



2026:CGHC:8243

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 400 of 2005**

**Reserved on 28.01.2026**

**Delivered on 16.02.2026**

Ramadhar Baghel, S/o. Santlal Baghel, Aged about 26 years, R/o. Village Kasara, P.S. Patana, Present Address Narkeli, P.S. Baikunthpur, District Korla (CG)

**... Appellant(s)**

**versus**

State Of Chhattisgarh through Police Station Baikunthpur, District Korla (CG)

**... Respondent(s)**

For Appellant (s)	:	Mr. Rahul Mishra, Advocate
For Respondent(s)	:	Mr. Suresh Tandon, Panel Lawyer

**Hon'ble Shri Justice Narendra Kumar Vyas**

**CAV Judgment**

1. This criminal appeal under Section 374 (4) of Cr.P.C. has been filed against the judgment dated 14.03.2005 passed by Special Judge, Ambikapur District Surguja in Special Sessions Trial No. 90 of 2003, by which the appellant has been convicted for offence under Sections 366 and 376 of IPC and has been sentenced to undergo rigorous imprisonment for three years with fine of Rs. 500/- under Section 366 IPC, Rigorous

imprisonment for seven years with fine of Rs. 500/- under Section 376 IPC with default stipulations.

2. Facts of the case, in brief, are that, victim's father has lodged missing report on 25.05..2003 alleging that the appellant allured her minor girl and took her to other village and committed rape upon her. It is alleged that the victim belongs to Scheduled Tribe, therefore, FIR (Ex.P-1) was registered at Police Station AJAK, Ambikapur bearing Crime No. 27 of 2003 for the offence under Section 363,366, 376 IPC and 3(1)(xii) of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. After completion of the investigation, charge sheet was filed before the Court of Chief Judicial Magistrate, Baikunthpur, who in turn committed the case to the Court of Special Judge, Atrocities, Ambikapur which was registered as Special Sessions Case No. 90 of 2003.
3. After hearing the parties, learned Special Judge on the basis of material on record and upon considering the statements of the witnesses has passed the judgment of conviction and order of sentence against the appellant as mentioned in above. Record of the case demonstrates that the accused remained in jail from 26.05.2003 to 14.03.2005 and he has been released by this Court on 08.08.2005. Being aggrieved with the judgment of conviction and order of sentence, the appellant has filed this appeal.
4. The prosecution in order to prove the guilt of the appellant examined 12 witnesses, Jugguram (PW-1), victim (PW-2), Dr. Smt. Shekh F. S. Ansari (PW-3), Smt. Shyambai (PW-4), Dr. Ashok Kumar (PW-4), Kairuram (PW-5), Puran (PW-6), Robinjulyas Khalkho (PW-8), C.S.P. Shankar Ram Baghel (Ex.P-9), Dr. Nilam Tirkey (Ex.P-10), Dr. A.K. Karan (PW-11),

Inspector V.K. Tiwari (PW-12) and exhibited the documents FIR (Ex. P-1), property seizure memo (Ex.P-2), property seizure memo (Ex.P-3), X-ray Plate (Ex.P-4), doctor advise (Ex.P-5), Report of doctor (Ex.P-6), Seizure memo (Ex.P-7), caste certificate (Ex.P-8), MLC of victim (Ex.P-9), MLC of appellant (Ex.P-10), application for medical examination of victim (Ex.P-11), application for medical examination of appellant (Ex.P-12), arrest memo (Ex.P-13), FSL report (Ex.P-14). The appellant examined Khusiram Sidhar (DW-1) in his support. Statement of the accused/appellant was recorded under Section 313 CRPC in which he denied the allegation made against him, pleaded his innocence and false implication in the case. The appellant has stated that at the time of incident, three girls eloped by other three persons and all the girls were doing labour work in tractor, as such the victim to save herself has made false allegation on him. He has also stated that all the girls unanimously eloped from the house and two cases have already been decided by the Court. Appellant also stated that he belongs to Scheduled Caste Community and annexed his caste certificate issued by Tahsildar.

5. Counsel for the appellant would submit that from the evidence brought on record particularly statement of the victim which does not inspire confidence of the case of the prosecution as the victim in so many words has stated that she is consenting party and the prosecution has not placed any document to prove age of the victim, even Ex.P-10 age of the victim has been shown as 17 years and radiology report is not conclusive proof of age in view of the well settled legal position of law that there is always margin of + 2 and – 2 years, as such there is serious doubt about the age of the victim and the prosecution has not cleared the

doubt regarding the age of the victim which goes in favour of the accused and would pray for allowing the appeal.

