

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.14 OF 2025**

Sri Haripada Malakar@Pradip,

Son of Late Nepal Malakar,
C/o. Sri Sudhir Sukla Das,
Resident of village-Jogendranagar, Najrul Colony,
P.S.- East Agartala, P.O.- Jogendranagar,
District-West Tripura.

..... Appellant(s)

Versus

The State of Tripura.

.....wife-Respondent(s)

For the Appellant(s) : Mr. Pranabashis Majumder, Advocate.

For the Respondent(s) : Mr. R. Datta, P.P.

Date of hearing and delivery of
Judgment & Order : 01/04/2026

Whether fit for reporting : YES.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER(ORAL)**

T. AMARNATH GOUD(J)

1. The present appeal has been preferred under Section 374(2) of the Code of Criminal Procedure by the accused-appellant calling in question the legality and correctness of the judgment and order dated 26.04.2023 passed by the learned Special Judge (POCSO), West Tripura, Agartala, in Special (POCSO) Case No. 47 of 2019, whereby the appellant has been convicted for the offence punishable under Section 376AB of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and has been sentenced to suffer rigorous imprisonment for a term of 20 years

along with a fine of Rs.30,000/-, with a default stipulation of simple imprisonment.

2. The prosecution case, as projected from the written ejahar lodged by the mother of the minor victim, in brief, is that on 13.08.2019 at about 3:00 p.m., the victim girl, aged about 4 years, had gone to the house of a neighbouring person for the purpose of watching television. It is alleged that during that period, the accused-appellant, who is stated to be an adjacent neighbour, took the victim to his room and committed sexual assault upon her. It is further the case of the prosecution that soon thereafter, the victim returned to her residence and complained of pain in her genital area to her mother. Being concerned about the condition of the child, the informant-mother took her to GBP Hospital, Agartala for medical examination and treatment. Subsequently, a written ejahar was lodged at West Agartala Women Police Station, on the basis of which a case being No. 2019/WEA/052 dated 13.08.2019 came to be registered under Sections 341/376(2)(i) of the Indian Penal Code read with Section 6 of the POCSO Act.

3. On registration of the case, investigation was taken up by the Investigating Officer, who, during the course of investigation, examined the victim and other material witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. The Investigating Officer also arranged for the medical examination of the victim as well as the accused, visited the place of occurrence, prepared a sketch map with index, and seized relevant articles including the wearing apparels and other materials connected with the alleged occurrence. The seized articles were sent for forensic examination to the State Forensic Science Laboratory, and reports were collected in due course. The statement of the victim was also recorded under Section 164 of the Code of Criminal Procedure before the learned Magistrate. Upon completion of investigation, the Investigating Officer submitted charge-sheet against the

accused-appellant under Sections 341/376(2)(i) of the Indian Penal Code read with Section 6 of the POCSO Act, finding a prima facie case against him.

4. During the course of trial, upon consideration of the materials on record and hearing the parties, charges were framed against the accused-appellant under the aforesaid provisions of law. Subsequently, on the prayer of the prosecution, the charge was altered to incorporate Section 376-AB of the Indian Penal Code in view of the relevant amendment. The contents of the charges were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried. In order to substantiate the charges, the prosecution examined as many as 22 witnesses, including the victim, her parents, the medical officers, and the Investigating Officer. The accused was thereafter examined under Section 313 of the Code of Criminal Procedure, wherein, he denied the incriminating circumstances put to him.

5. Upon appreciation of the evidence adduced by the prosecution and considering the materials available on record, the learned Special Court arrived at the finding of guilt and convicted the accused-appellant for the offences as aforesaid and sentenced him accordingly. Being aggrieved and dissatisfied with the said judgment of conviction and order of sentence, the accused-appellant has preferred the present appeal seeking to set aside the order of conviction and sentence passed dated 26.04.2023 by the learned Special Judge, West Tripura in Case No.Special(POCSO)47 of 2019.

6. Heard Mr. P. Majumder, learned counsel appearing for the appellant as well as Mr. R. Datta, learned P.P., appearing for the respondent.

7. Mr. Majumder, learned counsel appearing for the appellant, submits that there are material discrepancies in the statements of the informant-mother (P.W.-10) and other key prosecution witnesses. It is contended that, according to the medical evidence, although redness was noticed in the private part of the victim, the exact cause thereof could not be ascertained. Learned

counsel further submits that though spermatozoa was detected on the lungi of the accused-appellant, the same, by itself, does not establish the guilt of the appellant, as the said garment is his personal clothing and such presence may be attributable to other reasons. It is further argued that no blood or semen was detected in relation to the alleged injury of the victim. P.W.-8, the medical officer who examined the victim, has opined that there was no evidence suggestive of sexual intercourse. Learned counsel also submits that the victim, in her statement, merely stated that the appellant caused her hurt, and such a statement, in isolation, cannot form the basis for conviction under Section 376-AB of the Indian Penal Code read with Section 6 of the POCSO Act. On these grounds, learned counsel has urged this Court to set aside the impugned judgment and order of conviction.

8. Per contra, learned Public Prosecutor submits that the statement of the victim child, duly corroborated by the testimony of the informant-mother and supported by medical evidence indicating injury in the private part of the victim, is sufficient to sustain the conviction of the accused-appellant as recorded by the learned trial court. It is further contended that there is no dispute with regard to the age of the victim, and the prosecution has duly established that she was a minor at the relevant point of time.

In further support of his submissions, learned Public Prosecutor has relied upon **paragraph 5.5.6** of the judgment of the Hon'ble Supreme Court reported in **2025 SCC Online SC 1610** titled as in **Deepak Kumar Sahu v. State of Chhattisgarh**, decided on **5th August, 2025**, which is reproduced hereinbelow:—

"5.5.6. The credible and reliable evidence of prosecutrix could not be jettisoned for want of corroboration including the corroboration by medical report or evidence. The Court observed in Manga Singh (supra) that "in absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix". It was stated that it is well

settled that in the cases of rape it is not always necessary that external injury is to be found on the body of the victim.”

9. Heard and perused the evidence on record.

10. Before delving into the conclusion, let us first examine some important witnesses.

11. P.W.-10, the informant, as well as, mother of the victim of this case deposed that the accused-appellant is her adjacent neighbour. About one and half years back, one evening, at about 3.30 pm she was working in her kitchen and her daughter (*name withheld*) was playing on the courtyard. Sometimes later, the victim came to her crying and stated that the accused allured her by showing chocolates and took her to his house where he committed rape upon her daughter. Witness further deposed that her daughter also complained of severe pain in her vagina, where-after, the witness informed the matter to others. Subsequently, she went to East Agartala Women PS and lodged official ejahar against the accused. Informant also deposed that one Kartik Das, a resident of their locality wrote the ejahar as per her version and being satisfied with the contents written thereon, witness put thumb impression at the bottom. Witness continued to depose that her victim-daughter was also taken to GBP Hospital, Agartala by the police for her medical examination where the witness also put thumb impression in the consent form and her victim-daughter was admitted for a day. Subsequently, police seized the birth certificate of her daughter and took her thumb impression on a seizure list. Informant also deposed that police seized the wearing apparels of her daughter and accused along with his bed sheet and took the thumb impression of the witness in another seizure list.

When the informant was subjected to cross-examination by the defence, she stated that there exists several other houses around them.

House of Rinku is at the North and a vacant land is situated at the Southern side of her house. The witness cannot say anything about the Eastern or Western side of her house. In her cross-examination, the witness also stated that on the alleged day of the incident, her husband was out for work. They have prepared the ejahar by sitting inside the police station. Witness also admits that her ejahar does not mention the person who obtained her thumb impression but denied the suggestion of defence that Kartik Das did not write the ejahar as per her version or that she did not put thumb impression at the bottom. Witness also stated that she was examined by the police in connection with this case. She did not mention in her ejahar or before the IO that during the alleged time of incident, she was inside her kitchen and her daughter was playing on the courtyard. Again the witness denied the suggestion of the defence that on the alleged date and time the witness was not working in the kitchen or that her daughter was not playing on the courtyard. However, the informant stated that she did not mention in the ejahar or before the IO that the accused took her daughter to his house by alluring her showing chocolates. But, the witness denied the suggestion put to her by the defence that the accused did not take her daughter in his house by showing her chocolates or that he did not commit rape upon her. In cross, the witness stated that the accused resides in the house of his father-in-law and several other members of the family were residing in the same house and that her victim-daughter mostly plays on the open ground and some times also with the sand and brick chips kept by others near the house. Informant also stated in her cross-examination that out of dust and dirt she some times suffer from skin allergies. But the witness denied the suggestion of the defence that all the seized wearing apparels and bed sheet were produced from her house. Again the witness stated in her cross-examination that she follow the BJP Party, whereas, the accused belongs to the CPI(M) Party.

