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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 981 of 2024

Moneshwar Alias Rinku Katlam S/o Shyam Lal Katlam Aged About 22 Years R/o Village Fakirtola, Andi, Police Station - Bortalab, District Rajnandgaon (C.G.)

... Appellant

versus

State of Chhattisgarh Through Police Station Bortalab, District Rajnandgaon (C.G.)

... Respondent

(Cause-title taken from Case Information System)

For Appellant	:	Mr. Sanjay Kumar Yadav, Advocate
For Respondent/State	:	Mr. Shaleen Singh Baghel, Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

04.02.2026

1 Heard Mr. Sanjay Kumar Yadav, learned counsel, appearing on behalf of the appellant and Mr. Shaleen Singh Baghel, learned Government Advocate appearing on behalf of the State/respondent.

- 2** Today, though the criminal appeal has been listed for hearing on I.A. No.01, application for suspension of sentence and grant of bail to the appellant, however, with the consent of learned counsel for the parties, the appeal is heard finally.
- 3** Accordingly, I.A. No.01, application for suspension of sentence and grant of bail to the appellant, stands disposed of.
- 4** This appeal is directed against the judgment of conviction and order of sentence dated 20.12.2023 passed by the Additional Sessions Judge, Dongargarh, District Rajnandgaon, Chhattisgarh in Special Sessions Case No.09/2022 whereby the appellant has been convicted for the offence punishable under Sections 363 and 366 of the Indian Penal Code, 1860 (for short, "IPC") as well as Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and sentenced to undergo rigorous imprisonment for 02 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 03 months, rigorous imprisonment for 03 years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for 03 months and rigorous imprisonment for 20 years and fine of Rs.2,000/-, in default of payment of fine, additional rigorous imprisonment for 06 months, respectively and it was further directed to run all the sentences concurrently.
- 5** Learned State counsel submits that notice issued to the father of the prosecutrix/victim (PW-2) has been served, but none has

appeared on behalf of the prosecutrix/victim to contest the present appeal.

- 6 The prosecution case, in brief, is that the father of the victim lodged a written complaint at Police Station Boratalab stating that he is running a salon shop at Dongargarh. On 27.04.2022 at about 03:00 p.m., his minor daughter, aged about 15 years, left the house without informing any family member and thereafter went missing. Initially, the family members presumed that she might have gone somewhere nearby; however, when she did not return even after 1–2 hours, they made a search in the vicinity and the village, but in vain. Having failed to trace her whereabouts, the complainant suspected that some unknown person had enticed and taken away his daughter. On the basis of the said report, Crime No. 31/2022 was registered for the offence punishable under Section 363 of the IPC against an unknown person and investigation was set into motion.
- 7 During the course of investigation, it came to light that the accused, namely Moneshwar @ Rinku, had taken the victim to Hyderabad. Subsequently, both the victim and the accused were recovered from Hyderabad. Statements of the prosecution witnesses as well as the victim were recorded. On the basis of the statement of the victim, offences under Sections 366 and 376(2) (d) of the IPC and Sections 4 and 6 of the POCSO Act were additionally registered. The accused was arrested, necessary

seizures were effected, and the medical examination of both the victim and the accused was conducted. After completion of the investigation, the charge-sheet was filed before the competent Court.

- 8 Thereafter, charges were framed against the accused for the offences punishable under Sections 363 and 366 of the IPC, Section 5(l) read with Section 6 of the POCSO Act and, in the alternative, under Section 376(3) of the IPC.
- 9 Statements under Section 161 of the Cr.P.C. of the witnesses were recorded by the police. After completion of investigation, charge-sheet was filed before the Court of Additional Sessions Judge, Dongargarh, District Rajnandgaon (C.G.) for the commission of offence punishable under Sections 363, 366, 376(2)(n) and 506 IPC and Sections 4 and 6 of POCSO Act.
- 10 The trial Court has framed charges under Sections 363 and 366 of the IPC as well as Section 6 of the POCSO Act. During trial, the prosecution has examined as many as 18 witnesses as PW-1 to PW-18 and exhibited 23 documents Ex. P/1 to Ex.P/23 as well as three articles vide A-01C to A-03C. In order to prove the defence, appellant has examined one witness as DW-1, but not exhibited any document.
- 11 After appreciation of oral as well as documentary evidence produced by the prosecution, the learned trial Court has convicted

the appellant and sentenced him as mentioned in the fourth paragraph of this judgment. Hence this appeal.

