



2025:CGHC:23017-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 219 of 2016

1 - Ramgopal S/o Fankulal Tengvar Aged About 30 Years R/o Village Madai, Police Station Seepat, Tehsil Masturi, District Bilaspur, Chhattisgarh.

... Appellant

versus

1 - State Of Chhattisgarh Through Station House Officer, Police Station Seepat, District Bilaspur, Chhattisgarh.

... Respondent(s)

For Appellant : Shri Samrath Singh Marhas on behalf of Smt. Anubhuti Marhas, Advocate.

For Respondent(s) : Shri Afroj Khan, Panel Lawyer.

Hon'ble Shri Sanjay K. Agrawal &
Hon'ble Shri Deepak Kumar Tiwari, JJ

Judgment on Board
(11/06/2025)

Deepak Kumar Tiwari, J

1. This Criminal Appeal preferred by the accused/appellants under Section 374(2) of the CrPC is directed against the impugned judgment of conviction and sentence dated 12.1.2016 passed by the

Additional Sessions Judge, (FTC), District Bilaspur in Special ST No.428/2014 by which the appellant has been convicted and sentenced as under:-

Conviction	Sentence
Under Section 6 of the POCSO Act.	RI for life with a fine of Rs.20,000/-, in default of payment of fine to further undergo RI for one year.

2. Case of the prosecution, in brief, is that (PW-2) victim, aged about 16 years girl, lodged a written complaint (Ex.-P/1) at Police Station Seepat on 5.10.2014 stating that the appellant, who is a teacher, has been alluring her for the last one year and on the pretext of marriage sexually exploited her. When the victim asked him for the marriage, he refused for the same and threatened to beat and also allured of Rs.20,000/- for leaving the village. Based on such information, FIR No.242/2014 (Ex.-P/2) was registered.
3. Crime details form was prepared vide Ex.-P/3. Spot map was prepared vide Ex.-P/4. After obtaining consent of the victim (Ex.-P/5), she was medically examined by Dr. Sheela Saha (PW-9), but she has not given any definite opinion about recent sexual intercourse. The accused/appellant was also medically examined by Dr. Rajendra Singh Maravi (PW-7) and he opined that the accused/appellant is capable for perform sexual intercourse vide Ex.-P/15. School register (Ex.-P/20), wherein the date of birth of the victim

was recorded as 4.11.1998, was seized vide Ex.-P/7 from headmaster of the school (PW-11) Baldau Prasasd.

4. Statements of the witnesses were recorded. After completion of the investigation, charge sheet was filed and the case was committed to the Court of Sessions. The appellant abjured his guilt and claimed to be tried.
5. In order to bring home the charges, the prosecution examined as many as 11 witnesses and exhibited 20 documents. The accused/appellant in his statement recorded under Section 313 of the CrPC has stated that he has been falsely implicated. However, he has not adduced any defence witness.
6. The learned trial Court after appreciating the oral and documentary evidence available on record convicted and sentenced the appellant under Section 376 of the IPC and under Section 6 of the POCSO Act, however, in view of the provisions contained under Section 42 of the POCSO Act, the appellant was sentenced only under Section 6 of the POCSO Act since offence under the said Act is more graver, against which this Appeal has been preferred by the appellant.
7. Learned counsel for the appellant would submit that the age of the victim has not been proved to be less than 18 years on the date of the incident. According to the Ossification test report (Ex.-P/18), age of the victim on the date of examination i.e. 9.10.2014, has been

opined to be the age group of 19 years or above. The alleged offence took place one year prior to the year of examination and, therefore, the victim has crossed the age of 18 years on the date of the incident and she became major. He would further submit that the headmaster of the school (PW-11) has categorically admitted the fact that on what basis the date of birth of the victim has been recorded in the school register, he was not aware and the said entry was not made by him. From the statement of the victim (PW-2), it is explicit that she was in love with the accused/appellant for about one year and the FIR has been lodged belatedly. He would further submit that Dr. Sheela Saha (PW-9), who has examined the victim, has not given any definite opinion and the FSL report is also not available on record. Considering the above infirmities, the prosecution has utterly failed to prove the charges against the appellant beyond reasonable doubt. The appellant is entitled for acquittal and the Appeal deserves to be allowed.