In cross, the witness admits that she did not state to IO that due to her daughter's pain the witness along with her aunt-in-law took her

victim-daughter to GBP Hospital, Agartala for her treatment first and that subsequently, the witness prepared the ejahar with the help of Kartik Das. Attention of the witness was drawn to her earlier statement recorded by the IO where the same is found to have been written there. Further the witness denied the suggestion of the defence that she have lodged a false case against the accused being their political rival or that she deposed falsely as per instruction of police.

12. P.W.-11 is the victim child, aged 5 years. Being a child of tender age, she was not administered oath as she was found unable to understand its sanctity. The learned Court put forth many questions to test her capacity, prudence and ability to depose.

The witness stated that she studies in a Balwari school, attends in the morning, learns Bengali alphabets and writes her name, and that there are about 5 students in her class. She further stated that her family consists of her parents and herself. Though the witness has no knowledge of time, month or year, the Court was satisfied that she possesses maturity commensurate with her age and is capable of giving a statement before the Court.

In her deposition, P.W.-11 stated that the informant is her mother. She further stated that on one occasion, 'Pisha' (referring to the accused) hurt her, and while making this statement, she indicated the lower part of her body by pointing with her fingers. She also stated that police had once visited their house and she had also visited the police station.

In cross-examination, she denied that she was never hurt by 'Pisha'.

13. P.W.-8 (Medical Officer) deposed that on 13.08.2019, she was posted as Senior Resident, Department of Obstetrics & Gynaecology,

AGMC & GBP Hospital, Agartala. On that day, the victim-girl, aged about 4 years, was produced before her for medical examination in connection with East Agartala Women PS Case No. 2019/WEA/052 under Sections 341/376(2)(i) of the IPC and Section 6 of the POCSO Act. The victim was produced under the care of Woman Constable No. WC-1741 and her mother, with a history of rape committed upon her by a neighbour on 13.08.2019 at around 3:00 PM. The mother of the victim had noticed whitish discharge over the child's private parts. The victim was admitted to the Gynaecology Department and examined on 14.08.2019 at around 12:30 PM. On examination, she found redness over the external genitalia. The urethral orifice and anal orifice were at normal location, and the hymen was intact. Subsequently, upon receipt of the Forensic Laboratory report dated 04.09.2019, she opined that there is no evidence suggestive of sexual intercourse. She prepared her report dated 25.10.2019, which was marked as Exhibit-7, and her signature with seal was marked as Exhibit-7/1.

In cross-examination, she admitted that her report does not mention the name of the woman police constable who produced the victim, nor does it indicate that the victim was admitted to the hospital or that the victim was produced on 13.08.2019 at 10:00 PM for medical examination. She further admitted that redness over the external genitalia can also be caused due to injury while playing or due to itching, and that she did not mention the exact area of redness in her report.

14. P.W.-20, Deputy Director, State Forensic Science Laboratory (SFSL), Narsingarh, West Tripura, deposed that on 04.09.2019, the BIO/SERO Division of SFSL received one exhibit marked as 'G' in connection with East Agartala Women PS Case No. 2019/WEA/052 dated 13.08.2019, forwarded by the Dy. SP (CAW), Agartala, for examination and opinion. Exhibit-G was a sealed packet containing two cloth pieces of the lungi of the accused Haripada Malakar, which were found to contain semen stains. The said

exhibit was subjected to DNA examination as per standard protocol during the period 04.09.2019 to 21.09.2019. On examination, a male genetic profile was generated from Exhibit-G.

