

2025 LiveLaw (SC) 1105

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ARAVIND KUMAR; J., N.V. ANJARIA; J.**

CRIMINAL APPEAL NO. 4732 OF 2025; November 13, 2025
DINESH KUMAR JALDHARI *versus* STATE OF CHHATTISGARH

Protection of Children from Sexual Offences (POCSO) Act, 2012 - Sections 9(m) and 10 - Aggravated Sexual Assault - The Supreme Court upheld the conviction of a man found guilty of aggravated sexual assault on a 4-year-old girl, rejecting his plea for acquittal based on the absence of medical evidence and eyewitness testimony, holding that the consistent and credible evidence of the child's parents was sufficient to sustain the conviction - The Supreme Court reiterated the well-settled principle that medical evidence will take a backseat and even if it does not corroborate with the ocular evidence, the latter would be allowed to prevail where it is consistent and cogent- Appeal partly allowed. [Paras 5 - 9]

For Appellant(s): Ms. Varnika Gupta, Adv. (Arguing counsel) Ms. Jaspreet Gogia, AOR Ms. Srishti Choudhary, Adv. Mr. Karanvir Gogia, Adv. Ms. Shivangi Singhal, Adv. Mrs. Indira M (marla Batta), Adv.

For Respondent(s): Ms. Ankita Sharma, AOR Mr. Arjun D Singh, Adv. Ms. Ishika Neogi, Adv.

J U D G M E N T

N.V. ANJARIA, J.

Heard learned Advocate Ms. Varnika Gupta for the Appellant and learned Advocate Ms. Ankita Sharma for the respondent who appeared through video conferencing.

2. At the instance of appellant–convict, the challenge in this present appeal is addressed to judgment and order dated 06.03.2025 of the High Court of Chhattisgarh in CRA No. 1348 of 2023. Thereby the High Court dismissed the appeal before it and confirmed judgment and order dated 18.04.2023 of learned Special Judge (POCSO), Kunkuri, District Jashpur, Chhattisgarh in Special Case No. 17 of 2021.

2.1. Trial Court convicted the appellant under Section 9(m) and Section 10 of the Protection of Children from Sexual Offences Act, 2012 and sentenced him to seven years of rigorous imprisonment and further imposed a fine of Rs. 2,000/- and in default of payment of fine, to undergo further normal imprisonment for one year.

3. Stated in nutshell, as the prosecution case goes, the incident of commission of crime took place on 15.08.2021. The mother of the victim reported that her husband returned home with one Virendra and appellant Dinesh Ram, after collecting the coal wood. It was around 4:30 p.m. when the mother of the victim went inside to give food to the appellant and at that time, she found that the appellant had wore only half short (*Chadda*) and was sitting near the legs of her minor daughter aged 4 years. On being questioned and confronted by the mother, the appellant fled away. The mother (PW-3) noticed that the clothing of her daughter had gone inappropriate, and that her daughter was crying in pain. The victim told her that she had pain in her private part. The mother found the private part of the daughter to be wet.

3.1. On the same day an FIR bearing Crime No. 52 of 2021 was registered with Duldula Police Station, Jashpur, Chhattisgarh by the mother of the victim Sukanti Bai (PW-3) against the appellant under Section 376, 376 AB of the Indian Penal Code, 1860 and under Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as ‘POCSO Act’). The victim was sent for medical examination and

came to be examined by Dr. Priyanka Toppo (PW-6), her statement came to be recorded under Section 164 of the Code of Criminal Procedure, 1973 by the Judicial Magistrate. The appellant came to be arrested.

3.2. The birth certificate of the victim seized by the police reflected that the date of birth of the victim was 13.02.2017, establishing that the age of the victim was between 4 to 5 years. A chargesheet was filed in respect of the offences under IPC and under the POCSO Act as mentioned above. At the end of the trial the appellant was convicted and sentenced under the POCSO Act, which conviction and sentence, was confirmed by the High Court.

4. On behalf of the appellant, assailing the impugned judgment and order convicting and sentencing the appellant, it was mainly contended that there were no eyewitnesses to fortify the occurrence of incident and the narration of the incident by the mother (PW-3) of the victim was not supported by independent evidence. Nowhere there were any marks of any external injury on the victim, nor there was bleeding on her private part as per the Medical Officer (PW-6) evidence, submitted learned advocate for the appellant. It was next submitted that the redness in the vagina seen could happen by rubbing over the clothes by the victim or due to infection. It was therefore vehemently submitted that the appellant deserved benefit of doubt and should have been acquitted.

4.1. On the other hand, learned advocate for the State of Chhattisgarh supported the conviction and sentence, to submit that they were based on clear facts, cogent circumstances and reliable evidence.

5. While examining the merits of conviction and sentence of the appellant, the material evidence may be usefully noticed which offers a detailed account of the incident. Father (PW-2) and mother (PW-3) of the victim were consistent. Their evidence offers a detailed account of the incident. Both PW-3 and PW-2 deposed that PW-2 with the appellant and his brother had gone to forest to take coal wood. They came back at 2 p.m. and had liquor at the house of PW-2 and PW-3. Thereafter, PW-3 gave food to Virendra. Dinesh was inside. After giving food, PW-3 and her husband PW-2 were sitting outside their house. Virendra came out after eating the food. The victim daughter aged 4 years was sleeping in the house.