- 12 Mr. Sanjay Kumar Yadav, learned counsel for the appellant submits that the impugned judgment of conviction and sentence is bad both in law and on facts and, therefore, deserves to be set aside, as the learned trial Court has failed to appreciate the evidence on record in its proper perspective. It is submitted that the learned trial Court has erred in placing reliance upon the testimonies of prosecution witnesses who are admittedly interested witnesses, being close family members of the victim, and whose statements suffer from material contradictions and inconsistencies. Despite such infirmities, the learned trial Court failed to scrutinize their evidence with the caution required under law.
- 13 Mr. Yadav further submits that the age determination of the victim has not been conducted in accordance with settled legal principles. No reliable documentary evidence was duly proved, and the medical opinion regarding age was neither conclusive nor corroborated by primary records. Consequently, the finding with regard to the age of the victim is perverse and unsustainable in law. It is further contended that the victim and the appellant were admittedly in a consensual love relationship and were living together as husband and wife after solemnizing marriage. This

crucial aspect of the case has been completely ignored by the learned trial Court, resulting in grave miscarriage of justice.

- 14 Mr. Yadav contends that the prosecution evidence, as a whole, does not inspire confidence and is insufficient to establish the guilt of the appellant beyond reasonable doubt. The learned trial Court has failed to appreciate the defence submissions as well as the contradictions in the statements of prosecution witnesses, particularly with respect to the age and consent of the victim. It is also urged that the findings recorded in the impugned judgment are erroneous, contrary to law, and based on surmises and conjectures. The evidence relied upon by the learned trial Court is not of such a nature from which a definite inference of guilt could be safely drawn against the appellant.
- 15 On an overall appreciation of the material on record, it is apparent that the prosecution has utterly failed to prove the charges framed against the appellant. Therefore, the conviction is unsustainable, and the appellant deserves to be acquitted of all the charges levelled against him.
- 16 On the other hand, Mr. Priyank Rathi, learned Government Advocate, opposes the arguments advanced by the learned counsel for the appellant and submits that the impugned judgment of conviction and sentence has been passed after due appreciation of the oral as well as documentary evidence available on record and does not suffer from any illegality or

perversity warranting interference by this Court. It is submitted that the prosecution has successfully proved the age of the victim through cogent and reliable evidence and that the victim was a minor on the date of the incident. The learned trial Court has rightly relied upon the evidence on record while recording such a finding.

- 17 Mr. Rathi further submits that the testimony of the victim is trustworthy, cogent and inspires confidence, and the same stands duly corroborated by other prosecution witnesses as well as medical and documentary evidence. Mere relationship of witnesses with the victim does not render their evidence unreliable, particularly when their statements are consistent on material particulars. It is further contended that consent is immaterial in cases involving a minor and the alleged love affair or marriage, even if accepted, does not dilute the statutory offence under the IPC and the POCSO Act. The learned trial Court has rightly rejected the defence version and has correctly appreciated the legal position governing the case. It is lastly argued that the prosecution has proved the charges against the appellant beyond reasonable doubt, and no ground is made out for interference with the impugned judgment. Accordingly, it is prayed that the appeal deserves to be dismissed.
- 18 We have heard learned counsel for the parties and perused the record of the trial Court with utmost circumspection.

19 The first and foremost question arose for the consideration would be whether the prosecutrix was minor and less than 18 years of age on the date of incident or not ?

20 In order to determine the age of the prosecutrix, this Court has carefully examined the evidence available on record. The prosecution has relied upon the First Information Report (Ex.P/4), missing person report, statements of the father of the prosecutrix, the prosecutrix herself, her mother and uncle, birth certificate, school admission records, Dakhil-Kharij Register seized as Article A-1 (Ex.P/14), and the testimony of the concerned school teacher and the Investigating Officer. All these documents and oral testimonies consistently record the date of birth of the prosecutrix as 27.06.2006.