8. Per contra, learned State Counsel would support the impugned judgment of conviction and submit that the prosecution has been able to bring home the charges beyond reasonable doubt and the trial Court has rightly convicted the appellant for aforesaid offence and, therefore, the Appeal deserves to be dismissed.

9. We have heard learned counsel for the parties, considered their rival submissions and have gone through the records with utmost circumspection.
10. First of all, the question which arises for consideration is that whether the victim (PW-2) was minor on the date of the incident i.e. one year prior to 5.10.2014. In this connection, the victim (PW-2) has deposed that her date of birth, as per the school record, is 4.11.1998. Headmaster of the school (PW-11) categorically admits that he has not made the aforesaid entry in the school register (Ex.- P/20) and he is not aware as to on what basis the said entry has been recorded in the school register. Father of the victim (PW-1) has also not deposed the exact date of birth of the victim. The I.O. KPS Paikara (PW-4) admits that during investigation, he has not seized Kotwari register or birth register of the victim. Thus, to ascertain the age of the victim which has been recorded in the school register, no preliminary document was produced or proved.
11. In the matter of **Ravinder Singh Gorkhi Vs. State of UP**¹, the following was observed at para-26:-

“**26.** In *Birad Mal Singhvi v. Anand Purohit* {1988 Supp SCC 604} this Court held: (SCC p. 619, para 15)

“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

¹ (2006) 5 SCC 584

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.”

(emphasis supplied)

12. Same proposition was reiterated in the matter of **Babloo Pasi Vs.**

State of Jharkhand and another², wherein the following material

observations were made at paras-28 to 29:-

“**28.** It is trite that to render a document admissible under Section 35, three conditions have to be satisfied, namely: (i) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be an entry stating a fact in issue or a relevant fact, and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially 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. (See: *Birad Mal Singhvi Vs. Anand Purohit*).

29.in the absence of evidence to show on what material the entry in the voters' list in the name of the accused was made, a mere production of a copy of the voters' list, though a public document, in terms of Section 35, was not sufficient to prove the age of the accused.....”

13. Further in the matter of **Madan Mohan Singh and Others Vs.**

Rajni Kant and Another³, it was observed that the entries made in the official record by an official or person authorised in performance of official duties may be admissible under Section 35 of the Evidence Act but the Court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register/ school leaving certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

14. In the light of aforesaid settled legal principles, if we examine the facts of the present case, we find that the relevant document on the basis of which entries were made in the School Admission Register (Ex.P/20) was not filed and proved. It is pertinent to mention here that the prosecution itself has filed Ossification test report (Ex.-P/18) which was conducted by Dr. SK Tiwari (PW-8). In the said report, the doctor has categorically opined that after examination of the victim on 9.10.2014, he has determined her age to be 19 years or above on the date of the examination. Thus, on the date of the incident, the victim has crossed the age of 18 years and as such, the prosecution has utterly failed to establish that on the date of the incident, the victim was minor.

15. Father of the victim namely, PW-1 has categorically admitted in his cross-examination that on 1.10.2014 the victim had voluntarily left the house and on the next day, she was found in her maternal uncle's house. After the lapse of one year, the victim has informed her father about her relations with the accused/appellant that he has allured her for marriage and developed physical relations with her, and the same was deposed by the victim (PW-2).
16. From the above evidence, it is explicit that the victim herself has not disclosed her relations with the appellant for a substantial period of time. This conduct itself shows that she was a consenting party. Further, the prosecution has not proved any medical evidence and Dr. Sheela Saha (PW-9), who has examined the victim, has not given any definite opinion about recent sexual intercourse and no FSL report was filed or proved.
17. In view of the above evidence, we are of the opinion that the prosecution has failed to prove that the sexual assault was a result of the appellant's coercion or compulsion on his part and that the prosecution has failed to discharge its burden to prove the charges levelled against the appellant and we are inclined to extend benefit of doubt to the appellant.
18. In the result, the Appeal is allowed. Conviction and sentence imposed on the appellant under Section 6 of the POCSO Act are set aside and he is acquitted of the said charge by extending benefit of

doubt. The appellant is on bail. He need not surrender. The bail bonds furnished by the appellant shall remain in operation for a period of 6 months from today in view of the provisions contained under Section 437-A of the CrPC.

19. Let a certified copy of this judgment along with original record be transmitted to the trial Court concerned forthwith.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve