



2025:CGHC:30770-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 2097 of 2025**

State of Chhattisgarh, SHO Farasgaon, District Kondagaon,
Chhattisgarh.

... Applicant(s)**versus**

1. Gayatri Rao W/o Ganesh Rao Aged About 40 Years R/o Shanti Nagar Ward Jagdalpur Police Station Bodhghat District Bastar, Chhattisgarh.
2. Mamta Agrawal W/o Omprakash Agrawal, Aged About 38 Years R/o Vinayak Bihar, D.D. Nagar Raipur Police Station D.D. Nagar Raipur, District Raipur, Chhattisgarh.
3. Shivpal Singh Rajput S/o Ratan Singh Rajput, Aged About 30 Years R/o Village Chilki Police Station Udaypura, District Raisen Madhya Pradesh At Present Vinayak Bihar, D.D. Nagar Raipur, Police Station D.D.Nagar Raipur, District Raipur, Chhattisgarh.
4. Rakesh Jain, S/o Subhashchandra Jain, Aged About 35 Years R/o Village Lalaji Ka Bada Guna, Police Station Guna, District Guna Madhya Pradesh

...Respondent(s)

For State/Applicant : Mr. S.S. Baghel, Deputy Government Advocate.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

07.07.2025

1. Heard Mr. S.S. Baghel, learned Deputy Government Advocate for the appellant/State.
2. Learned State counsel submits that the defects pointed out by the Registry had already been cured. He further submits that through memo of submission dated 04.07.2025, the State is hereby filing the relevant exhibited documents, which have taken on record. Therefore, we proceed to hear the matter finally.
3. Also heard on I.A. No. 1 of 2025, which is an application for condonation of delay.
4. After hearing the learned counsel for the appellant/State and considering the reasons mentioned in the application, we are of the considered opinion that sufficient cause has been shown in the application and accordingly, I.A. No. 1 of 2025 is **allowed** and delay of 103 days in filing the leave to appeal is condoned.
5. The State has sought leave to appeal against the impugned judgment of acquittal dated 06.12.2024 passed in POCSO Case No. 10 of 2021 by the learned Upper Sessions Judge FTSC (POCSO),

Kondagaon, District Kondagaon (C.G.), whereby the learned Upper Sessions Judge FTSC (POCSO) has acquitted the respondents No. 1 to 3 from the offences punishable under Sections 366(A), 370(4), 467, 468, 471, 372, 374 and 34 of the Indian Penal Code (IPC) and Section 17 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and respondent No. 4 has been acquitted for the charges under Sections 366(A), 370(4), 376(2)(n), 467, 468, 471, 372 and 34 of the IPC holding that the prosecution has failed to prove the charges beyond reasonable doubt.

6. Case of the prosecution, in brief, is that:

(i) On 30.11.2020, the complainant/father of the victim (PW-2) appeared in the Police Station Farasgaon and filed a written complaint (Ex.P/2) that on 26.11.2020 at 2.00 p.m. he slept in the house and when he woke up at about 4.00 p.m. then he saw that his daughter/victim was not at home. Thereafter, the complainant searched for the victim in nearby places, but could not find her. The complainant suspected that his daughter/victim has been abducted by some unknown person alluring her. On the basis of the said complaint, the Police of Police Station Farasgaon registered FIR (Ex.P/3) vide Crime No. 130 of 2020 for the offence under Section 363 of the IPC against the unknown person and investigation was commenced.

(ii) After due and necessary investigation, the charge-sheet was filed against the respondents/accused and the respondents/accused was put to face charges before the learned trial Court.

The respondents/accused abjured the guilt. In order to prove its case, the prosecution examined as many as 16 witnesses in its favour.

(iii) After appreciating the evidences on record, the learned trial Court did not believe the evidence proving guilt of the respondents/accused, and therefore, acquitted the respondents/accused from the offences charged vide impugned judgment and order dated 06.12.2024, hence, the present Criminal Miscellaneous Petition has been filed seeking leave to appeal.

7. Learned State counsel would submit that the learned trial Court has erred by acquitting the respondents/accused from the offences charged by discarding the evidence of complainant without there being any strong reason to discard the evidences of the prosecution. Learned State counsel further submitted that the learned trial Court failed to appreciate the prosecution evidence in its right perspective, particularly the testimony of the victim (PW-1) has clearly stated in his judicial statement that when she was standing with her friend at Jagdalpur bus stand, then Gayatri Rao/respondent No. 1 came there and lured her and took her to her house and forcibly detained for about 08 days and after sometime Mamta Agrawal/respondent No. 2 and Shivpal Singh Rajpur/respondent No. 3 were contacted to respondent No. 1 and on the basis of fake Aadhaar Card she was sold to Rakesh Jain/respondent No. 4 of Guna for Rs.1,50,000/-. He further submits that the version of the victim (PW-1) has been categorically corroborated by father (PW-2) and mother (PW-7) of the victim. However, the learned trial Court overlooked and neglected

the statement of the victim (PW-1) as well as evidence produced by the prosecution and acquitted the respondents from serious offences, which is illegal and liable to be set aside. He would submit that the learned trial Court also committed error of law in not believing the testimony of the prosecution witnesses and the learned trial Court has acquitted the accused/respondents only on the basis of minor omission and contradictions. Thus, the learned trial Court is absolutely unjustified in acquitting the respondents/accused from the aforesaid offences by recording a finding which is perverse to record. Therefore, leave deserves to be granted.

