



2025:CGHC:22596
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 1126 of 2024

Judgment reserved on 04. 03. 2025

Judgment delivered on 09.06.2025

XYZ (Complainant)

... **Appellant (s)**

versus

1. State of Chhattisgarh Through The Station House Officer, Police Station Kotwali, Jagdalpur District Bastar, C.G.
2. Ku. Varsha Sumer D/o Rohit Das Sumer Aged About 24 Years R/o Chaurasia Colony, Navdurga Nagar, Mathpurena, Raipur, Police Station Tikrapara Tahsil And District Raipur, C.G.

... **Respondent(s)**

For Appellant : Mr. Manish Nigam, Advocate
For Respondent/State : Mr. Sanjeev Pandey, Dy. AG
For Respondent No.2 : Mr. Varun Sharma with
Mr. Harshad Vyas, Advocates

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

1. This acquittal appeal has been filed under Section 413 of Bhartiya Nagarik Suraksha Sanhita, 2023 where the appellant seeks grant of leave to appeal against the judgment dated 22.08.2024 passed by Additional Sessions Judge, FTSC, (under POCSO Act) District Bastar, place Jagdalpur (CG) in Special Sessions Case No. 26 of 2023 by which the

respondent No. 2 has been acquitted of the charges under Sections 451,325 of the IPC and 10 of the POCSO Act, 2012.

2. Prosecution case in brief are that complainant (PW-1) mother of injured boy aged about 10 years has made written complaint (Ex.P-1) at Police Station Kotwali Jagdalpur and on the basis of complaint, FIR (Ex.P-2) was lodged, alleging that on 09.08.2022 between 02 PM to 03 PM, her tenant came to her house when her son was alone in the room while cuddling her son, saying *golu molu* pulled his cheek and caressing his whole body put her elbow on the scrotum of his son and by grabbing the scrotum with her hands twisted the same, due to which swelling occurred in the scrotum of her child and because of which he suffered immense pain. He was admitted in Maharani Hospital for treatment where pain killer injection was given to her son, upon the problem not being cured, she took to her son to Dr. Manish Kale thereafter she was advised for sonography and informed her that on account of twist of scrotum, blood circulation of the scrotum was stopped. Upon being advised by Dr. Manish Kale, she took her son to MPM Hospital on 12.08.2022 where he was admitted and operation was conducted where one testes of her son was removed completely. The prosecution after investigation submitted the charge sheet before Additional Sessions Judge, FTCS (POCSO Act) District Bastar, Jagdalpur which was registered as Special Sessions Case No. 26 of 2023.
3. The prosecution to prove its case has exhibited documents namely written report (Ex.P-1), FIR (Ex.P-2), Crime detail form (Ex.P-3), Panchanama (Ex.P-4), marksheet of class of victim (Ex.P-5),

Panchanama (Ex.P-6), Notice (Ex.P-7), application for providing Dakhil Kharij Register of victim (Ex.P-8), seizure memo (Ex.P-9), true copy of Dakhil Kharij Register of victim (Ex.P-10), medical report of victim (Ex.P-11), query report (Ex.P-12), Discharge note of MPM hospital (Ex.P-13), Sonography report (Ex.P-14), query report (Ex.P-15), map (Ex.P-16), Patwari report (Ex.P-17), medical form (Ex.P-16), query on medical report (Ex.P-17), spot map (Ex.p-18), statement of victim (Ex.P-19) and counseling report (Ex.P-20).

4. The prosecution to prove the case has examined witnesses i.e. mother (PW-1), elder mother of victim (PW-2), Principal N. Dutta (PW-3), Dr. R.K.S. Raj (PW-4), victim (PW-5), father of victim (PW-6), Virendra Kumar (PW-7), Dr. Abhijit Chikhalikar (PW-8), Pradeep Kumar Kashyap (Ex.P-9), Patwari B.R. Porte (Ex.P-10), Inspector Ram Vilash Negi (Ex.P-11), Sub Inspector Nilambar Nag (Ex.P-12), Neighbour of victim (Ex.P-13), Neighbour of victim (Ex.P-14). The accused has not examined any witness but she was examined under Section 313 CrPC wherein she has taken plea of false implication and also taken the defense that she has kept her gold ornaments worth of Rs. 40,000/- and when she has demanded to return her gold ornaments then the victim's mother and her elder mother have assaulted and abused her thereafter, she left the rented house on 27.07.2022.
5. The learned trial Court after appreciating the material on record has given benefit of doubt to the respondent/accused and has acquitted her from the offence as stated above. Being aggrieved with order of the acquittal, the acquittal appeal has been preferred by the complainant.

