evidence Act 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the prosecutrix in the absence of any material on the basis of which the age was recorded. It was observed as under

"40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15th June, 1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16

years 1 month and 16 days) on the date of the alleged incident, i.e., 31st July, 1993. The transfer certificate has been issued by a Government School and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Indian Evidence Act. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded.

48. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of Ravinder Singh Gorkhi Vs. State of U.P.<sup>4</sup> held as follows:-

"The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a (2006) 5 SCC 584 party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly be convicted.

19. In the matter of ***Rishipal Singh Solanki Vs. State of Uttar Pradesh & Others, (2022) 8 SCC 602***, while considering various judgments, the Hon'ble Supreme Court has observed in para 33 as under :

“33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

XXXX

XXXX

XXX

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7 This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

33.11 Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

20. Recently, in the matter of ***P. Yuvaprakash Vs. State represented by Inspector of Police, 2023 SCC Online SC 846***, the Hon’ble Supreme Court has held in para 14 to 17 as under :

“14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors.* this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in *pari materia*) with Section 94 of the JJ Act, and held as follows:

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided *prima facie* on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in

the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94 (2) of the JJ Act, this court held in *Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors* that:

“Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended,

could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In *Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal*, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.”

21. Reverting to the facts of the present case and due consideration of the prosecution evidence, we find that no any clinching and legally admissible evidence have been brought by the prosecution to prove the fact that the prosecutrix was minor on the date of incident, yet the trial Court in the impugned judgment has held her minor, hence, we set aside the finding given by the trail Court that on the date of incident the prosecutrix was minor.
22. So far as the issue of forceful sexual intercourse by the appellant upon the prosecutrix is concerned, we have carefully perused the statement of the prosecutrix. In her statement, the prosecutrix has stated that the incident took place on 21.01.2017. The accused took her to Raipur on his bike from Dhaanch Bhawan Pragati Nagar, Kurud, near her house, on the pretext of marrying her and kept her in a rented house till 24.01.2017. The accused had said that he would marry her, but he did not. Her evidence is also that where the accused had kept her in a rented house, the accused's father and brother came looking for her and brought her and the accused to the accused's house in village Kachandur, thereafter

the police brought her from the accused's house in village Kachandur to the police station. The police recovered her from the accused's house as per the recovery panchnama (Ex.P-01) and handed her over to her mother as per the surrender memo (Ex.P-02). The police recorded her statement. Her statement was recorded before the Judicial Magistrate First Class (Ex.P-05). She also has evidence that when the accused took her on his motorcycle, her friend Saleh Khatun was also with her, the accused took them around Village Dhour to his house in Village Kachandur and there he called his brother and sent her friend Saleh Khatun back and the accused took the victim with him to Raipur.

- 23.** The prosecutrix (PW-1) in her cross-examination has accepted that she knows the accused Raja Bauhan. She further stated that the incident is of 17.07.2020. The accused Raja Bauhan is a resident of her village and she already knew the accused. On the day of the incident, she and the accused met near the village school. She also wanted to marry the accused, then prosecutrix and the accused asked for a pickup vehicle and went to Raipur, Chhattisgarh. She further admitted that accused kept her in a room in an iron factory in Raipur. She stayed in the room with the accused for about ten days. The accused had physical relations with her four to five times with her consent. The accused and prosecutrix wanted to marry each other. She further admitted that since she left home without informing anyone, her father had



lodged a report in the police station, then the police came to Raipur and brought her back to the village. She further admitted that she and accused belong to the same village and know each other well. She later admitted that she too loved the accused and had made the plan to elope with the accused and she herself had called the accused. She admitted that the accused Raja Chauhan had told her that there was no arrangement for food and water right now and they will not elope now, but the prosecutrix herself did not agree. It was because of prosecutrix's stubbornness that the accused agreed to elope with her. She also admitted that the accused was known to her parents. Her parents did not agree to her marriage with the accused because he belonged to a different caste. She lastly admitted that she is still ready to marry the accused even after he is released from jail.

- 24.** Regarding the medical examination of the prosecutrix, witness Dr. Mrs. Pushpanju Climis (PW-04) has stated that after the incident, on 25.01.2017, the medical examination of the prosecutrix (PW-01) was done as per Ex.P-11 and the test result has revealed that the hymen of the victim (PW-01) was torn and two fingers were easily entering on the vagina.

The witness further stated that in her opinion no definite opinion can be given about the instant sexual intercourse.