21 The father of the prosecutrix, in his judicial testimony, has categorically stated that the date of birth of his daughter is 27.06.2006 and that she was born in the village itself. He further deposed that the birth was recorded contemporaneously, and information was given to the Kotwar, Anganwadi Centre and the Community Health Centre. He stated that he has only two children, the prosecutrix being the elder child, followed by a younger son. His testimony remained intact in cross-examination and no material contradiction could be elicited to discredit his version.

22 The mother of the prosecutrix has fully corroborated the testimony of the father by stating that the date of birth of the prosecutrix is 27.06.2006, and that she was born in the village. She also affirmed that the prosecutrix has one younger brother. Her evidence is consistent with the documentary record and has remained unshaken in cross-examination.

23 The prosecutrix herself, in her examination-in-chief before the Court, has stated that her date of birth is 27.06.2006 and that she has one younger brother. There is nothing in her cross-examination to create any doubt regarding her age or date of birth.

24 The prosecution has further produced the Dakhil-Kharij Register of the school, which was seized and exhibited as Ex.P/14, and marked as Article A-1. The school teacher, Ramshwar Lal Yadav (PW-6), has proved the said register and stated that the date of birth of the prosecutrix recorded therein is 27.06.2006. The Investigating Officer, Omprakash Dhruv (PW-15), has also proved the seizure of the said register. The birth certificate and school records produced by the prosecution uniformly reflect the same date of birth.

25 The defence examined the Kotwar and Statistical Officer and produced the Kotwari Register and Birth-Death Register, which also record the date of birth of the prosecutrix as 27.06.2006. Though a minor variation in the name of the prosecutrix appears

in one of the Kotwari entries, the date of birth remains consistent across all documents. It is a matter of common knowledge that at the time of initial registration, a child's name may be recorded as a calling name, and the final name is assigned later at the time of school admission. The birth-death register produced by the Statistical Officer records the correct name and date of birth of the prosecutrix. Therefore, no adverse inference can be drawn merely on account of a minor variation in the name.

26 Upon a cumulative appreciation of the oral and documentary evidence, it is clear that the date of birth of the prosecutrix as 27.06.2006 stands proved beyond doubt. The evidence on record is consistent, reliable and legally admissible. Accordingly, this Court holds that on the date of the incident, the prosecutrix was a minor and below 18 years of age.

27 Very recently, the Hon'ble Supreme Court in the matter of **Birka Shiva v. State of Telangana, 2025 SCC OnLine SC 1454** has observed as under:

"8. The evidentiary value of such an entry made in public or official registers may be admissible in evidence under Section 35 of the Indian Evidence Act, 1872. However, admissibility is distinct from probative value. While such documents may be admitted into evidence, their evidentiary weight depends on proof of their authenticity and the source of the underlying information. Mere production and marking of a document as exhibited by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the 'evidence of those persons who can vouchsafe for Hereinafter referred to as the

*'Evidence Act' the truth of the facts in issue'. [See: *Narbada Devi Gupta v. Birendra Kumar Jaiswal*] We may refer to a few judicial pronouncements of this Court in this regard:*

8.1. *This Court, in *Birad Mal Singhvi v. Anand Purohit*, held that the entries contained in the school register are relevant and admissible but have no probative value unless the person who made the entry or provided the date of birth is examined. It was observed:*

"14. ... If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value.

... The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value, but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. ...

15. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. 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 the 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. ... The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined..."

(Emphasis Supplied)

This decision has been consistently followed by this Court in Pratap Singh v. State of Jharkhand; Babloo Pasi v. State of Jharkhand; Murugan v. State of T.N.; State of M.P. v. Munna; C. Doddanarayana Reddy v. C. Jayarama Reddy; and Manak Chand v. State of Haryana.

8.2. A coordinate Bench of this Court in State of Chhattisgarh v. Lekhram, through S.B. Sinha, J., clarified that though entries in school registers are admissible under Section 35 of the Evidence Act, their evidentiary value improves only when corroborated by oral testimony of persons who are aware of its content, such as parents or the person who made the entry at the time of admission. It held as under:

"12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.

13. ...The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."

8.3. Similarly, this Court in Satpal Singh v. State of Haryana, stated that though a document may be

admissible, but to determine whether the entry contained therein has any probative value, may still be required to be examined in the facts and circumstances of a particular case. It held as follows:

“26. In *Vishnu v. State of Maharashtra* [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217] while dealing with a similar issue, this Court observed that very often parents furnish incorrect date of birth to the school authorities to make up the age in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded.

x x x

28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. Thus, entry in school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.”

