

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE  
HON'BLE JUSTICE SHRI ANAND PATHAK &  
HON'BLE JUSTICE SHRI HIRDESH**

**ON THE 21<sup>st</sup> OF JULY, 2025**

**CRIMINAL APPEAL NO. 5282 of 2025**

**AMAR SINGH ALIAS SADUA RAJAK**

**Vs.**

**THE STATE OF MADHYA PRADESH**

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***Appearance:***

*Shri Rajesh Kumar Shukla- learned Counsel for appellant.*

*Ms.(Dr.) Anjali Gyanani- learned Public Prosecutor for respondent-State.*

*Shri Hari Krishan Singh Chauhan- learned Counsel for victim.*

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**JUDGMENT**

**Per Justice Hirdesh:**

Today, the case is listed for hearing on IA No.11487 of 2025, first application under Section 389(1) of CrPC moved on behalf of appellant Amar Singh *alias* Sadua Rajak for suspension of jail sentence and grant of bail and also on IA No. 12150 of 2025, an application under Section 338(2) of BNSS moved on behalf of victim seeking permission to assist the prosecution in the matter.

(2) Considering the reasons assigned in IA No.12150 of 2025, the same is hereby allowed. Shri Hari Krishan Singh Chauhan, learned Counsel appearing for victim, is permitted to assist prosecution in the matter. Affidavit moved on behalf of victim is also taken on record.

(3) On being asked, learned counsel for appellant agreed to argue matter

finally and sought for withdrawal of suspension application. Accordingly, after withdrawal of suspension application, with the consent of learned Counsel for the parties, the matter is heard finally.

(4) The instant criminal appeal under Section 374(2) of CrPC has been preferred by appellant- Amar Singh *alias* Sadua Rajak challenging the judgment of conviction and order of sentence dated 9<sup>th</sup> of May, 2025 passed by Special Judge (POCSO Act) Shivpuri in Special Trial No. 20 of 2024, whereby appellant has been convicted under Section 5(1)/6 of the POCSO Act and sentenced to undergo rigorous imprisonment for 20 years with fine of Rs. 3,000/- with default stipulation further with a direction to pay compensation of Rs.1 lac to the victim under Section 33(8) of POCSO Act.

(5) Case of prosecution, in brief, is that victim of mother (complainant) along with her husband registered a report on 5<sup>th</sup> of March, 2024 at Physical Police Station, Shivpuri to the effect that on 5<sup>th</sup> of March, 2024 around 03:00 pm, she had gone to the house of her brother to have food and her daughter-victim aged around 14 years and 10 months was at home. When she returned home, around 05:00 pm, her daughter was not found. She searched for the victim in the neighbourhood and among relatives, but she could not be found. She suspected that somebody has enticed and taken her daughter away. On the basis of such allegations, FIR was lodged against an unknown person *vide* Crime No.47 of 2024 at Physical Police Station, Shivpuri under Section 363 of IPC. During investigation, victim was recovered and her statement was recorded. On the basis of her statement, offence under Sections 366, 376(2)(n), 354-D and Section 3/ 4 of POCSO Act was enhanced. Appellant was arrested. Relevant seizures were made. After completion of investigation and other formalities, charge-sheet was filed before the competent Court of criminal jurisdiction from where the case was committed to the Special Court for trial.

(6) Charges were framed. Appellant denied committing the alleged crime

and sought trial. In the trial, accused in his statement recorded under Section 313 of CrPC pleaded that he is innocent and has falsely been implicated. Prosecution, in order to prove its case, examined as many as 10 witnesses whereas no evidence has been produced in defence on behalf of accused.

(7) The Trial Court, after evaluating documentary as well as oral evidence and other material available on record, convicted and sentenced appellant *vide* impugned judgment, as aforesaid.