5.1. It was further stated that at about 4:30 p.m. PW-3 went inside to give food to the appellant. At that time, she saw the appellant wearing half shorts, sitting near the legs of the minor daughter. When asked what he was doing there, the appellant stood up and ran away. According to PW-3, the underwear of her daughter was down till her knees, and the frock was pulled up to the chest. She also stated that she called her husband by ringing an alarm and immediately, her husband came out to catch hold the accused who was running away and, hit him near the courtyard with a stick twice, but the appellant managed to flee. The crying daughter when asked about what had happened, she told in rural language that she had pain in her private part. PW-3 stated that the appellant was from her colony and she knew him. There is no good reason not to disbelieve the details revealed and the narration given about the incident by PW-3 - mother of the victim.

5.2. It may be true that Dr. Priyanka Toppo (PW6) did not find external injury marks on the victim's body and stated that there was no bleeding of any kind. According to Medical Officer Dr. Nitish Anand (PW-8), the appellant was capable of having an intercourse. It is well settled that the medical evidence will take a backseat and even if do not corroborate with the ocular evidence, where the ocular evidence is consistent and cogent, the later would be allowed to prevail. In the medical evidence in the instant case, the redness in the vagina of the victim was noticed. In any way the Court is inclined to hold that the

account of the incident given by PW3 – the mother inspires confidence and deserves to be accepted.

5.3. The victim was brought in the witness-box. In paragraph 18 of the judgment, the High Court has highlighted the sequence of events that took place in course of the evidence of the victim (PW-1). PW-1 was studying at Anganwadi. Upon being found that the PW-1 understood the questions and was capable of deposing, she was subjected to evidentiary examination.

5.4. The very account of the evidence recorded by the trial court forming part of the record is reproduced hereinbelow,

“1/ Witness was shown the Accused present in the Court, who was standing behind the curtains, after getting his mask removed as to whether she identifies that person, then Witness stated that yes, on asking about his name she stated nothing and started getting frightened and did not look at the Accused.

2/ On seeing the fright of the Victim, Accused was sent out of the Courtroom and Evidence was stopped for a while to make the Victim normal.

3/ After 15 Minutes, Victim was again enquired normally but she not give any answer and that is why this evidence is being stopped again for one hour.

Sd/- 16/11/2021

(Ajit Kumar Rajbhanu)

Special Judge Kunkuri...”

“Again (At 1:45)

4/ Victim was called again for evidence with her mother, Victim is not giving any answers and is crying and even after many efforts, she is not telling anything before this Court. Hence, Examination of the Witness is closed on this point.

Cross Examination by Mr. Bishnu Prasad Kuldeep, Counsel for the Accused.

5/ Nil.

Statement read over to the Witness

Accepted as Correct Typed on my instructions

Sd/

16/11/2021

(Ajit Kumar Rajbhanu)

Special Judge Kunkuri

Sd/

16/11/2021

(Ajit Kumar Rajbhanu)

Special Judge Kunkuri”

5.5. It is manifest from the above that when the accused present in court removed his mask, the victim got frightened and did not even look at the accused. The victim was required to be sent out of the courtroom, and recording of the evidence was stopped. When the victim was found to be normal after some time, the recording of evidence though commenced had to be discontinued having regard to the mental status of the victim (PW-1). It is recorded as could be noticed, that at the time when the victim was called again for tendering her evidence with her mother, she was crying and was not able to speak anything in the court as the victim PW-1 was frightened by the presence of the accused. Hence, her examination was closed.

5.6. The fact that the victim was in a frightened state upon seeing the accused is a pointer in itself. The whole sequence of events in course of recording of evidence of PW-1, was tale-telling. The shock related to the happening of the incident which continued with the victim post-incident made its statement in the trauma-filled behaviour of the victim who was a 4 year-old girl.

6. Section 7 of the POCSO Act defines sexual assault and Section 8 is the punishment for the said offence, which is imprisonment of either description for a term to be not less than three years, and which may extend to five years, with fine. The offence of aggravated sexual assault is Section 9. The punishment for the aggravated sexual offence is provided in Section 10, which is the imprisonment for a term not to be less than 5 years, and the same may extend to 7 years and shall also be liable to pay the fine. In the present case the appellant is convicted under Section 9(m), the trial court and the High Court having concurrently found that that the appellant had committed sexual assault on a child below 12 years, which falls under Section 9 read with Section 10.

7. The evidence highlighted above go to establish the commission of offence. The appreciation of evidence of the trial court and consideration thereof by the High Court could be said to be eminently legal and proper, warranting no interference by this Court.

8. A vain attempt was made on behalf of the appellant to press the aspect that there was no suggestion of, much less evidence of penetration in the sexual assault by the appellant and therefore the conviction and sentence was not justified. The Court is not impressed with this submission, given the facts and evidence on record.

9. The conviction of the appellant recorded by the trial court and affirmed by the High Court is resultantly upheld. At the same time, the sentence imposed on the appellant is of 7 years' rigorous imprisonment which is maximum sentence prescribed under Section 10 of the POCSO Act. The appellant has so far undergone imprisonment for about 4 years and 5 months. In the totality of the facts and circumstances, the Court is inclined to reduce the sentence requiring the appellant to undergo the rigorous imprisonment for 6 years, instead. The imposition of fine of Rs. 6000/- and the simple imprisonment of one year in default of payment of fine would stand.

10. The judgment and order of the High Court is modified to above limited extent by substituting the sentence as above.

11. The appeal is partly allowed to the said extent.

In view of the disposal of the appeal as above, all pending interlocutory applications would not survive and are accordingly disposed of.