8.4. In *Madan Mohan Singh v. Rajni Kant*, this Court held that the entries made in the official record 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. It was held as follows :

“20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they 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.

21. ... For determining the age of a person, the best evidence is of his/her parents, if it is supported by unimpeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeachable evidence of reliable persons and contemporaneous documents like the date of birth register of the Municipal Corporation, government hospital/nursing home, etc., the entry in the school register is to be discarded. ...”

*8.5. This Court, in *Alamelu v. State*, while dealing with a similar factual matrix, held that the prosecution had failed to prove that the girl was a minor at the relevant date since the transfer certificate of a Government School showing age was not duly proved by witnesses. It observed as under:*

“40. Undoubtedly, the transfer certificate, Ext. P-16 indicates that the girl's date of birth was 15-6-1977. 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. 31-7-1993. 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 Evidence Act, 1872. 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. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined.

41. We may notice here that PW 1 was examined in the Court on 9-8-1999. In his evidence, he made no reference to the transfer certificate (Ext. P-16). He did not mention the girl's age or date of

birth. PW 2 was also examined on 9-8-1999. She had also made no reference either to her age or to the transfer certificate. It appears from the record that a petition was filed by the complainant under Section 311 CrPC seeking permission to produce the transfer certificate and to recall PW 2. This petition was allowed. ... In her cross-examination, she had merely stated that she had signed on the transfer certificate, Ext. P-16 issued by the school and accordingly her date of birth was noticed as 15-6- 1977. She also stated that the certificate has been signed by the father as well as the Headmaster. But the Headmaster has not been examined. Therefore, in our opinion, there was no reliable evidence to vouchsafe for the truth of the facts stated in the transfer certificate.”

(Emphasis supplied)

9. In the attending facts, we find that the evidentiary value of Ex.P11 is significantly undermined in the absence of corroborating material. We say so for the following reasons:

(i) PW-13, who is the Headmaster of Zilla Parishad High School, Chandanapur, Peddapalli District (erstwhile Karimnagar District), stated that the victim studied in his school from 2007 to 2013, i.e., 6th Class to 10th Class and that the Admission Register records her date of birth as 3rd November 1996. However, in his cross-examination, he admitted that he had no personal knowledge as to the source or basis on which the date of birth was recorded therein or if the recorded date of birth was correct or not. The relevant part of his testimony is extracted hereunder:

“...In our school there is not clerk to maintain records. I did not produce any certificate pertaining to earlier school I, in which P.W.3 studies up to 5th Class. There must be basis for entering date of birth of a student in our school such as her earlier school record. I do not have personal knowledge as to what record was produced by parents of P.W. 3 as basis to enter her date of birth in our school as I was not Head Master in 2007.

I cannot say in which school P.W.3 studied up to 5th Class. In the nominal roll register of our school, the signature of P.W.3 was obtained. I do not have personal knowledge whether the said date of birth of

P.W.3 was correct or not and I am giving evidence only on the basis of record."

(Emphasis Supplied)

(ii) The prosecution has failed to examine the person who had made the entry in the Admission Register to ascertain on what basis such an entry was made. More so, the entry in respect of the date of birth of the victim in the primary school register, i.e., 1st Class to 5th Class, has not been produced and proved before the Courts below to verify the age as per its records. It is also not possible to ascertain from the records as to whether the date of birth was provided by the parents or simply entered at the behest of another party, without verification, at the time of admission to Zilla Parishad High School.

(iii) The testimonies of PW-1, PW-2 and PW-3 are also telling that none of them mentioned the victim's age with specificity. There is no reference to Ex.P11, and no attempt was made by the prosecution to adduce corroborative testimony regarding the victim's date of birth from her family members.

Thus, while examining the issue at hand, on the anvil of the principles elucidated above, it is essential to notice that the prosecution has failed to toe the line of legal requisites. There is nothing on record to corroborate the date of birth of the victim as recorded in the birth certificate (Ex.P11) issued by the school. Therefore, it cannot be relied upon to definitely determine the age of the victim and held with certainty that the victim was below sixteen/eighteen years of age.