Subsequently, on 04.10.2019, the SFSL received another sealed parcel containing Exhibit-H, forwarded by the Dy. SP (CAW), Agartala. Exhibit-H was a sealed envelope containing a dry blood-stained gauze piece of the accused Sri Haripada Malakar @ Pradip, collected by Dr. Prasenjit Das, Department of FMT, AGMC & GBP Hospital, Agartala. The said exhibit was subjected to DNA examination during the period 04.10.2019 to 15.10.2019. On examination, a male genetic profile was generated from Exhibit-H, and crucially, the DNA profile of Exhibit-H (blood of the accused) matched with the DNA profile generated from Exhibit-G (semen stain on the lungi of the accused). Accordingly, he opined that the semen stain detected in Exhibit-G originated from the same source as Exhibit-H, i.e., from the accused-Haripada Malakar.

In cross-examination, he confirmed that Exhibit-11 was forwarded to the Dy. SP (CAW) on 23.09.2019 and that the second parcel containing Exhibit-H was received on 04.10.2019. He denied that the reports were prepared in a mechanical manner.

15. P.W.-21, Dr. Sabyasachi Nath, Senior Scientific Officer, SFSL, Narsingarh, West Tripura, deposed that on 20.08.2019, the SFSL received one sealed parcel containing 7 exhibits marked as A to G in connection with East Agartala Women PS Case No. 2019/WEA/052 dated 13.08.2019, forwarded by the Dy. SP (CAW), Agartala. The case was endorsed to him by the Director for examination and report. The exhibits were as follows — Exhibit-A (Perianal Swab of victim), Exhibit-B (Peri-Urethral Swab of victim), Exhibit-C (Vaginal Swab of victim), Exhibit-D (Panty of victim), Exhibit-E (Bed-sheet seized from the place of occurrence), Exhibit-F (Long pant of

accused) and Exhibit-G (Lungi of accused). He conducted examination on the said exhibits during the period 22.08.2019 to 03.09.2019.

On examination, he opined that — (i) Spermatozoa of human origin were detected in the lungi of the accused; (ii) Blood stain could not be detected in Exhibit-G; and (iii) Seminal stain, spermatozoa or blood stain of human origin could not be detected in Exhibits A, B, C, D, E and F. His report was marked as Exhibit-13 and his signature thereon as Exhibit-13/1.

In cross-examination, he denied that the report was prepared in a mechanical manner.

16. For adjudication of the matter in hand, let us produce Section 375 and Section 376-AB of IPC:-

“375. Rape.—

A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

(First.)— Against her will.

(Secondly.) — Without her consent.

(Thirdly.) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt,

(Fourthly.) — With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly.) — With or without her consent, when she is under eighteen years of age.

(Seventhly.) — When she is unable to communicate consent.

Explanation 1.— For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.— A medical procedure or intervention shall not constitute rape.

Exception 2.— Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

376-AB.- Punishment of rape on women under twelve years of age.-

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:1

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.]”

17. Now let us produce Section 6, 7, 9 and 10 of the POCSO Act:-

“6. Punishment for aggravated penetrative sexual assault.—(1) Whoever commits aggravated penetrative sexual assault

shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

9. Aggravated sexual assault.—(a) Whoever, being a police officer, commits sexual assault on a child—

(i) within the limits of the police station or premises where he is appointed; or (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as a police officer; or

(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the security or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or

(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or

(g) whoever commits gang sexual assault on a child.

Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(j) whoever commits sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or

(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child; or

(l) whoever commits sexual assault on the child more than once or repeatedly; or

(m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or

(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits sexual assault on a child knowing the child is pregnant; or

(r) whoever commits sexual assault on a child and attempts to murder the child; or

(s) whoever commits sexual assault on a child in the course of 1[communal or sectarian violence or during any natural calamity or in any similar situations]; or

(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or

(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public is said to commit aggravated sexual assault.

[(v) whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity, is said to commit aggravated sexual assault].

10. Punishment for aggravated sexual assault.—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

18. It is also seen from the record, the manner in which the deposition of P.W.-11(victim child) was recorded, this Court expresses its concern towards the prosecution that they could have taken some more efforts to elicit proper evidence from P.W.-11, explaining the allegations against the accused. It further falls for concern that the learned Special Judge could have extracted more information about the offence from P.W.-11 by putting elaborate and simple questions to the minor child, in order to have a clear picture as to whether the offence was committed.