6. Learned counsel for the appellant would submit that the trial Court has disbelieved the statements of prosecution witnesses though in the cross examination statements PW-1, PW-2 and PW-5 have remained uncontroverted which clearly established the fact that the child was sexually assaulted by the respondent No.2. He would further submit that even if minor discrepancy is found recorded in the statement of prosecution witnesses still there is sufficient material to prove the guilt of accused/ respondent No.2. He would further submit that learned trial Court has failed to appreciate provisions of Section 29 and 30 of the POCSO Act and has disbelieved the testimony of child (PW-5) which is reliable, trustworthy sufficient to convict the accused and the trial Court has ignored the provisions of law, evidence and has acquitted the accused. He would further submit that learned trial Court has overlooked the fundamental facts by recording its finding regarding presence of the accused in the place of occurrence whereas the accused in her admission has stated that she left the rental premises in the month of July 2022 which clearly establishes that the accused was present at the place of occurrence. He would further submit that the trial court without appreciating the evidence has wrongly acquitted the respondent No.2 from the aforesaid charges. He would further submit that the trial Court failed to appreciate the prosecution witnesses and the circumstances which prove the case of the prosecution beyond reasonable doubt, there is no proper appraisal of the material on record and would pray for allowing the acquittal appeal. To substantiate his submission, he would refer the judgment of Hon'ble Supreme Court in the case of **Ganesan vs.**

State reported 2020 (10) SCC 573 and just Rights for Children Alliance vs. S. Harish and others reported in 2024 SCC Online SC 2611.

7. On the other hand, learned counsel for the respondent No.2 would submit that the prosecution has not collected any cogent evidence to establish the involvement of the respondent No.2 in the crime in question. He would further submit that the FIR was lodged after 11 days of incident and there was no explanation on the part of victim for lodging delay FIR. He would further submit that learned trial Court in para No. 88 has rightly doubted medical legal case and has not considered the statement of PW-4 with regard to medical legal case as he has clearly admitted in para No. 8 that on 10.08.2022 he has not seen any swelling over the scrotum of the victim. He would further submit that mother of victim in her statement has admitted that neither any document nor affidavit with regard to tenancy of the accused/ respondent No.2 was filed before the Court, therefore, tenancy of the accused is also doubtful as the respondent No.2 vacated the house on 27.07.2022.
8. He would further submit that the prosecution has not brought any evidence on record that the accused/ respondent No.2 was present at the time of alleged incident as no one has seen the accused in entering into the house of the victim. He would further submit that the alleged overt act of twisting the scrotum is of such magnitude that would require immediate medical surgery but the family members of the child administered *Pudin Hara* and then on the second day he was taken to hospital whereas on the third day surgery was done is totally against the medical science and

the medical evidence does not corroborate with the prosecution story. He would further submit that even otherwise, it is well settled legal position of law that if one view which is favourable to the accused then that finding should not be normally disturbed unless so perverse which conscious the mind of the Court. In the present case, no such situation is available on record, thus he would pray for dismissal of the acquittal appeal. To substantiate his submission, he would refer judgment of Hon'ble Supreme Court in the cases of **Shivasharanappa and others vs. State of Karnataka reported in 2013(5) SCC 705, Digamber Vaishnav and another vs. State of Chhattisgarh reported 2019(4) SCC 522, H.D. Sundara and others vs. State of Karnataka reported 2023(9) SCC 581, Kalinga alias Kushal vs State of Karnataka reported 2024(4) SCC 735 and constable 907 Surendra Singh and another vs. State of Uttarakhand reported 2025 SCC online SC 176.**