11. *Furthermore, none of the victim's family members, i.e., her mother and brothers have said anything about the age of the victim in their depositions made in the Court. Even the victim is effectively silent on this aspect, only stating that she and her siblings were born approximately two years apart and thereby making an estimation of their ages as well as her own. Throughout her deposition, the victim has remained silent with regard to her particular date of birth.*

12. *Well, suffice it to say that Courts of law cannot make a determination of guilt in thin air, based on estimations. In the present facts and circumstances, the proof submitted by the prosecution in the form of*

Ex.P11 (birth certificate issued by the school) was not sufficient to arrive at a finding that the prosecutrix was less than sixteen/eighteen years of age, especially when such a document was not sufficiently corroborated. Therefore, it was neither safe nor fair to convict the appellant based on it, particularly in the context where the age of the victim was such a pivotal factor. "

28 Reverting to the facts of the present case in the light of the aforesaid legal position, it is evident that the father of the prosecutrix, the prosecutrix herself and the mother of the prosecutrix have categorically and consistently stated the date of birth of the prosecutrix as 27.06.2006. Their testimonies are corroborated by the contemporaneous documentary evidence, namely the birth certificate, school admission records and the Dakhil-Kharij Register (Ex.P/14), which was duly proved by the school teacher as well as by the Investigating Officer. Unlike cases where the witnesses are unable to disclose the basis of recording the date of birth, in the present case, the date of birth of the prosecutrix is uniformly reflected across all relevant records without any discrepancy.

29 In addition to the oral testimonies, the prosecution has produced cogent documentary evidence, including the Kotwari Register and the Birth-Death Register, which have also been proved through defence witnesses and support the prosecution case by recording the same date of birth of the prosecutrix as 27.06.2006. A minor variation in the name of the prosecutrix in one of the Kotwari entries does not create any doubt regarding her age, particularly

when the date of birth remains identical in all records. It is well recognized that at the time of initial registration, a child's name may be entered as a calling name and finalized later at the time of school admission. The evidence adduced with regard to the age of the prosecutrix is thus consistent, clinching and of sterling quality, leaving no room for doubt. Accordingly, the finding of the learned trial Court holding that the prosecutrix was a minor on the date of the incident is well-founded and calls for no interference.

30 The next question for consideration would be whether the appellant has committed rape upon her or not ?

31 Very recently, in the matter of ***Tilku Alias Tilak Singh v. The State Of Uttarakhand, 2025 INSC 226***, the Supreme Court while dealing with the case of ***S. Varadarajan Vs. State of Madras, AIR 1965 SC 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 enticing 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."

32 Upon an exhaustive re-appreciation of the entire evidence on record, this Court finds that the prosecution case, far from establishing forcible abduction or sexual assault, itself discloses that the relationship between the prosecutrix and the appellant was one of mutual affection and voluntary companionship.

33 The prosecutrix (PW-1), in her police statement, has unequivocally stated that the appellant was her neighbour, that they used to interact frequently, and that such interaction gradually developed into a love affair. She further admitted that her parents became aware of their relationship and had admonished both of them. This admission strikes at the very root of the prosecution theory of kidnapping by deceit or coercion.

34 It is further borne out from the evidence of the prosecutrix that prior to leaving the village, the appellant allegedly took her to

Rajmata Rajeshwar Temple and applied vermillion in her hair, which she claims to be an act of marriage. Significantly, she admitted that she consciously chose not to disclose this alleged marriage to her parents or any other family member. Such conduct is wholly inconsistent with the version of a helpless minor being forcibly taken away from her lawful guardianship. Rather, it reflects deliberate concealment and voluntary conduct on her part.

- 35 On 27.04.2022, as per the prosecutrix's own version, it was on a telephonic conversation that she went to meet the appellant, from where they jointly travelled first to village Kumhadatola, then to Chichola, and thereafter boarded a bus to Hyderabad. At no stage has the prosecutrix alleged that force, threat, inducement or deceit was used while undertaking this journey. The entire narration demonstrates conscious participation and free movement, negating the essential ingredients of Section 363 IPC.
- 36 The conduct of the prosecutrix after reaching Hyderabad is even more telling. She admitted in her cross-examination that she lived with the appellant peacefully and happily for about one and a half months. During this period, the appellant worked as a labourer and both resided together without restraint. There is no allegation that she was confined, prevented from communicating with others, or subjected to any form of intimidation. This prolonged period of cohabitation, devoid of complaint or resistance,

decisively rules out the offence of abduction with intent contemplated under Section 366 IPC.