19. Insofar as the evidence on record is concerned, P.W.-10, the mother of the victim and the informant of this case, deposed that her minor daughter came to her crying and disclosed that the accused had allured her with chocolates, took her to his house and committed rape upon her, and that the child complained of severe pain in her vagina. P.W.-11, the victim child aged 5 years, though unable to be administered oath, was found by the Court to possess maturity commensurate with her age. She deposed that 'Pisha' (the accused) had

hurt her, and while making this statement, she indicated the lower part of her body by pointing with her fingers. The evidence of P.W.-11, though brief, is consistent with the allegation of sexual assault upon her person.

20. The medical evidence, however, does not support the commission of rape in its full legal sense. The P.W.-8, the Medical Officer who examined the victim on 14.08.2019 found redness over the external genitalia, while the hymen was found intact and the urethral and anal orifices were at normal location. Upon receipt of the Forensic Laboratory report, she opined that there is no evidence suggestive of sexual intercourse. The forensic evidence further corroborates this finding. P.W.-21, the Senior Scientific Officer, SFSL, deposed that upon examination of the exhibits, spermatozoa of human origin were detected only in Exhibit-G (the lungi of the accused), whereas no seminal stain, spermatozoa or blood stain of human origin were detected in the swabs taken from the victim or in the victim's panty or the bed-sheet seized from the place of occurrence. P.W.-20, the Deputy Director, SFSL, further deposed that the DNA profile generated from the semen stain on the accused's lungi matched with the DNA profile of the accused's blood sample, conclusively establishing that the semen found on the lungi belonged to the accused Haripada Malakar.

21. Having regard to the totality of the evidence on record, this Court feels that the ingredients of Section 375 of the Indian Penal Code, particularly the element of penetration which is essential to constitute the offence of rape, are not made out. The medical evidence clearly establishes that the hymen of the victim was intact and there is no evidence of sexual intercourse. The forensic evidence further confirms the absence of any seminal material on the victim's body or clothing.

22. It is also seen that the prosecution and also the Special Judge (POCSO) West Tripura has not taken required care to put/suggest the

reasonable question to extract more information from the victim-P.W.-11. They could have been more caution considering it's a 4(four) years old child.

23. In view of the above discussion, this Court is of the opinion that the penetration has not been explained and not proved by the prosecution. As such, offence under Section 375 of IPC (Rape) has not been made out as a sequel punishment under Section 376-AB i.e., punishment for rape on women under twelve years of age is not applicable. Thus, the matter is examined under Section 9 of the Protection of Children from Sexual Offences Act, 2012, read with Section 7 of the said Act in view of the statement of victim-P.W.-11 that *"One day 'pisha' hurt me."* Accordingly, the conviction and sentence imposed under Section 376-AB of the Indian Penal Code and Section 6 of the POCSO Act is not sustainable and the same is set aside.

24. However, on the basis of the material available on record, particularly the deposition of P.W.-11 indicating that the accused had hurt her in the lower part of her body, the deposition of P.W.-10 regarding the child's complaint of pain in her vagina, and the medical finding of redness over the external genitalia, this Court finds that the offence of Aggravated Sexual Assault as defined under Section 9(m) of the Protection of Children from Sexual Offences Act, 2012, read with Section 7 thereof, is made out against the accused. Accordingly, the accused is convicted for the offence punishable under Section 10 of the POCSO Act, and is sentenced to undergo rigorous imprisonment for a period of 7(seven) years.

25. In the result, the appeal is allowed to the extent indicated above. The conviction and sentence of twenty years of imprisonment imposed by the learned Special Judge under Section 376-AB of the Indian Penal Code and Section 6 of the POCSO Act is hereby modified and converted to rigorous imprisonment for 7(seven) years under Section 10 of the Protection of Children

from Sexual Offences Act, 2012. All other terms and conditions of the sentence shall remain as imposed by the trial court.

26. As a sequel, stay if any stands vacated. Pending application(s), if any also stands close.

S. DATTA PURKAYASTHA, J

DR. T. AMARNATH GOUD, J

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