



2025:CGHC:46127-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPURCRA No. 321 of 2024Juvenile Conflicted With Law (*sic*)**Child in conflict with law [S.2(13) of JJ Act]**

... Appellant

versus

State Of Chhattisgarh Through Station House Officer, Police Station Ambikapur, District Surguja Chhattisgarh.

... Respondent

For Appellant : Mr. Nirupama Bajpai, AdvocateFor Respondent/State : Ms. Saumya Sharma, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice**Hon'ble Shri Bibhu Datta Guru, Judge****Judgment on Board****Per Bibhu Datta Guru, J****10/09/2025**

1. This appeal is directed against the judgment of conviction and order of sentence dated 16.10.2023 passed by the Juvenile Justice Board/ learned Additional Sessions Judge, Fast Track Special Court (POCSO Act), Ambikapur District Surguja, C.G. in Special Criminal Case No.60/2018

whereby the appellant/ child in conflict with law (henceforth 'the CCL') has been convicted and sentenced as under:-

<u>Conviction</u>	<u>Sentence</u>
U/s 376(A)(B) of IPC	R.I. for 20 years and fine of Rs.1,000/-, with default stipulation.

2. Case of the prosecution, in brief, is that on 17.06.2018, the mother of the prosecutrix (PW-03) lodged a report in the Ambikapur police station to the effect that she has three children, two sons and a daughter, and the prosecutrix is the eldest daughter. On 17.06.2018 at 07.00 am, she left her children and went to work as a labourer and her husband also went to work and only her children were at home. At around 12.00 noon, her son came and told her that his sister/ the prosecutrix was crying and blood was oozing out from her urinary tract, then she came to her house with her son and saw that her daughter/prosecutrix was crying and blood was oozing from her urinary tract. On asking, she told that she had gone to neighbour's house to play with the boy and during playing the boy was struggling to put his finger in her urinary tract due to which blood was oozing from her urinary tract and she was experiencing a lot of pain. Thereafter, the complainant informed about the said fact to her husband and neighbours. On the basis of the above complaint lodged by the mother of the prosecutrix, FIR (Ex.P.-06) was registered in Police Station Ambikapur under Section 376 IPC and Section 4 of POCSO Act and the case was taken up for investigation.

3. During the investigation, Spot Map (Ex.P/1) was got prepared. Accused was apprehended and statements of the witnesses were recorded by the police as well as the statement of the victim before the Judicial Magistrate under Section 164 CrPC.
4. After completing investigation, charge sheet was presented against the before the Juvenile Justice Board Ambikapur (henceforth 'the JJ Board') for offence under section 376 (A) (B) IPC and Section 04 of the Protection of Children from Sexual Offences Act. The JJ Board Ambikapur, under Section 15 of the Juvenile Justice (Care and Protection of Children) Act 2015 (henceforth 'the JJ Act'), determined that this case is fit for trial in the JJ Board, Ambikapur and sent it to the JJ Board for trial vide order dated 07-09-2018. After which, the JJ Board decided to hear this case against the CCL. The case was considered on the basis of the need for trial as an adult under Section 19 of the said Act. Also, the CCL has been tried as an adult.
5. The trial Court has prepared a charge sheet under Section 376 (A) (B) of the Indian Penal Code and Section 5(5)/6 of the POCSO Act, 2012 against the CCL and upon completion thereof, charge-sheet was submitted accordingly. After framing the charges against the accused/appellant, the charges were read out and explained to the appellant, he denied committing the crime and demanded trial.
6. In order to bring home the offence, the prosecution has examined 08 witnesses in its support. Statement of the accused/appellant under Section 313 Cr.P.C was recorded, wherein he has pleaded his innocence

and false implication in the matter.

7. The trial Court after appreciating oral and documentary evidence available on record, by its judgment dated 16/10/2023 convicted and sentenced the appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
8. Learned counsel appearing for the appellant/CCL would submit that the statements of the witnesses is filled with contradictions and omissions and not to be believed in absence of corroboration and prosecution story is filled with doubts, benefit whereof should be extended to the accused. Learned counsel further submits that the appellant/CCL has been falsely implicated in the present case. She would submit that the conviction against the appellant is bad in law and it is not supported by the evidence of the prosecution beyond reasonable doubt. She would submit that without there being any evidence, the conviction of the appellant is bad in the eyes of law. It has been further argued by her that in fact the appellant himself was a minor on the date of incident and as such he should have been tried before the JJ Board and not before the Court of learned Sessions Court. Even there is no eye witness to the incident. The father of the victim had stated that he was not aware of the incident and only came to know from the mother of the victim. The mother of the victim had stated in her deposition before the Court that if the appellant's family would have given money for treatment of the victim, they would not have lodged the report. The learned trial court has convicted the appellant without there being any reliable material or evidence on

record. Thus, the impugned judgment of conviction and order of sentence may be set aside.

9. Learned counsel appearing for the State, per contra, would submit that the age of the victim much below 18 years, which is otherwise remains unchallenged during entire cross-examination, stands proved. She further submits that the offence committed by the appellant is a heinous one and after commission of the said offence, the victim expired in the month of December, 2018, therefore, looking to the gravity of the offence, the impugned judgment of conviction and order of sentence passed by learned Trial Court is just and proper and warrants no interference of this Court.
10. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the original records of the learned trial Court with utmost circumspection and carefully as well.

11. It is an admitted fact that the victim was minor at the time of incident. It is also noteworthy that the victim has died after six months of the alleged incident, due to which, the evidence of her mother and father becomes crucial. Regarding age, the father of the prosecutrix (PW-01) in his examination, has stated that at the time of the incident his daughter was 10 years old. The mother of the prosecutrix (PW-03) has also stated in her evidence that at the time of the incident the prosecutrix was 10-11 years old and was studying in class VI. The evidence of the above witnesses regarding the age of the prosecutrix has been irrefutable in

their cross-examination.

12. Further, PW-2 Smt. Krishna Verma, In-charge Head Master posted at Govt. Primary School, Namnakala, District Surguja has stated in her evidence that on 23.06.2018, on demand of the register related to the date of birth of the victim who was studying in her school, she gave the certified copy of the Dakhil Kharij register (Ex.P-05) related to the date of birth of the victim. The date of birth of the victim is recorded as 06.04.2008.
13. In this case, the Dakhil Kharij register of the prosecutrix is attached in which the date of birth of the prosecutrix is mentioned as 06.04.2008 and the father and mother of the prosecutrix have stated in their evidence that the age of the prosecutrix was 10-11 years at the time of the incident and no challenge has been given to the witnesses in cross-examination by the defence regarding the date of birth of the prosecutrix other than the date of birth mentioned in the Dakhil Kharij register. Therefore, on the basis of the above documentary evidence and the evidence of the prosecution witnesses, it is proved that on the date of incident i.e. 17.06.2018, the prosecutrix was a minor girl below 12 years of age.
14. The next question for consideration would come, whether the appellant committed such heinous act punishable under Section 376(A)(B) of IPC with the Victim or not?
15. Due to death of prosecutrix, the evidence of her parents and brother becomes important. In this regard, the mother of the prosecutrix (PW-03) in her evidence, while stating that she recognized the child in conflict

with law, has stated that the prosecutrix had become very ill at the time of the incident, for which she was undergoing treatment and about 06 months after the incident, her daughter died in the month of December, 2018. She further stated that on the date of the incident, she and her husband had gone out of the house in the morning for work and the prosecutrix and her younger son were at home. At about 11 o'clock, her younger son came and told her that blood was oozing out from the place where the prosecutrix was urinating. When she came back home, she saw that there was blood all over the urinary tract of the prosecutrix. When she asked, the prosecutrix told that she had gone to the house of the neighbour's child to play and at that time the boy did inappropriate thing with her by pressing her mouth at his house. Thereafter, she went to the police station Kotwali and lodged the FIR.

16. Similarly, in the case at hand, the other witness, the father of the prosecutrix (PW-01) has stated in his evidence that he knows the CCL and corroborated the above narrative as stated by PW/3. His wife called him and told him that the prosecutrix has been raped by the CCL and hence the prosecutrix has to be taken to the hospital. When he came home, his wife had taken the prosecutrix to the hospital. On reaching the hospital, his wife told him that the prosecutrix is bleeding from her urinary organ and she is being treated in the hospital. When he went to see his daughter, he found that blood was oozing out from her genitals and she was complaining of pain.

17. The father of the prosecutrix (PW-01) has denied in cross-examination

that he is only telling what he heard and has himself said that he was told about the incident by his wife and his daughter/prosecutrix in the hospital. Thus, it is clear from the entire evidence of the said witness that he first came to know about the incident when his wife told him and when he went to the hospital, he saw that the prosecutrix was bleeding from her internal organs and the prosecutrix had also told him about the incident.

18. The medical witness Dr. Snehilata Tirkey (PW-06), by corroborating the prosecution's case, stated that he examined the victim and submitted her report Ex.P.-11, on examining the victim, she found that the victim was physically and mentally healthy. No injury marks were found on her body, her secondary sexual characteristics were underdeveloped. There was bleeding from her vagina and pain was present and the vagina was torn at 6 o-clock position and blood was oozing out of the vagina, the blood had dried up and flowed down the entire undergarment and the lower part of the leg. The vagina was torn which was caused by forcefully inserting a hard and blunt object in the vagina.
19. This witness further stated that the prosecutrix was not habitual or used to sexual intercourse and for a definite opinion about the immediate sexual intercourse can be given only after chemical examination report. The witness has also stated that as per the FSL report (Ex.P.-12), it has been reported that human sperm and semen stains were found on the vaginal slide of the prosecutrix, undergarments of the victim and the CCL. The evidence of the doctor has been irrefutable in his cross-

examination.

20. The above evidence analysis shows that the prosecution witnesses mother, father and other witnesses have supported the incident in their evidence and their statements made in the main examination have been irrefutable in their cross-examination. Apart from this, the medical witness (PW-06) has stated in her evidence that blood was flowing from the 6 O'clock vaginal opening of the prosecutrix and pain was present and the vaginal opening was torn at the position and blood was oozing out from the vaginal opening which was caused by forcefully inserting a hard and blunt object on the vaginal opening and the prosecutrix was not used to sexual intercourse. The witness has also accepted in cross-examination that this type of injury can occur when a person has sexual intercourse forcefully. In this way, the medical examination report of the victim also supports the fact that rape took place with the victim.

21. In this case, the evidence of the prosecutrix could not be taken as she had died, but her statement under Section 164 Cr.P.C. is annexed to the case, according to which after examining the competency of the prosecutrix to give evidence, her statement was taken in which the prosecutrix has told about the incident. Apart from the medical report of the prosecutrix, as per the FSL report Ex.P-12 received, it has been reported that human sperm and semen stains have been found on the vaginal slide of the prosecutrix (Exhibit-"A", panty "B" and panty "C" of the CCL). Also, in the medical report of the CCL, he has been found capable of having sexual intercourse. Thus, on the basis of medical report, FSL report and

statements of witnesses, it is found proved that on the date of incident, the CCL had committed the offence on the victim who was below 12 years of age.

22. In cases like rape where the age of the prosecutrix is proved to be less than 18 years. In this regard, Section 29 of the POCSO Act makes presumption about certain crimes and prescribes that "where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved". Also, Section 30 (1) speaks about presumption of culpable mental state and it specifically provides that in any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution, the Court shall presume the unsoundness of such mental state.