- 37 The allegation of sexual intercourse is also riddled with material inconsistencies. In one breath, the prosecutrix alleges marriage followed by physical relations; in another, she states before the Court that no marriage took place and that physical relations were established thereafter. These contradictions are not minor discrepancies but go to the very foundation of the prosecution case. The shifting stand casts a serious doubt on the veracity and reliability of her testimony.
- 38 The medical and scientific evidence does not lend the required corroboration to the prosecution story. Though vaginal slides were seized and allegedly showed presence of human spermatozoa, the medical examination records no injuries whatsoever suggestive of forcible sexual intercourse. No signs of struggle, resistance, or violence were noticed. More significantly, the prosecution failed to subject the seized articles to chemical examination to establish any nexus with the appellant. Such lapses cannot be ignored when the conviction is based on serious penal consequences.
- 39 The testimony of the Investigating Officer further exposes grave infirmities in the prosecution case. He admitted that no Anganwadi records or Kotwari documents relating to birth were seized. He also admitted that no documentary proof regarding the Hyderabad

police operation, travel or lodging was brought on record. These omissions assume importance, particularly when the prosecution relies heavily on circumstantial evidence and the sole testimony of the prosecutrix.

- 40** Even with regard to age, though the prosecution attempted to project the prosecutrix as a minor, the manner in which the evidence was collected and proved leaves room for serious doubt. In criminal jurisprudence, especially in cases under POCSO, the burden lies squarely on the prosecution to prove minority strictly in accordance with law. Any ambiguity must necessarily go in favour of the accused. The learned trial Court failed to appreciate this settled principle.
- 41** It is trite law that while conviction for sexual offences can be based on the sole testimony of the prosecutrix, such testimony must be of sterling quality, consistent, and free from material contradictions. Where the conduct of the prosecutrix, her admissions in cross-examination, delay, inconsistencies and lack of corroborative medical evidence cumulatively generate doubt, the accused cannot be convicted on surmises or moral presumptions.
- 42** The prosecutrix in the present case neither raised any alarm nor disclosed the alleged offences to anyone during her stay with the appellant. She admittedly accompanied him willingly and resided

with him peacefully. These circumstances are fundamentally incompatible with the prosecution theory of rape or kidnapping.

- 43** The learned trial Court, while recording conviction, has failed to properly appreciate the distinction between a consensual elopement arising out of a love relationship and a forcible abduction or sexual assault. Emotional considerations appear to have overshadowed judicial scrutiny, resulting in a grave miscarriage of justice.
- 44** Criminal courts are required to base their findings on proof beyond reasonable doubt and not on conjectures, assumptions or sympathetic considerations. When two views are possible on the evidence on record, the view favourable to the accused must prevail.
- 45** In the present case, the prosecution has failed to establish the essential ingredients of offences under Sections 363, 366 and 376 IPC as also Section 6 of the POCSO Act, beyond reasonable doubt. The evidence on record unmistakably points towards a consensual relationship and voluntary cohabitation.
- 46** For the foregoing discussions, this Court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt against the appellant for committing the aforesaid crime and as such, the appellant is entitled for acquittal by giving him benefit of doubt.

47 In the result, the appeal is **allowed**. The impugned judgment of conviction and order of sentence dated 20.12.2023 is set aside. The appellant is acquitted from all the charges leveled against him. The appellant is in jail since 12.06.2022. He be released forthwith, if not required in any other case.

48 Keeping in view the provisions of Section 437-A Cr.P.C. (now Section 481 of the Bhartiya Nagarik Suraksha Sanhita, 2023), the appellant is directed to forthwith furnish a personal bond in terms of Form No.45 prescribed in the Code of Criminal Procedure of sum of Rs.25,000/- with one surety in the like amount before the 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 Hon'ble Supreme Court.

49 The trial Court record along with the copy of this judgment be sent back immediately to the trial Court concerned for compliance and necessary action.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Anu