(8) It is contended on behalf of appellant that prosecution failed to conclusively prove that the age of victim was below 18 years, as required under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the trial Court has committed an error in relying on School Admission Register (Ex.P10) and testimony of School Authority- Chandan Singh (PW-5), but entry of date of birth of victim as 22<sup>nd</sup> of April, 2009 was not substantiated by the person, who had made the entry or by any primary document such as birth certificate. Chandan Singh (PW-5) in his evidence deposed that he could not confirm who had made the entry in Admission Register (Ex.P10), which is weakening the evidentiary value regarding the date of birth of victim and his testimony lacks corroboration from primary document as required under Section 35 of the Evidence Act. There are inconsistencies in the evidence of mother of victim (PW-2) and father of victim (PW-6) regarding date of birth of victim. Mother of victim in her evidence stated that the victim was 18-19 years of age at the time of incident whereas father of victim in his evidence deposed that he was not sure about the date of birth of his daughter, but estimated that her birth year as 2008 basing on his elder daughter's birth year as 2006. These contradictory statements coupled with own statement given by the victim (PW-1) of being 16 years old, creates a reasonable doubt about her minority. Similarly, Dr. Pranita Jain (PW-4) who had conducted the medico-

legal examination of victim, did not conclusively determine the age of victim and this witness in her evidence has specifically admitted that no age-related documents were provided before her and her assessment of secondary sexual characteristics was inconclusive. Without ossification test or scientific test, the trial Court gave a finding that the victim was below 18 years of age which is contrary to evidence.

(9) Learned Counsel for the appellant while advancing his arguments, further contended that the victim had left home voluntarily and stayed with appellant on her own. No evidence was available on record that appellant had enticed or induced or forcibly took the victim away or kidnapped from her lawful guardianship and prosecution has failed to prove its case beyond reasonable doubt and therefore, trial Court acquitted appellant of charges under Sections 363 and 366 of IPC. Victim (PW-1) consistently denied physical relationship with appellant in her Court statement, contradicting her statement recorded under Section 164 of CrPC. Rajni Chauhan (PW-11), who claimed that the victim disclosed her about physical relations, but she is hearsay witness as the victim has already denied the same in the Court. The medico-legal examination of victim was conducted after nine days of her recovery i.e. on 3<sup>rd</sup> of April, 2024 because of victim's initial refusal and no sign of injury or forceful sexual intercourse was found on the person of victim. DNA report (Ex.P-20) is unreliable due to procedural lapses and lack of chain of custody. The presence of male DNA even if matched with appellant does not conclusively link to the alleged offence due to nine-days gap and lack of contextual evidence. The trial Court erred in invoking the presumption of guilt of accused under Section 19 of the POCSO Act. The victim's denial of sexual assault, lack of medical corroboration and absence of eye-witnesses negate the foundational facts required for invoking the presumption.

(10) Learned Counsel for appellant further contended that the prosecution

story rests on contradictory and uncorroborated testimonies of witnesses and trial Court failed to ensure a fair trial by not adequately considering the defence of appellant, particularly regarding the consent of victim and lack of direct evidence. Appellant is young boy aged around 20 years and he has no criminal record. Victim's admission of staying with appellant willingly for fifteen days without any coercion, coupled with the fact that victim and appellant were in a consensual relationship and later, formalized a marriage by ignoring victim's testimony and societal context. In such premises, the trial Court has committed a grave error in convicting and sentencing present appellant for alleged offence under Section 5L/6 of POCSO Act. Hence, it is prayed that appellant deserves acquittal and the impugned judgment deserves to be set aside.

(11) On the other hand, learned counsel for State submitted that there is no merit at all in any of the contentions of appellant. The material on record including the medical evidence corroborating the statement of victim for determination of guilt of appellant of alleged offence. Regarding both a child in conflict with law and a child who is victim of crime, as per scheme contemplated under Section 12 of Juvenile Justice (Care and Protection of Children) Rules, it is not permissible to determine the age of victim in any other manner where her entry in School Admission Register produced by the school authority is very much available, clearly establishes that the victim was minor on the date of incident i.e. 5<sup>th</sup> of March, 2024 and her date of birth was 22<sup>nd</sup> of April, 2009. Therefore, the judgment of conviction and order of sentence passed by Trial Court deserves confirmation and no interference is warranted. Hence, prayed for dismissal of appeal.

(12) During pendency of the instant appeal, an affidavit has been sworn by victim through her counsel, stating on oath that she is now 19 years of age. After registration of crime/offence, she and appellant, got both of them married with mutual consent by their families and both were living as

husband and wife happily. Presently, she is living in her in-laws house and leading a peaceful life.

(13) We have heard learned Counsel for the parties and considered the rival submissions made herein-above and also went through the original record of trial Court with utmost circumspection and carefully, however, in the case at hand, the moot question is whether the victim was below 18 years of age at the time of incident or not and this Court thinks it apposite to go through evidence of following material witnesses and settled principle of law regarding determination of age of victim.

(14) According to the legal principle well-established by the Hon'ble Apex Court, the age of the victim is to be determined under the provisions which are attracted for determining the age of a child in the Juvenile Justice Act. In the case of *Rishipal Singh Solanki vs. State of UP, 2021, SCC Online SC 1079*, the principles were enunciated that when the question of age arises before the Court, the Court will determine the age by obtaining evidence under Section 9 and Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 after due consideration.

(15) Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, deals with the presumption and determination of age of a child brought before a Child Welfare Committee (CWC) or Juvenile Justice Board (JJB). If there is reasonable doubt regarding the person's age, the CWC or JJB is mandated to determine the age of child based on evidence. The following processes are required to be undertaken for presumption and determination of age:-

"94.(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a Corporation or a Municipal Authority or a Panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical

age determination test conducted on the orders of the Committee or the Board."

(16) Mother of victim (PW-1) in Para 01 of her examination-in-chief has specifically deposed that victim is 18-19 years of age and she has studied till Class I<sup>st</sup> to II<sup>nd</sup> and she was admitted in Class I in private school in the Colony. The victim was 6-7 years old when she was admitted to school. The mother of victim in Para 04 of her cross-examination denied that the age of her daughter was 14 years and 10 months on the date of incident and said that police must have written it voluntarily. The mother of victim in Para 5 of her cross-examination further deposed that she has three children. Her eldest daughter is 23 years and victim is 18-19 years of age and she has a son, whose age is 17 years. This witness has been declared hostile by the prosecution.

(17) Father of victim (PW-2) in Para 1 of his examination-in-chief deposed that he cannot tell about the age of victim because he is illiterate. He had admitted the victim to school and he does not know how old the victim was when she was admitted to school. This witness further in Para 3 of her cross-examination deposed that his eldest daughter is 21-22 years old. The victim is one and a half years younger than the elder daughter. This witness further admitted that victim must be 18- 19 years old and further deposed that he has told the victim's birth year as 2008 by guessing. He did not give the victim's birth certificate while enrolling her in the school and it is possible that the school authority has written her daughter's date of birth by assumption. He does not know whether he had told to the school authority about the date of birth of his daughter-victim or not.

(18) Victim (PW-1) although in her evidence deposed that she is 16 years of age but, in Para 5 of her cross-examination she deposed that she does not know her date of birth and she does not have a birth certificate. Even, her AADHAR card was not given to police. Besides her, she has a brother and a

sister. Her sister is three-four years elder to her. Her brother is two-three years younger. His sister is married.

(19) Chandan Singh (PW-5), in his deposition deposed that he is posted as Director in Private New Modern School, Karondi, District Shivpuri. By producing Admission Register which started from the year 2007, he deposed that admission of victim in Class-I is recorded on Admission No.279/dated 07-07-2015 and date of birth of victim is mentioned as 22-04-2009 by which, the original register is Ex.P-10, on the basis of which, he had issued the date of birth certificate of victim *vide* Ex.P-11. This witness further in Para 02 of his cross-examination deposed that name of Headmaster is not written in register. Neither any signature nor any date is mentioned in Ex.P10 and also admitted that in the entry, there is overwriting on admission number. He cannot tell what documents were taken for the date of birth of the victim at the time of her admission. This witness in Para 3 of his cross-examination deposed that he does not know who had come to get the victim admitted. This witness further deposed that admission form is taken for admission of a student and he does not know as to whether any admission form was given for admission of victim or not.