6. On the other hand, learned counsel for the State supporting the impugned judgment would submit that age the time of incident the victim was 15 years old and in the offence of rape the statement of the victim is sufficient to prove the guilt of the appellant, as such the victim in clear terms has deposed the manner in which the appellant committed the offence. He would further submit that it is trite law that the conviction can very well be recorded on the basis of sole testimony of the victim provided such testimony inspires confidence and in the present case the statement of the victim inspires confidence and would pray for dismissal of the appeal.
7. I have heard learned counsel for the parties and perused the records.
8. Considering the submissions made by the parties, the point emerged for determination by this Court is whether the finding of conviction recorded by the Special Judge is just and proper and same is not liable to be interfered by this Court?.
9. To appreciate this point, it is expedient for this Court to examine the statement of the victim (PW-2) wherein she in examination-in-chief has stated that the accused took her to village Bhainsmuda where he kept her and thereafter they went to Ambikapur from village Bhainsmuda where they stayed for three weeks. She has further stated that the appellant committed forceful rape on her. She has also stated that when the family members have come there then she lodged the report against the appellant. This witness has also stated that the appellant enticed her with intent to marry her. The witness was cross-examined, wherein she has stated that the place

of occurrence is market place where lot of crowd of villagers were present and she has not informed this fact anybody who were moving near to her. She has voluntarily stated that accused has given threat to kill her, therefore, she has not narrated the incident to anybody and she has not made hue and cry regarding the incident. She has further stated that she did not inform the incident at village Bhainsmuda and due to pressure or threat. She has also stated that in Ambikapur where she was resided with the appellant there were so many houses and she resided there in the rented house with the appellant where the owner of the house resided with his family and she has also not informed about the incident to the owner of the house. She remained in the rented house and take food from house owner but she did not also inform him anything about the incident. She used to go there but did not make any shout for help and she only informed the incident to the wife of the house owner and whenever the appellant went to earn livelihood she prepared food for him but she did not inform the incident to anybody. She has also admitted that they were living as husband and wife in the rented house and she was living daily routine life with the appellant and she did not make effort to escape from the hands of the appellant. She has also admitted that two girls were eloped with two other boys at the time of incident and she was 15 years of age at the time of incident.

10. Dr. Smt. Shekh F. S. Ansari (PW-3) has done x-ray of the victim vide application (Ex.P-4).
11. The x-ray report has been given by Dr. A.K. Karan (PW-11) and has given his report (Ex.P-10) wherein he has given opinion that radiological age of above mentioned person is about 17 year. He has further stated that

according to his opinion, the age of the victim may be 17 years and also admitted in the cross examination that as per point No. 2 of his report, the age of the victim may be 18-19 years and there may be increased of two years of age which will be 17 to 19 years. He has also admitted that as per the radiological report, no definite opinion of age can be given.

12. Dr. Nirmala Tirkey (PW-10) she has stated in her report (Ex.P-9) that she has not seen external or internal injury on the private part of the victim. No evidence of forceful sexual intercourse was found. She is habitual sexual intercourse. FSL Report (Ex.P-14) wherein it is mentioned that Article A is petticoat, Article B- slide and Article -C is underwear of appellant and in the article A, B and C human sperms were not found on clothes.

13. From the evidence brought on record by the prosecution, it is quite vivid that the prosecution is not succeeded in proving that the victim was minor on the date of alleged occurrence. The prosecution has not placed any evidence to prove the age of the victim by placing relevant school records but has placed on record the radiology report which may not be an accurate determination and sufficient margin either way has to be followed. The issue with regard to age determination by radiology report is subject to examination before the Hon'ble Supreme Court in the case reported in **2018 (9) SCC 248 in the case of Rajak Mohammad vs. State of Himanchal Pradesh** wherein the Hon'ble Supreme Court has held in para 9 to 11 as under:-

9. While it is correct that the age determined on the basis of a radiological examination may not an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

10. We will, therefore, have to hold 6 that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that

the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.

11. We will, therefore, have to conclude that the appellant/ accused deserves to be acquitted on the benefit of doubt. We, consequently, set aside the order of the High Court and the conviction recorded as well as the sentence imposed and acquit the accused appellant of the offences alleged. We further direct that the accused appellant be released from custody forthwith unless his custody is required in connection with any other case.

14. From the evidence of the victim wherein she categorically stated that she remained with the appellant at Ambikapur about three weeks and they were living as husband and wife. She has not narrated the incident to his house owner, she met the villagers in the market but she also did not disclose the fact to anybody. Further from the evidence of victim coupled with the fact that the age of the victim has not been proved, as such possibility of victim being a consenting party cannot be altogether ruled out as held by the Hon'ble Supreme court in the cases of **State of H.P. vs. Mango Ram {(2000) 7 SCC 224}**, **Uday vs. State of Karnataka {(2003) 4 SCC 46}**, **Deelip Singh @ Dilip Kumar vs. State of Bihar {(2005) 1 SCC 88}**.
15. Under such circumstances, the victim appears to be a consenting party and therefore, no offence punishable under Sections 366 and 376 of IPC is made out against the appellant. The learned Special Judge has erred in convicting the appellant for such offences. Accordingly, the appeal filed by the appellant deserves to be allowed, accordingly, it is allowed. The conviction as well as the sentence directed by the Special Judge for the said offences is hereby set aside. The appellant is acquitted from all the charges levelled against him. He would be entitled to get the fine amount back, if he has deposited the same before the trial Court.

16. At present, the appellant is on bail. His presence is no more required before this Court and therefore, it is hereby directed that his bail bonds shall stand discharged. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-

**(Narendra Kumar Vyas)**  
**Judge**

santosh