8. We have heard learned State counsel and perused the record of the case including the impugned judgment of acquittal.

9. Learned Upper Sessions Judge FTSC (POCSO), Kondagaon, District Kondagaon (C.G.) while acquitting the accused/respondents has observed in paragraphs 76, 77, 78, 79, 80 and 81 as follows:

“76. Victim (PW-1) has stated in her evidence that during marriage, the accused had got a fake Aadhar card made for her in which accused Gayatri Rao had got her name written in place of her mother and her husband's name in place of her father. Victim's mother (PW-7) also says that the victim had told her that the accused had got her Aadhar card made by increasing her age. Inspector Vinod Sahu (PW-16) says that he has seized a photocopy of Aadhar card edited by accused Rakesh Jain on a computer in which the name and date of birth of the victim was mentioned as 01.01.1997 as per Ex.P/17.

77. From the observation of the photocopy of Aadhar

card attached in the case, the name of the victim is mentioned in the said photocopy and the date of birth is mentioned as 01.01.1997. But the prosecution has not seized the original Aadhaar card in which the date of birth of the victim and the name of her parents have been changed. The prosecution has not collected any evidence regarding who and where and with which electronic device the said changed Aadhaar card has been prepared. Then it cannot be said that the date of birth of the victim (A) and the name of her parents have been changed by the accused on the photocopy of the seized Aadhaar card.

78. According to the prosecution story, the marriage documents of the victim have been prepared in the Court of Guna, but the prosecution has not seized any document or register related to the marriage from the Court premises of Guna, from the accused or from any advocate or notary. The prosecution has not recorded the statement of any person from Guna who was involved in the marriage of the victim, which establishes that the victim is married to the accused Rakesh Jain. Thus, the prosecution has not collected any other corroborating document or evidence regarding the marriage of the victim and the accused. Then it cannot be said that the accused have made the Aadhaar card of the victim and have used the said Aadhaar card for the purpose of fraud by writing the date of birth of the victim as 01.01.1997 in it.

79. Thus, on the basis of the above evidence and its analysis, the prosecution has failed to prove that the victim was a child on the date of the incident and the prosecution has failed to prove these facts beyond reasonable doubt that the accused Gayatri Rao, Mamta Agarwal, Shivpal Singh Rajput on 26.11.2020,

Thursday, at 3.00 pm, at the place of incident-village Balond Kalarpara, police station Farasgaon district Kondagaon, formed a common intention to kidnap/abduct the victim/to have illicit sex with her and took the minor girl away from her legal guardianship to lure the minor victim and compel her for illicit sex and for the purpose of exploiting the minor victim, kidnapped her and trafficked her by using deception and fraud and committed forgery by getting a fake Aadhar card of the minor victim made and writing the date of birth of the victim 01.01.1997 in it. The accused knew about this, or had reason to believe that this is a forged document and fraudulently used the said document as genuine and sold the minor victim for Rs. 150000/- with the intention that she should have unlawful sexual intercourse with any person or be used for any unlawful and immoral purpose and forced the minor victim to do unlawful compulsory labour by keeping her in his house and instigated the minor victim to accused Rakesh Jain for unlawful sexual intercourse/aggravated sexual assault knowing that the victim is a minor.

80. The accused Rakesh Jain on 26.11.2020, Thursday, at 3.00 p.m., in the area of incident-Village Balond Kalarpara, Police Station Farasgaon, District Kondagaon, created a common intention to kidnap/abduct the victim/to have illicit sex with her and took away the minor girl from her legal protection to lure the minor victim into illicit sex and forced her into it and for the purpose of exploitation, kidnapped the minor victim by deception and trafficked her and raped the minor victim repeatedly by forcibly establishing physical relations with her against her will and having sexual intercourse with her and committing forgery by getting a

fake Aadhar card of the minor victim made and writing the date of birth of the victim 01.01.1997 in it and forged the said document with the purpose of cheating and in order to show the minor victim as an adult, the accused forged the Aadhar card of the victim showing her date of birth as 01.01.1997 and the accused knew about this or had reason to believe that it was a forged document and fraudulently used the said document as genuine and with the intention of the victim having unlawful sexual intercourse with any person or using her for any illegal and immoral purpose, purchased her for Rs. 150000/- and forced the minor victim to do unlawful compulsory labour by keeping her in his house and established physical relations with the minor victim repeatedly and took serious penetration with her. On the basis of the above discussion, the conclusion on questions No. 2 to 12 is given as "not proved".

81. Consequently, on the basis of the above evidence analysis, the learned trial Court come to the conclusion that on the basis of the evidence presented by the prosecution, it has failed to prove its case against the accused beyond doubt in the absence of corroborative evidence. Therefore, accused Gayatri Rao, Mamta Agarwal, Shivpal Singh Rajput are acquitted for the offences under Sections 366K, 370 (4), 467, 468, 471, 372, 374, 34 IPC and Section-17 of Protection of Children from Sexual Offences Act, 2012 and accused Rakesh Jain is acquitted for the offences under Sections 366K, 370(4), 376 (2)(d), 467, 468, 471, 372, 374, 34 IPC and Section-06 of Protection of Children from Sexual Offences Act, 2012."

10. Taking into consideration the findings recorded by the learned Upper Sessions Judge FTSC (POCSO), Kondagaon, District Kondagaon

(C.G.), acquitting the respondents/accused from aforesaid offences, we do not find any reason to allow Criminal Miscellaneous Petition seeking grant of leave to appeal.

11. Recently, applying the law governing the scope of interference in an appeal against acquittal, the Hon'ble Supreme Court in the case of "**State of Rajasthan Vs. Kistoora Ram**" reported in **2022 SCC OnLine SC 984**, has held as follows:-

"8. The scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all."

12. Thus, for the foregoing reasons, the Criminal Miscellaneous Petition seeking for leave to appeal being totally devoid of merits, the same is **rejected**. Consequently, the appeal also stands **dismissed**.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice