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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1434 of 2022

Laxman Jangde S/o Deendayal Jangde Aged About 25 Years R/o Near Mashanghat, In Front Of Community Building, Ward No. 14, Ramnagar, Bhilai, District - Durg, Chhattisgarh

... Appellant

versus

State Of Chhattisgarh Through The Station House Officer, Police Station - Vaishali Nagar, District - Durg, Chhattisgarh

... Respondent(s)

For Appellant : Mr.Karunendra Narayan Singh, Advocate
appears as Amicus Curiae

For Respondent : Mr.Sakib Ahmed, Panel Lawyer

Hon'ble Shri Justice Ramesh Sinha, Chief Justice

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Judgment on Board

Per Ramesh Sinha, CJ

28/01/2025

1. This criminal appeal arises out of the judgment of conviction and order of sentence dated 30.07.2022 passed by the Additional Sessions Judge, Fourth F.T.S.C., Durg in Special Criminal Case (Pocso) Case No.76/2020, whereby the appellant has been

convicted for offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter called as 'POSCO') and sentenced to undergo RI for 20 years and fine of Rs.50,000/-, in default of payment of fine to further undergo RI for one year.

2. The prosecution story, in brief, is that the complainant (PW-2) has lodged an oral report on 16.03.2020 at Vaishali Nagar Police Station to the effect that she does the work of sweeping and mopping, her husband works as a mechanic. She has two children, elder daughter / victim, aged 7 years, who studies in class 1. There is no TV in the house, so the victim often goes to the house of accused Laxman in the neighbourhood to watch TV. Today her daughter, when she came back from work at 5 P.M., said, "Mummy, she is having pain here" and pointed towards her urination spot, then she touched all sides of the victim's body and the victim told that Laxman Bhaiya was touching her place of urination with his hand and he had opened his pant and was touching her place of urination, then she told that she bit Bhaiya's hand and ran away and came home, then the complainant informed her husband and brought the victim to lodge a report. On the said report of the complainant, FIR (Ex.P-1) was registered against the appellant in Police Station Vaishali Nagar under Crime No.65/2020 for offence under Section 354, 376 and 511 of the IPC and Section 14(4) of the POCSO Act and the case was taken up for investigation.

3. During the investigation, the statement of the victim and her parents were recorded. Spot map was prepared by the investigating officer vide Ex.P-2. Patwari also prepared spot map vide Ex.P-3. Statement of mother of the victim under Section 164 CrPC was recorded vide Ex.P-7. For getting the medical examination of the victim done, consent of parents of the victim was obtained and medical examination form (Ex.P-9) was prepared. Two vagina slides were seized in a sealed packet as per seizure memo (Ex.P-11) when they were brought from the hospital by lady constable Madhubala. When the father of the victim presented the birth certificate of the victim, same was seized as per seizure memo (Ex.P-5) in front of witnesses. The accused was arrested on 17.03.2020 as per arrest memo (Ex.P-13). MLC of the appellant was conducted vide Ex.P-15 in which he was found capable for sexual intercourse. The statement of the victim under Section 164 CrPC was recorded vide Ex.D-01. Birth certificate of the victim was seized vide Article A 'C'
4. After completion of investigation, charge-sheet was filed before the Additional Sessions Judge Fourth F.T.S.C., Durg for trial in accordance with law.
5. In order to establish the charge against the appellant, the prosecution examined as many as 6 witnesses and exhibited the documents (Exs.P-1 to P-22). The statement of the appellant under Section 313 of CrPC was also recorded in which he denied

the material appearing against him and stated that he is innocent and he has been falsely implicated in the case. After appreciation of evidence available on record, the learned trial Court has convicted the accused/appellant and sentenced him as mentioned in para 1 of the judgment. Hence, this appeal.

6. Learned Amicus Curiae appearing for the appellant submits that learned trial Court has failed to appreciate that the evidence of the victim is not believable as there is material contradiction and omission in her evidence. Learned trial Court has failed to appreciate that earlier the victim girl used to visit the house of the appellant for watching TV and on the date of incident, the appellant slapped her and she has narrated the said incident to her mother, due to which, the mother of the victim has lodged false and fabricated report against the appellant. He further submits that learned trial Court has failed to appreciate that the medical report has not supported the case of the prosecution. If the entire case of the prosecution is taken as it is, then also the alleged offences are not made out against the appellant. The prosecution has not adduced any cogent and reliable evidence to prove the guilt against the appellant. As such, the criminal appeal deserves to be allowed and the impugned judgment deserves to be set aside.
7. On the other hand, learned counsel for the State opposes the submissions made by the learned counsel for the appellant and

submits that the prosecution has proved its case beyond reasonable doubt and the victim (PW-1) has clearly deposed 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.