- 25.** Similarly, in the report Ex.P-34 received from the State Forensic Science Laboratory, Raipur (C.G.), there was absence of semen stains and human sperms on the seized property of the accused

and the prosecutrix (PW-01) namely undergarments, slides and leggings respectively, it cannot be said that the accused did not commit aggravated penetrative sexual assault by having intercourse with the prosecutrix (PW-01) at the time of the incident. Apart from this, in the FSL report, many times, when the semen is examined, its traces are not found due to the chemical substances getting decomposed over a period of time. Therefore, the above report is negative.

- 26.** Close scrutiny of the evidence, it is clear that the prosecutrix was a consenting party. In her cross-examination, she has accepted that she knows the accused Raja Bauhan. She further stated that the incident is of 17.07.2020. The accused Raja Bauhan is a resident of her village and she already knew the accused. On the date of the incident, she and the accused met near the village school. The prosecutrix also wanted to marry the accused, as such they both asked for a pickup vehicle and went to Raipur. She further admitted that accused kept her in a room in an iron factory in Raipur. She stayed in the room with the accused for about ten days. The accused had physical relations with her four to five times with her consent. The accused and prosecutrix wanted to marry each other. She further admitted that since she left home without informing anyone, her father had lodged a report in the police station, then the police came to Raipur and brought her back to the village. She further admitted that she and accused belong to the same village and know each other well. She later

admitted that she too loved the accused and had made the plan to elope with the accused and she herself had called the accused. She admitted that the accused Raja Chauhan had told her that there was no arrangement for food and water right now and they will not elope now, but the prosecutrix herself did not agree. It was because of prosecutrix's stubbornness that the accused agreed to elope with her. She also admitted that the accused was known to her parents. Her parents did not agree to her marriage with the accused because he belonged to a different caste. She lastly admitted that she is still ready to marry the accused even after he is released from jail. Hence, the said fact cannot be disputed that the prosecutrix was a consenting party and went with the appellant / accused willfully.

- 27.** In the matter of *Alamelu (supra)*, the Hon'ble Supreme Court has held as under :

“51. This Court in *Rameshwar v. State of Rajasthan* {AIR 1952 SC 54} declared that corroboration is not the sine qua non for a conviction in a rape case. In the aforesaid case, Vivian Bose, J. speaking for the Court observed as follows:-

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, ... The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be

corroboration before a conviction can be allowed to stand."

52. The aforesaid proposition of law has been reiterated by this Court in numerous judgments subsequently. These observations leave no manner of doubt that a conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.

\*\*\*    \*\*\*    \*\*\*

54. Even PW5, Thiru Thirunavukarasu stated that Sekar (A1) had brought the girl with him to his house and told him that he had married her. They had come to see Trichy and requested a house to stay. This witness categorically stated that he thought that they were newly married couple. He had made them stay in Door No. 86 of the Police Colony, which was under his responsibility. On 10th August, 1993, the police inspector, who arrived there at 10.00 p.m. told this witness that Sekar (A1) had married the girl by threatening her and "spoiled her". The girl, according to the prosecution, was recovered from the aforesaid premises. Therefore, for six days, this girl was staying with Sekar (A1). She did not raise any protest. She did not even complain to this witness or any other residents in the locality. Her behavior of not complaining to anybody at any of the stages after being allegedly abducted would be wholly unnatural.

55. Earlier also, she had many opportunities to complain or to run away, but she made no such effort. It is noteworthy that she made no protest on seeing some known persons near the car, after her alleged abduction. She did not make any complaint at the residence of Selvi, sister of Sekar (A1) at Pudupatti. Again, there was no complaint on seeing her relatives allegedly assembled at the temple. Her relatives apparently took no steps at the time when mangalsutra was forcibly tied around her neck by Sekar (A1). No one sent for police help even though a car was available. She made no complaint when she was taken to the house of PW5, Thiru Thirunavukarasu and stayed at his place. Again, there was no protest when Sekar (A1) took her to the police station on 5<sup>th</sup> day of the alleged abduction and told at the Tiruchi Police Station that they had already been married. The above behaviour would not be natural for a girl who had been compelled to marry and subjected to illicit sexual intercourse.

56. In view of the aforesaid, we are of the considered opinion that the prosecution has failed to prove beyond reasonable doubt any of the offences with which the appellants had been charged. It appears that the entire prosecution story has been concocted for reasons best known to the prosecution."