(20) From the evidence of father of victim (PW-6) and Chandan Singh (PW-5), there are some inconsistencies regarding date of birth of victim. Father of victim (PW-6) in his cross-examination deposed that his eldest daughter is 21- 22 years old and victim is one and a half years younger than her. Further, he admitted that victim must be 18-19 years old and he had told the victim's birth year as 2008 by guessing. He had not given the victim's birth certificate while enrolling her in school and it is possible that school authority has written her daughter's date of birth by assumption. In the case of *Vishnu alias Undrya vs. State of Maharashtra (2006) 1 SCC 283*, the Hon'ble Apex Court has held that normally, the age recorded in the school certificate is considered to be the correct determination of age,



provided the parents furnish correct age of the ward at the time of admission and it is authenticated, but in the present case, Chandan Singh (PW-5) in his evidence although deposed that on the basis of original register i.e. Ex.P10, he had issued the date of birth certificate of victim vide Ex.P11, but neither any signature nor any date has been mentioned in it and had admitted that in the entry, there is overwriting on the admission number. He cannot tell what documents were taken for the date of birth of victim at the time of admission of victim. Therefore, entry of date of birth of victim in School/Scholar Admission Register appears to be not authentic.

(21) The Coordinate Bench of this Court, Principal Seat at Jabablpur in recent judgment of ***Ram Prasad Ahirwar and Another vs. State of MP and Others, (2025) 1 MPLJ (Cri.) 5521*** has held as under:-

*"45. When all these aspects are cumulatively taken into consideration and in view of judgment of the Apex Court in Birad Mal Singhvi versus Anand Purohit (supra) wherein the ratio of law is that to make compliance of Section 35 of the Indian Evidence Act, 1872, the entries regarding date of birth contained in the Scholar's Register and the Secondary School Examination have no probative value, if no persons on whose information, the date of birth of the candidate was mentioned in the School Record, is examined. The entry contained in Admission Form or in the Scholar's Register must be shown to be made on the basis of information given by the parents or a person having knowledge about the date of birth of the person concerned.*

*46. When ratio of law laid down by the Apex Court in Birad Mal Singhvi versus Anand Purohit (supra) is culled out then it is evident that the Complainant/PW.1 (father of victim/deceased) admits that when he had gone to admit the victim/deceased to the School, he had no idea about her date of birth. He admits that he does not know the date of birth of the victim/deceased. He admits that the victim/deceased was younger to Murat and he had given the age of Murat to be 13 years and then deposes that the victim/deceased was 2 years younger to Murat whereas PW.2 (mother of victim/deceased) admits that the age of Murat was 15 years and then says that the victim/deceased was 4 years younger to him.*

*47. When all these aspects are taken into consideration then the Complainant/PW.1 (father of victim/deceased), who had admittedly assisted the victim/deceased in taking admission in School, is*

*admitting that he does not know the age of the victim/deceased as mentioned above and as is evident from Paragraph No.9 of the testimony of the Complainant/PW.1 (father of victim/deceased) then the victim/deceased cannot be considered to be below the age of 12 years as has been considered by learned Trial Court and, therefore, we are persuaded to accept the first proposition put forth by learned Senior Counsel for the appellants that the age of the victim/deceased could not be proved beyond reasonable doubt to hold that she was less than 12 years of age."*

(22) It is settled principle of law that undisputedly, the school authority is ignorant of date of birth of a student/ward, who is brought for admission to school. There are two sources of information relating to date of birth of ward entered in the school register. First source of information is the birth certificate of child issued by Municipality, Corporation, or Panchayat or any such other local authority/body, which itself is based upon the certificate given by hospital, where child was born. The second source of information is the date of birth of child as given by parent/guardian. Where source of information relating to date of birth of child is the statement of parent/guardian, the Court must satisfy itself that such parent/guardian has affirmatively stated to in his/her testimony. Where parent/guardian of victim/prosecutrix states in his/their testimony that they do not know the date of birth of victim/prosecutrix or that, they have given it to the school authorities as an estimation without being sure, then the Court must look for alternate proof relating to date of birth of victim/prosecutrix as the source of information on the basis of which, the date of birth of victim/prosecutrix was entered in the school register itself was doubtful, and the same does not become reliable only because it has been entered in the School Register.

(23) When all the aspects are taken into consideration, specifically in absence of birth certificate of child issued by Municipality, Corporation, or Panchayat or any such other local authority/body, which itself is based upon the certificate given by hospital, when mother of victim as well as victim

herself deposed that date of birth of victim is unknown and father of victim specifically admitted that he also does not know the date of birth of victim, his elder daughter is 21-22 years old and the victim is one and a half years younger than his elder daughter and victim must be 18-19 years old at the time of incident, then there is no reason to disbelieve or discard their evidence and victim *prime facie* appears to be major at the time of incident. Under these circumstances, it appears that the age of victim was around 18-19 years of age at the time of alleged incident as the date of birth of victim entered in the School/ Scholar Admission Register on the basis of information given by parent of the victim is unreliable and does not inspire confidence of the Court because of the fact that in cases under the POCSO Act, the age of victim is a fact in issue that the prosecution must prove beyond reasonable doubt to secure the conviction of accused. The source of information on the basis of which, the date of birth of victim was entered in the School/Scholar Admission Register is the information given by the parent of victim, who is unaware of the date of birth of victim. In the present case, the School Authority could not narrate about the date of birth of victim with necessary clarity. On the basis of School/ Scholar Admission register, the date of birth of victim mentioned as 22-04-2009 appears to be doubtful and unreliable.

(24) So, in the considered opinion of this Court, the date of birth of the victim could not be found proved beyond reasonable doubt to hold that she was below 18 years of age at the time of alleged incident.

(25) In view of above discussions, prosecution has failed to prove the age of victim below 18 years at the time of incident.

(26) At this stage, the question is whether the victim is a consenting party or not ?

(27) During recovery, although the Victim (PW-1) before the police deposed that while she was alone at home, the appellant to whom she

knows from before, called her on the date of incident near Circular Road Balaji Gardan and from where, she went with the appellant and accompanied him. Appellant had physical relations with her. She was accompanied with appellant from 05-03-2024 to 23-03-3024 because she likes him and wants to marry him in future and appellant had physical relations with her about 03-04 times, but the victim in her Court statement deposed that two-three months ago, she had left for a walk towards Girraji on her own will and after about 15 days, she went home on her own free will. She had gone to Girraji with appellant. She stayed with appellant at Girraji in a room and nothing was happened with her there and further in her cross-examination she denied that appellant had made any physical relationship with her while she left her home, but as per DNA profile obtained from the source material of appellant and victim, was found identical. Various discrepancies were found in the police diary statement and Court statements of the victim.

(28) Looking to entire facts and circumstances of the case, so also from the evidence of victim (PW-1), nothing is illustrated to show that accused had taken away or enticed her forcefully to flee with him. She had left her house on her own and accompanied accused for about 15 days. During this time, neither victim had made any attempt to flee away nor give any complaint to police or anybody about incident. This a peculiar case where evidence on record clearly makes out a case of consensual sex, allegation of forcibly sexual assault or intercourse without consent of victim is not found proved.

(29) On the basis of admissions made by victim, it was found proved that allegation relating to her kidnapping/abduction from her lawful guardianship by enticing or taking away by appellant and commission of rape with her was not proved, so that the trial Court had rightly acquitted appellant of such charges levelled against him. In the wake of clear case of

consensual sex, emerging from prosecution case, between two adults i.e. victim and accused, specially inferred from conduct of the victim that she was capable of understanding consequences of her act. As per affidavit filed on behalf of victim, both of them married with mutual consent of their families and were living as husband and wife. Presently also, victim is living in her in-laws house and leading a peaceful life.

(30) In view of statements of victim (PW-1) and categorical admission made by her, there is no iota of doubt that it is a case of consent. Since the victim has been found major and the prosecution failed to prove that victim is a minor, her age being above 18 years on the date of incident as discussed above and in the case of consent, the appellant cannot be convicted under Section 5(1)/6 of POCSO Act, 2012.

(31) Thus, appeal is **allowed**. Impugned judgment is **set aside**. Appellant, if not required in any other case, be set at liberty forthwith.

(32) Case property be disposed of as per the directions of the learned Trial Court.

(33) Record of the trial Court be sent back.

(34) Pending applications (if any) shall stand disposed of.

**(ANAND PATHAK)**  
**JUDGE**

**(HIRDESH)**  
**JUDGE**