



2025:CGHC:49380-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 116 of 2018

State Of Chhattisgarh, Through District Magistrate, District Rajnandgaon,
Chhattisgarh.

... Appellant

versus

Karan Dewar S/o Sherkhan Dewar, Aged About 26 Years, R/o Village
Laxmanpur, Bhatha Para, Police Station Chhuikhadan, District Rajnandgaon,
Chhattisgarh.

... Respondent

For Appellant/State	: Mr. Deepak Kumar Singh, Panel Lawyer
For Respondent	: Mr. Ashish Pandey, Advocate

**DB: Hon'ble Shri Justice Sanjay S. Agrawal &
Hon'ble Shri Justice Sanjay Kumar Jaiswal**

Judgment On Board

Per Sanjay S. Agrawal, J.

26/09/2025

1. This appeal has been preferred by the appellant/State under Section 378 of the Code of Criminal Procedure, 1973, questioning the legality and propriety of the judgment dated 24/07/2017 passed by the Additional Sessions Judge, Khairagarh, District Rajnandgaon (C.G.) in Special Case No.12/2016, whereby, the respondent has been acquitted

with regard to the offence punishable under Sections 363, 366 and 376 (2)(j)(n) of IPC read with Section 5/6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the POCSO Act”).

2. From perusal of the record, it appears that, an FIR (Ex.P/12) was lodged by the father of the prosecutrix on 21/04/2016 wherein, it was alleged that, his daughter on 14/04/2016 around 06:00 P.M. had gone out of the house in order to answer the call of nature, but, did not return and despite of his searching, he did not find her. It appears further that a doubt was, therefore, raised by him that, some unknown person, has abducted her and, during the course of the investigation, she was recovered from the possession of the respondent on 17/07/2016, as evidence by the Recovery Panchnama (Ex.P/1) in presence of two witnesses, namely, Mamta (PW-4) and Ankalha (PW-5). Although, it was alleged that, she was recovered as such but, both the attesting witnesses of the alleged Recovery Panchnama (Ex.P/1), have, however, not supported the same. No reliance, therefore, could be placed upon it.
3. It is to be seen further that in order to establish the alleged allegation, the prosecutrix was examined as PW-1, but a bare perusal of her testimony would reveal the fact that in fact nothing wrong was done by him or had made sexual intercourse with her. She even failed to identify him.
4. Perusal of the record would show further that, on account of the alleged incident, peticoat/saya of the prosecutrix was recovered on 17/07/2016 vide seizure memo (Ex.P/2), while the undergarment of the respondent

vide seizure memo (Ex.P/9) on 18/07/2016 and, were sent for chemical examination and, according to the FSL Report (Ex.P/11), the semen was found in the alleged garments recovered from the prosecutrix as well as from the respondent. Although, the FSL Report (Ex.P/11) reveals the alleged fact as such, but, in order to ascertain as to whether the alleged semen was found in the alleged article of the prosecutrix or was it matched, but the same was, however, not established by the prosecution, as required under Section 53-A of Code of Criminal Procedure, 1973 and in view of the principles laid down by the Supreme Court in the matter of ***Krishan Kumar Malik v. State of Haryana***, reported in ***(2011) 7 SCC 130***, wherein, it was held at para 44 as under:-

“44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23.06.2006, brought to our notice by learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in Cr. P.C., the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.”

5. Applying the aforesaid principle to the case in hand and, in absence of the examination of the DNA test of the respondent as required under Section 53-A of Cr.P.C., no reliance, therefore, could be placed upon

the alleged FSL Report (Ex.P/11) and the trial Court has, therefore, not committed any illegality in not placing its reliance upon the said report.

6. In view of the aforesaid background, we do not find any substance in this appeal. The appeal being devoid of merit is, accordingly, dismissed.

Sd/-

(Sanjay S. Agrawal)
JUDGE

Sd/-

(Sanjay Kumar Jaiswal)
JUDGE