23. The said presumption also provides that "normally the prosecution has to prove its case beyond reasonable doubt but under this special Act the burden of proving innocence for offences has been imposed on the child in conflict with law." Thus, the evidence of the mother and father of the prosecutrix and medical evidence are sufficient to prove the charge against the child has been fully proved. Apart from this, no such

circumstances have come to light on the basis of which it can be presumed that the prosecutrix was injured by some other object and the prosecutrix has falsely implicated the CCL due to enmity or any other reason. Also, there is no contradiction in the evidence of the prosecutrix's parents, the evidence taken under Section 161 Cr.P.C. and the evidence of the prosecutrix taken under Section 164 Cr.P.C. It is also proved that the prosecutrix's mother lodged the report immediately after getting to know about the incident. Thus, it is proved that the CCL has committed the offence by inserting his finger to some extent in the vagina of the prosecutrix who is below 12 years of age on the date, time and place of the incident, as defined in Section 375 IPC and Section 3 POCSO Act, 2012.

24. The gist of the above discussion is that on the basis of the evidence of the mother and father of the prosecutrix and the medical report, the prosecution has succeeded in proving beyond reasonable doubt the charge against the CCL.
25. If the testimony of the victim and witnesses is trustworthy and totality of the circumstances appearing on the record of the case disclose that the victim does not have a strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her/his evidence.
26. It has also become almost settled position of law that conviction can be based on the solitary statement of victim, provided same inspires confidence of the court.

27. In cases under the POCSO Act, a ‘sterling’ witness refers to a witness whose testimony is of high quality on caliber to the extent that the Court can accept their version of events without requiring additional corroboration. The Supreme Court in ‘n’ numbers of cases, has observed that the testimony of a victim can be sufficient for conviction, if it is trustworthy and of sterling quality.

28. The Supreme Court in the matter of *Rai Sandeep alias Deenu v. State (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 recise, 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."

29. Applying the well settled principles of law laid down by the Hon'ble Supreme Court in the above stated judgment and after perusing the evidence available on record, it stands established on record beyond reasonable doubt that the accused, by forcefully inserting his fingers into the vagina of the victim to some extent, committed rape upon the victim. As also the age of the victim has been determined to be less than 12 years.
30. For the sake of convenience and to ensure justice is served in its true perspective, and in the interest of justice, Sections 15, 18 and 21 of the JJ Act are quoted as follows:

Section 15 (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.--For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

Section 18 (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, 1[or a child above the age of sixteen years has committed a heinous offence and the Board

has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,--

- (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
- (b) direct the child to participate in group counselling and similar activities;
- (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;
- (d) order the child or parents or the guardian of the child to pay fine;

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

- (e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;
- (f) direct the child to be released on probation of good conduct and placed under the care and supervision of

any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section(1), the Board may, in addition pass orders to

- (i) attend school; or
- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or (v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

Section 21 No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of

this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

31. Applying the well settled principles of law and upon cumulative analysis of the statements of the witnesses and thoroughly considering the 164 statement of the victim, we are of the view that the trial Court has rightly appreciated the entire facts of the case and convicted the accused under Section 376 (A)(B) of the IPC.
32. Considering the entire facts and circumstances of the case and upon deep analysis of the evidence available on record, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellant. The conviction imposed by the trial Court is hereby upheld.
33. As far as sentence part is concerned, the appellant, being a CCL, is currently in custody serving his sentence. Under the provisions of the JJ Act, 2015, particularly Sections 15 and 18, a child who commits a heinous offence and is found fit for trial can be sentenced to a maximum period of three years in a place of safety. The appellant has already undergone for about two years of his sentence. In accordance with the statutory requirement, he shall continue to remain in custody until he completes the sentence **period of three years**. Only after completing this period, he shall be eligible for release, ensuring compliance with the law's rehabilitative and reformatory objectives for CCL.
34. Thus, the sentence imposed by the learned trial Court while deciding the Special Criminal Case No.60/2018 is modified to the aforesaid extent.

35. In the result, the instant appeal is **Dismissed**.

36. Registry is directed to send a copy of this judgment to the guardian of the CCL informing that they are 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 High Court Legal Services Committee or the Supreme Court Legal Services Committee.

37. Let a copy of this judgment and the original record be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

\$. Bhilwar/ Gowri

Head Note

Under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, particularly Sections 15 and 18, a child who commits a heinous offence and is found fit for trial can be sentenced to a maximum period of three years in a place of safety.