9. I have heard learned counsel for the parties and perused the records.
10. Considering the submissions made by the learned counsel for the parties the point emerged for determination by this Court is whether the finding of acquittal recorded by the trial Court in favour of the respondents is legal and is deserves to be interfered by this Court while exercising its appellate jurisdiction in a case of acquittal?
11. The prosecution to prove its case has sought query report Ex.P-17 from concerning doctor of Maharani Hospital Jagdalpur wherein he has given opinion to know the exact nature of injury, he has advised for sonography of scrotum and abdomen. He has also stated definite opinion could be given by sonologist and general surgeon vide Ex.P-12. The prosecution

to further prove their case has examined Dr. Abhijit Chikhalikar (PW-8) who has conducted the sonography of victim and given its report Ex.P-14. The said witness in cross-examination has admitted that in the report he has mentioned both the spermatic cord has been found normal and also admitted that left testes is also normal.

12. Prosecution witness Dr. Virendra Kumar (PW-7) in the examination-in-chief has stated that right testis was turned, as such there was no flow of blood in the scrotum, therefore, right testis was removed. In paragraph-9 in the examination-in-chief, on the query has stated that normally the injury suffered by the victim cannot be happened due to twist of scrotum but it is possible. He has also stated that if delay is occurred in treatment, infection will be spread over the body and may cause death but due to injury death is not possible. This witness in the cross examination has admitted that during treatment if any serious injury is found then they will inform to police voluntarily or the family members. He has voluntarily stated that testicular torsion happen normally, therefore, no information was given to the police. He has admitted that testicular torsion normally happened in the children between the age group of 10 to 18 years. It may be happened naturally also. He has voluntarily stated that it may happen because of unnoticed injury. He has also stated that it may happen while playing and doing normal daily routine. This witness has also admitted that epididymitis which may happen due to infection also. He has also admitted that epididymitis cause due to urinal infection, sexually active but he has stated that normally due to urinal infection. The witness has further admitted that scrotum is twisted twice then it may

cause sever pain and also cause swelling in the scrotum. It may cause sever pain and the person will not be able to sit or sleep and he has to rush the doctor immediately.

13. Prosecution witness Dr. R.K. S. Raj (PW-4), this witness in his cross-examination has admitted that when the victim was examined by him on 10.08.2022 then he has not seen swelling on the scrotum.
14. The victim (PW-5) was examined before the trial Court wherein in examination in chief he has narrated the incident and in paragraph-7 he has stated that after the incident, neither he can sit nor stand. In paragraph-15, the witness has admitted that the accused has left the rented house on 27.07.2022. He has also admitted that the accused made an attempt to touch and caressing him before 09.08.2022 and when it has been done, he was not aware of the date. He has stated that when the incident was taken place he has made complaint regarding stomach pain. He has also admitted that when the incident was taken place his mother was not there but his elder mother was there. He has also stated that he has informed the incident after two and three days of operation.
15. On the above factual matrix and evidence on record, learned counsel for the appellant would submit that the trial Court should have draw presumption as per Sections 29 and 30 of the POCSO Act. Learned counsel for the respondent No.2 would submit that from the evidence particularly evidence of victim it is quite vivid that there is no material on record to draw presumption, as such the appellant is not entitled to get benefit of Sections 29 and 30 of the POCSO Act. Hon'ble Supreme Court

in the case of **just Rights for Children (supra)** in paragraph 222 has held as under:-

222. (X) The statutory presumption of culpable mental state on the part of the accused as envisaged under Section 30 of the POCSO can be made applicable provided the prosecution is able to establish the foundational facts necessary to constitute a particular offence under the POCSO that may have been alleged against the accused. Such presumption can be rebutted by the accused either by discrediting the prosecution's case or by leading evidence to prove the contrary, beyond a reasonable doubt.

(XI) The foundational facts necessary for the purpose of invoking the statutory presumption of culpable mental state for an offence under Section 15 of POCSO are as follows: -

(a) For the purpose of sub-section (1), the necessary foundational facts that the prosecution may have to first establish is the storage or possession of any child pornographic material and that the person accused had failed to delete, destroy or report the same.

(b) In order to invoke the statutory presumption of culpable mental state for an offence under sub-section (2) the prosecution would be required to first establish the storage or possession of any child pornographic material, and also any other fact to indicate either the actual transmission, propagation, display or distribution of any such material or any form of an overt act such as preparation or setup done for the facilitation of the transmission, propagation, display or distribution of such material, whereafter it shall be presumed by the court that the said act was done with the intent of transmitting, displaying, propagating or distributing such material and that the said act(s) had not been done for the purpose of either reporting or for use as evidence.

(c) For the purpose of sub-section (3) the prosecution must establish the storage or possession of such material and further prove any fact that might indicate that the same had been done to derive some form of gain or benefit or the expectation of some gain or benefit.

16. From the above stated legal position of law, it is quite vivid, that presumption can be drawn when prosecution is able to establish the fundamental facts, necessary to constitute a particular offence under the POCSO that may have been alleged against the accused and such

presumption can be rebutted by the accused either by discrediting the prosecution case or by leading the evidence to prove the contrary beyond reasonable doubt. In the present fact and circumstances of the case, the prosecuton was unable to prove the offence for which the complainant was discharged as the victim has given contradictory statement and the medical expert whose evidence has been led by the prosecution has unable to prove that the victim has caused injury by the accused by twisting his scrotum. In fact the doctors who are the expert in their respective field has clearly stated that the injury caused to scrotum of the victim may be happened due to urinal infection or while playing, as such the prosecution has unable to prove the offence against the accused. Even the prosecution witness (PW-5) the victim has stated that the accused has left the rented house on 27.07.2022 and the witnesses examined by the prosecution has nowhere stated that the victim was coming to the house after vacating rented house. From the prosecution evidence, it is quite vivid that the prosecution has not led any evidence to prove the offence of house trespass to attract the offence under Section 451 of the IPC as none of the witnesses have stated that the victim has left the rented house and thereafter, she has entered into the house and committed the offence.

17. The doctor R.K. S. Raj (PW-4) who has examined the victim on the next date of incident has stated that he has not found any swelling on the scrotum of the victim. Even the prosecution has not examined Dr. Manish Kale who has examined the victim on the first instance who can throw light on the issue regarding occurrence of offence of twisting of scrotum

and the injury sustained by the victim, as such the trial Court has rightly doubted the case of the prosecution.

18. Learned trial Court after elaborate appreciation of evidence has acquitted the respondent No.2 from the charges giving benefit of doubt which is neither suffer from perversity or illegality warranting interference by this court. Considering the well settled parameters laid down by the Hon'ble Supreme Court regarding interference in the order of acquittal by the appellate Court and has held that appellate Court can interfere with the order of acquittal only if it comes to a finding that only conclusion which can be recorded on the basis of evidence on record was guilt of the accused was proved beyond reasonable doubt and no other conclusion was possible. The Hon'ble Supreme Court in case of **Constable 907**

Surendra Singh (supra) has held as under:-

11. Recently, in the case of Babu Sahebagouda Rudragoudar and others vs. State of Karnataka 2024(8) SCC 149, a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“38. First of all, we would like to reiterate the principles laid down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in Rajesh Prasad v. State of Bihar (Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29) 6 (2024) 8 SCC 149

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa vs. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , SCC p. 432, para 42)

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.' "

40. Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581: (2023) 3 SCC (Cri) 748] this Court summarised the principles governing

the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC as follows :
(SCC p. 584, para 8) “8. ...

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and 41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent

with the guilt of the accused is possible from the evidence available on record.

19. From the evidence, material on record, particularly the statement of the victim who has stated that at the time of incident he has made complaint of stomach pain. Elder mother of victim (PW-2) has also admitted that the accused/ Respondent No.2 was living in their house as family member till she was tenant. Considering the statements of the doctors who have also deposed before the trial Court that the injury may be caused due to urinal infection which create doubt over the case of the prosecution. Learned trial Court after appreciating the evidence has recorded its finding that the prosecution has unable to prove its case beyond reasonable doubt and has acquitted the accused.
20. Also considering the legal position that in an appeal against acquittal, if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the respondent No.2, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law, as such this Court is of the view that the impugned judgment acquitting the accused/respondent No.2 of the offence under Sections 451, 325 IPC and 10 of the POCSO Act is just and proper and does not call for any interference. Accordingly, the acquittal appeal is hereby dismissed.

Sd/-

(Narendra Kumar Vyas)
Judge