8. We have heard the learned counsel for the parties and perused the record with utmost circumspection.
9. The issue that arises for consideration in the present appeal is whether the testimony of the victim/prosecutrix deserves acceptance and whether the prosecution has established the case of the appellant beyond reasonable doubt.
10. It is pertinent to observe that the question whether conviction of the accused can be based on the sole testimony of the victim in cases of sexual assault/rape is no longer *res integra*. The Hon'ble Supreme Court has dealt with the issue in a catena of judgments and has held that the sole testimony of the prosecutrix if found reliable can be the sole ground for convicting the accused and that the creditworthy testimony of the victim in cases of such nature deserves acceptance.
11. Insofar as, age of the victim on the date of the commission of the offence is concerned, she was admittedly 7 years and 7 months old at the time of the unsavory incident, which has been proved by

birth certificate of the victim (Article A 'C') in which her date of birth has been mentioned as 25.07.2012.

- 12.** Further, upon perusal of the testimony made by the victim in her statement recorded under Section 164 CrPC, it is observed that Laxman called her to his house at night and said that he will show her cartoons. Then she went to his house. He made her sit next to him and started pressing her bathroom area hard. Then she screamed. Then he started opening the zipper of his pant. After that she bit his hand and ran away from there and came to her house crying and slept.
- 13.** The prosecutrix has been examined as (PW-1). In para 1 of her statement, she has stated that she had gone to Laxman Bhaiya's house to watch TV. She had gone to watch cartoons on TV. She had gone to watch Motu Patlu cartoon. After that, Laxman said to sit on his lap. Then he started teasing her. After that, she bit hand with her teeth and ran away. In para 2, she has stated that Laxman Bhaiya was touching her urine place. After that she bit him and ran away, she went home and told her mother. The accused was taking off his pant before touching her urine place. In para 5, she has stated that when Laxman Bhaiya molested her, there was no one else there except her and Laxman Bhaiya.
- 14.** Mother of the victim (PW-2) has stated in para 1 of her evidence that the victim is her daughter, whose date of birth is 25th July. She does not remember the year of birth of the victim properly. Her

daughter, the victim, is currently 10 years old. Her daughter had gone to the house of the accused to watch TV, when the accused made the victim sit next to him and started doing dirty things with her, molesting her with his hands. The accused took off his pant and was holding the victim with one hand, the accused was about to take off his underwear, when the victim bit the accused's hand with her teeth and ran away. In para 2 of her evidence, she has stated that the victim came to her crying from the accused's house told her that Laxman Bhaiya forcibly made her sit on his lap and did dirty things with his hands and was touching the victim's urination area and was taking off his pant and underwear. After that, she went to Vaishali Nagar Police Station and lodged the FIR.

15. The Supreme Court in the matter of **Rai Sandeep @ Deenu v. State of NCT of Delhi, 2012 (8) SCC 21** held as under:-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately

before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

16. In the matter of Alakh Alok Srivastava v. Union of India & Ors.,

(2018) 17 SCC 291, in paras 14 and 20, it is observed as under:

“14. At the very outset, it has to be stated with authority that the Pocso Act is a gender legislation. This Act has been divided into various chapters and parts therein. Chapter II of the Act titled “Sexual Offences Against Children” is segregated into five parts. Part A of the said Chapter contains two sections, namely, Section 3 and Section 4. Section 3 defines the offence of “Penetrative Sexual Assault” whereas Section 4 lays down the punishment for the said offence. Likewise, Part B of the said Chapter titled “Aggravated Penetrative Sexual Assault and Punishment therefor” contains two sections, namely, Section 5 and Section 6. The various subsections of Section 5 copiously deal with various situations, circumstances and categories of persons where the offence of penetrative sexual assault would take the character of the offence of aggravated penetrative sexual assault. Section 5(k), in particular, while laying emphasis on the mental stability of a child stipulates that where an offender commits penetrative sexual assault on a child, by taking advantage of the child's mental or physical disability, it shall amount to an offence of aggravated penetrative sexual assault.”