28. Recently, the Hon'ble Supreme Court in the matter of ***Tilku Alias Tilak Singh vs The State of Uttarakhand*** decided on 06.02.2025 in Criminal Appeal No. 183 of 2014, reiterating the judgment passed in ***S. Vardarajan v. State of Madras*** reported in ***1965 AIR 942*** has held as under :-

"16. Even if the finding of the learned Single Judge of the High Court that the prosecutrix was between 16 to 18 years of age is to be accepted, in our view, the offence under Sections 363 and 366 IPC would still not be made out.

17. This Court in the case of *S. Vardarajan v. State of Madras* had an occasion to consider almost similar facts that arise for consideration in the present case. This Court has observed thus:

"7. ....It will thus be seen that taking or enticiting away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. Here, we are not concerned with enticement but what we have to find out is whether the part played by the appellant amounts to "taking" out of the keeping of the lawful guardian of Savitri. We have no doubt that though Savitri had been left by S. Natarajan at the house of his relative K. Natarajan she still continued to be in the lawful keeping of the former but then the question remains as to what is it which the appellant did that constitutes in law "taking". There is not a word in the deposition of Savitri from which an inference could be drawn that she left the house of K. Natarajan at the instance or even a suggestion of the appellant. In fact she

candidly admits that on the morning of October 1st, she herself telephoned to the appellant to meet her in his car at a certain place, went up to that place and finding him waiting in the car got into that car of her own accord. No doubt, she says that she did not tell the appellant where to go and that it was the appellant himself who drove the car to Guindy and then to Mylapore and other places. Further, Savitri has stated that she had decided to marry the appellant. There is no suggestion that the appellant took her to the Sub-Registrar's office and got the agreement of marriage registered there (thinking that this was sufficient in law to make them man and wife) by force or blandishments or anything like that. On the other hand the evidence of the girl leaves no doubt that the insistence of marriage came from her side. The appellant, by complying with her wishes can by no stretch of imagination be said to have taken her out of the keeping of her lawful guardian. After the registration of the agreement both the appellant and Savitri lived as man and wife and visited different places. There is no suggestion in Savitri's evidence, who, it may be mentioned had attained the age of discretion and was on the verge of attaining majority that she was made by the appellant to accompany him by administering any threat to her or by any blandishments. The fact of her accompanying the appellant all along is quite consistent with Savitri's own desire to be the wife of the appellant in which the desire of accompanying him wherever he went was course implicit. In these circumstances we find nothing from which an inference could be drawn that the appellant had been guilty of taking away Savitri out of the keeping of her father. She willingly accompanied him and the law did not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him. She was not a child of tender years who was unable to think for herself but, as already stated, was on the verge of attaining majority and was capable of knowing what was good and what was bad for her.....”

18. It is thus clear that the prosecutrix, who according to the learned Single Judge of the High Court, was between 16 to 18 years of age was very much in the age of understanding as to what was right and wrong for her.

19. From the evidence of the prosecutrix itself, it will be clear that she had voluntarily gone along with the appellant herein, travelled to various places and also resided as husband and wife at Dehradun.

20. In that view of the matter, we find that the learned Single Judge of the High Court was not justified in upholding the conviction for the offences punishable under Sections 363 and 366 of the IPC.

29. Reverting to the facts of the present case, the prosecutrix, who was between 17 to 18 years of age, was very much in the age of understanding as to what was right and wrong for her. From the evidence of the prosecutrix itself, it will be clear that she had voluntarily gone along with the appellant herein, travelled to various places and also resided as husband and wife.
30. Considering the entire evidence available on record, the conduct of the prosecutrix and in the light of judgments passed by the Hon'ble Supreme Court in the matters of *Alamelu (supra)* and *Tilku Alias Tilak Singh (supra)*, we are of the considered opinion that offence under Sections 363, 366 of the IPC and Section 6 of the POCSO Act would not be made out against the appellant.
31. For the foregoing reasons, the criminal appeal is **allowed** and the impugned judgment and conviction and order of sentence dated 07.08.2021 is set aside. The appellant stands acquitted from all the charges.

- 32.** Keeping in view of the provisions of Section 437-A CrPC (now Section 481 of BNSS), the appellant is directed to furnish a personal bonds in terms of form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25000/- with two sureties in the like amount before the trial Court concerned which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellant, on receipt of notice thereof, shall appear before the Supreme Court.
- 33.** Registry is directed to transmit the trial Court record along with a copy of this order to the court concerned forthwith for necessary information and compliance.

Sd/-

**(Bibhu Datta Guru)**  
**Judge**

Sd/-

**(Ramesh Sinha)**  
**Chief Justice**