“20. Speaking about the child, a three Judge Bench in M.C. Mehta v. State of T.N. (1996) 6 SCC 756 “1. ... “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching

age, he is found to be a man with a mission, a man who matters so far as the society is concerned.”

17. The Supreme Court in the matter of **Nawabuddin v. State of Uttarakhand** (CRIMINAL APPEAL NO.144 OF 2022), decided on 8.2.2022 has held as under:-

“10. Keeping in mind the aforesaid objects and to achieve what has been provided under Article 15 and 39 of the Constitution to protect children from the offences of sexual assault, sexual harassment, the POCSO Act, 2012 has been enacted. Any act of sexual assault or sexual harassment to the children should be viewed very seriously and all such offences of sexual assault, sexual harassment on the children have to be dealt with in a stringent manner and no leniency should be shown to a person who has committed the offence under the POCSO Act. By awarding a suitable punishment commensurate with the act of sexual assault, sexual harassment, a message must be conveyed to the society at large that, if anybody commits any offence under the POCSO Act of sexual assault, sexual harassment or use of children for pornographic purposes they shall be punished suitably and no leniency shall be shown to them. Cases of sexual assault or sexual harassment on the children are instances of perverse lust for sex where even innocent children are not spared in pursuit of such debased sexual pleasure.

Children are precious human resources of our country; they are the country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are

different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of **State of Rajasthan v. Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena v. Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.”

18. When considering the evidence of a victim subjected to a sexual offence, the Court does not necessarily demand an almost accurate account of the incident. Instead, the emphasis is on allowing the victim to provide her version based on her

recollection of events, to the extent reasonably possible for her to recollect. If the Court deems such evidence credible and free from doubt, there is hardly any insistence on corroboration of that version. In **State of H.P. v. Shree Kant Shekar (2004) 8 SCC 153** the Hon'ble Supreme Court held as follows:

“21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”

19. On these lines, the Hon'ble Supreme Court in **Shivasharanappa and Others v. State of Karnataka, (2013) 5 SCC 705** observed as follows:

“17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say as a rule of prudence, the

court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable.”

20. The Supreme court in the matter of **State of UP v. Sonu Kushwaha, (2023) 7 SCC 475** has held as under :

“12. The POCSO Act was enacted to provide more stringent punishments for the offences of child abuse of various kinds and that is why minimum punishments have been prescribed in Sections 4, 6, 8 and 10 of the POCSO Act for various categories of sexual assaults on children. Hence, Section 6, on its plain language, leaves no discretion to the Court and there is no option but to impose the minimum sentence as done by the Trial Court. When a penal provision uses the phraseology “shall not be less than....”, the Courts cannot do offence to the Section and impose a lesser sentence. The Courts are powerless to do that unless there is a specific statutory provision enabling the Court to impose a lesser sentence. However, we find no such provision in the POCSO Act. Therefore, notwithstanding the fact that the respondent may have moved ahead in life after undergoing the sentence as modified by the High Court, there is no question of showing any leniency to him. Apart from the fact that

the law provides for a minimum sentence, the crime committed by the respondent is very gruesome which calls for very stringent punishment. The impact of the obnoxious act on the mind of the victim/child will be lifelong. The impact is bound to adversely affect the healthy growth of the victim. There is no dispute that the age of the victim was less than twelve years at the time of the incident. Therefore, we have no option but to set aside the impugned judgment of the High Court and restore the judgment of the Trial Court.”

21. Considering the statement of the victim (PW-1), who has specifically stated the act of the present appellant, statement of her mother (PW-2), further considering the statement of the prosecutrix recorded under Section 164 CrPC (Ex.D-1), further considering the birth certificate of the victim in which her date of birth has been mentioned as 25.07.2012 (Article A 'C'), the material available on record and the principle of law laid down by the Supreme Court in the above-stated judgments, we are of the considered opinion that the learned Special Judge has rightly convicted the appellant for offence under Section 6 of the POCSO Act. We do not find any illegality and irregularity in the findings recorded by the trial Court.

22. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellants. The conviction and sentence as awarded by the Special Judge to the appellants is

hereby upheld. The present criminal appeal lacks merit and is accordingly **dismissed**.

- 23.** It is stated at the Bar that the appellant is in jail. He shall serve out the sentence as ordered by the trial Court.
- 24.** The Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.
- 25.** Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail term, to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court with the assistance of the High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice