

HIGH COURT OF TRIPURA
AGARTALA
Crl. A(J) 56/2024

Sri Rajib Karmakar
son of Sri Manoranjan Karmakar, resident of East Bank of
Fatiksagar, Amarpur, P.S. Birganj, District- Gomati, Tripura
-----Appellant

Versus

The State of Tripura **-----Respondent**

For the Appellant(s)	:	Mr. Ratan Datta, Advocate
For the Respondent(s)	:	Mr. Rajib Saha, Addl. PP
Date of hearing	:	21.01.2026
Date of delivery of Judgment & Order	:	28.01.2026
Whether fit for reporting	:	No

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER

(Dr.T.Amarnath Goud, J)

Heard Mr. Ratan Datta, learned Counsel appearing for the
appellant also heard Mr. Rajib Saha, learned Additional Public Prosecutor,
appearing for the respondent-State of Tripura.

2. The appellant, by means of filing the present appeal has
challenged the judgment and order of conviction and sentence dated
15.02.2024 passed by the learned Special Judge, Gomati District, Udaipur, in
connection with case No. Special (POCSO) 24 of 2021, wherein the appellant
has been convicted under Section 363 of the IPC and under Section 4 of the
POCSO, and was sentenced to suffer rigorous imprisonment for 3(three) years
and to pay a fine of Rs. 3,000/- with default stipulation, for the offence
punishable under Section 363 IPC, and further sentenced to suffer rigorous
imprisonment for a period of 12(twelve) years and to pay a fine of Rs.10,000/-
with default stipulation, for the offence punishable under Section 4 of the
POCSO Act.

3. Facts of the case, in a short compass is that, on 03.06.2021, the appellant, who is the elder son-in-law of the complainant, had took away the minor daughter of the complainant (the victim herein) by alluring her with ulterior motive. The complainant and other family members searched for both the appellant and the minor daughter of the complainant, but they were not traceable, and thereafter on 17.06.2024, the complainant lodged a written complaint with the Officer-in-Charge of Kakraban police station narrating the entire incident, and the same was treated as Kakraban PS case No. 38 of 2021 under Section 363 IPC.

4. On receipt of such information, the I.O. being endorsed by the officer- in-charge of the police station started investigation. After completion of investigation, the I.O has submitted charge-sheet against the appellant under Section 363/376(20(n) IPC and Section 4 of the POCSO Act. On receipt of the charge-sheet, cognizance was taken and subsequently, the case was committed to the court of learned Special Judge for trial. At the commencement of trial, charge was framed against the accused-appellant under Sections 363/376(20(n) IPC and Section 4 of the POCSO Act, to which the appellant pleaded not guilty and claimed to be tried.

5. The prosecution to substantiate the charge adduced as many as 16 witnesses and introduced some documents which were exhibited by the learned trial court. On closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. to which he denied all the allegations and declined to adduce any defence witness. After completion of recording of evidences and having heard the learned counsel appearing for the parties, the learned Special Judge convicted and sentenced the accused, as stated here-in-above. Hence, this appeal before this court.

6. Mr. Ratan Datta, learned counsel appearing for the appellant has submitted that after the alleged incident the victim is given into marriage with another person and she is leading a peaceful conjugal life in her matrimonial residence and the wife of the appellant also desires his acquittal. Thus, Mr. Datta, learned counsel has urged that it is necessary to acquit the appellant to maintain peace and harmony in the family of the victim as well as in the family of the appellant. Mr. Datta, has further argued that the victim has voluntarily eloped with the appellant and at that time she was attaining the age of majority. Learned counsel has further submitted that the victim in her deposition before the learned court has completely contradicted opposite to that of her statement recorded under Section 164(5) Cr.P.C. Further Mr. Datta, has also raised question regarding credibility of the witnesses since there are discrepancies in the deposition of the witnesses. Learned counsel also has argued that the actual date of birth of the victim cannot be ascertained from the School Register. Learned counsel has also submitted that the age of the victim has not been proved beyond reasonable doubt since no medical examination has been conducted upon the victim to ascertain her actual age. With regard to his submission, learned counsel has placed his reliance on *State (GNCT of Delhi) vs. Vipin alias Lalla*, reported in 2025 SCC OnLine SC 78, para 9. Learned counsel also has placed reliance on the judgment passed on *State of Uttar Pradesh vs. Anurudh and another*, reported in 2026 SCC OnLine SC 40. Further, he has placed reliance on the judgment passed by the apex court in *P. Yuvaprakash vs. State represented by Inspector of Police*, report in (2024) 17 SCC 684.[paras 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23]

7. On the other hand Mr. Saha, learned Additional PP appearing for the State-respondent has submitted that the appellant has committed the offence knowingly well that the victim, who is his sister-in-law, is minor. Mr. Saha, learned Additional PP has also submitted that the age certificate seized from the concerned school proves that the victim was minor at the time of the alleged incident. Mr. Saha, learned Additional PP also has further submitted that the appellant is not stranger to the family of the complainant and he had knowledge about the age of the victim. Lastly, learned Additional PP has submitted that the case has been proved beyond reasonable doubt and requires no interference of this Hon'ble Court.

8. We have considered the submissions of learned counsel appearing for the parties, and have perused the records.

9. We have given our thoughtful considerations to the evidences brought on record. According to this court, the vital witness of this case, naturally, is the victim girl, who deposed as PW-10. The other related witnesses to substantiate the case are PW-1 (complainant, father of the victim), PW-2 (mother of the victim), PW-15 (elder sister of the victim). PW-1 and 2 in their deposition stated that their daughter i.e. the victim is 16 years of age and on the alleged date she left the house at 9.30 morning to attend the private tutor but, she did not return and on search they came to learn that the husband of their eldest daughter i.e. the accused herein is also missing. They have further deposed that the accused had induced their daughter to proceed with him to Bangalore to lead life as husband and wife. They have also deposed that their daughter was recovered after one and half month by the police. PW-15 also has supported the deposition of PWs 1 and 2 to a certain extent. Now coming to statement of the victim recorded under Section 164(5)

Cr.P.C. (Exbt.4). The victim in her statement recorded under Section 164(5) Cr.P.C. has specifically stated that *“I love a man named Rajib Karmakar very much. He is the resident of Amarpur. We got married 2 (two) months back and since then I have been living in the house of Rajib at Amarpur. 7-8 days back, my mother called me over phone and asked me to come home with Rajib. That, my mother had accepted our marriage. She will get Rajib and I married again. On 17th last, when I came home, I came to know that my mother had already filed a case against Rajib. I want to lead conjugal life with Rajib. I had married Rajib voluntarily. I want to talk to Rajib for a moment. Leave Rajib”*, but the victim in her deposition before the learned trial court as PW-10 has deposed that her brother-in-law (the accused herein) has been proposing her since last four years, prior to the date of incident. She always refused his advances. He often called her on mobile phone. On 03.06.2021 when she proceeded towards her private tutor's home at Gangacharra he took a Maruti Van and asked her to accompany him and finally he took her to Agartala Airport and from there he forced her to accompany him to Bangalore where he forcibly asked her to wear 'Sakha' and 'Sindoor' and took her to a rented accommodation. There they stayed in the rented accommodation for one month. At Bangalore, he had forcibly established physical relationship with her against my wishes. Subsequently, on 17.07.2021 he brought me to her home at Amarpur. She also deposed that the accused also threatened her with death if she disclose the incident to her parents and my elder sister. She further deposed that after coming to the Court, she gave statement to the Magistrate as tutored by accused Rajib Karmakar.

10. Before recording the statement of the victim under Section 164(5) Cr.P.C., learned trial court has tested her credibility and after her

statement, so deposed, was read over to her to which the victim on being satisfied has put her signature. Thus, what she has stated was from her good conscious. The victim girl in her statement U/S 164 CrPC has given a different story which is materially contradictory to the statement given in course of trial. It appears that her statement is totally inconsistent with the testimony given in course of trial. From the deposition of the victim during trial, a conclusion cannot be drawn that the accused-appellant can be said to have taken the victim away from her lawful guardian. Something more have been found in the case that there was no inducement held out by the accused-appellant or an active participation by the accused-appellant so as to allure the victim girl to leave the house of her guardian. If that being so, the victim would have taken help of the police from the airport at Agartala or Bangalore or she could have cried for help all along the road, but from her entire evidence the same is absent. The accused-appellant, by accompanying her, cannot be said to have taken her forcefully. There is nothing in the evidence to suggest that the victim left the house at the instance of the accused-appellant. It has not even come in the deposition of any of the witnesses, including PW 1, 2 and 15 that there were any instances earlier where PW-1 was persuaded by the accused-appellant to do any act which would constitute an offence under Section 363. Therefore, it would be incorrect to infer that the accused-appellant is guilty of taking the victim out of the lawful guardian forcefully. There is no evidence to suggest that there was any enticement on the part of the accused-appellant. Thus, from the evidence that has come on record, it can be specifically inferred from the conduct of the victim (PW-10) that she was capable of understanding the consequences of her act. That apart, if at all the victim girl was forcefully taken away by the accused appellant and thereby

built up a physical relation with her for some days continuously, then there must have been some sort of mark of injury and other sign of sexual intercourse on the person of the victim but the evidence of Medical Officer (PW-13) reveals that there was no sign of recent sexual intercourse, no evidence of violence on her person and she is aged in between 17 years. Further, if not a consenting party then there must be some injury on her private part as well as sign of intercourse, which is not found in the present case. Therefore, the evidence that has come on record does not satisfy the ingredients of Section 376 of the IPC against the accused-appellant.

11. Now, coming to the question as to whether the victim was minor i.e. below 18 years, at the time of commission of offence. PW-1, 2, 10 and 15 in their deposition have stated that the victim (PW-10) was 16 years of age at the time of commission of offence. The I.O.(PW-16) has seized one School Certificate of the victim (Exbt.3) which reveals that the date of birth of the victim was 01.06.2005 which was also confirmed by the deposition of PW-9, Headmaster of the School. In this aspect, Mr. Datta, learned counsel has strongly doubted the age of victim and has contended that mere School Certificate is not sufficient enough to ascertain the actual age of the victim. In support of this contention, Mr. Datta, has placed reliance on *P. Yuvaprakash (supra)*, which reads as under:

“10. Learned counsel next argued that the courts below fell into error in not appreciating that the prosecution failed to discharge the burden of proof, with respect to the victim’s age. Reference was made to [Section 34](#) of the POCSO Act and [Section 94](#) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter “[JJ Act](#)”), to say that age determination has to be on the basis of settled statutory criteria. In the first instance, the school leaving certificate, or the matriculation certificate had to be seen; if that were not available, the birth certificate or records to that effect issued by the local or municipal authority are to be considered, and if neither of the first two classes of documents are available, then, age determination depends on the ossification test. Learned counsel highlighted that in the present case, the ossification test indicated that M’s age was between 18 and 20, proving that she was not a minor. This aspect was deposed to by PW-9, who also produced the test report.

Analysis and conclusions

13. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract [Section 34](#) of the POCSO Act which reads as follows:

“34. Procedure in case of commission of offence by child and determination of age by Special Court. – (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the [Juvenile Justice \(Care and Protection of Children\) Act, 2015](#) (2 of 2016).

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall

record in writing its reasons for such determination. (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

14. In view of [Section 34 \(1\)](#) of the POCSO Act, [Section 94](#) of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

“94. Presumption and determination of age. – (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under [section 14](#) or [section 36](#), as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining –

(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:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

15. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the [POCSO Act](#), the courts have to take recourse to the steps indicated in [Section 94](#) of the JJ Act. The three documents in order of which the [Juvenile Justice Act](#) requires consideration is that the concerned court has to determine the age by considering the following documents:

“94.2(i) (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. [Section 94 \(2\)\(iii\)](#) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court.

17. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in [Section 94\(2\)\(i\)](#) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

18. In a recent decision, in [Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors.](#),³ this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in pari materia) with [Section 94](#) of the JJ Act, and held as follows: (SCCp.616,para22)

“22. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

19. Speaking about provisions of the [Juvenile Justice Act](#), especially the various options in [Section 94 \(2\)](#) of the JJ Act, this court held in [Sanjeev Kumar Gupta vs. The State of Uttar Pradesh & Ors](#)⁴ that:

“17....Clause (i) of Section 94 (2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the 2021 (12) SCR 502 [2019] 9 SCR 735 concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

20. In [Abuzar Hossain @ Gulam Hossain v State of West Bengal](#)⁵, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

21. Reverting to the facts of this case, the headmaster of M’s School, CW- 1, was summoned by the court and produced a Transfer Certificate (Ex.C-1). This witness produced a Transfer Certificate Register containing M’s name. He deposed that she had studied in the school for one year, i.e., 2009-10 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW-2 TMT Poongothoi,

Headmaster of Chinnasoalpalayam Panchayat School, answered the summons [2012] 9 SCR 224 served by the court and deposed that 'M' had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It is stated earlier on the same issue, i.e., the date of birth, Thiru Prakasam, DW-3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.

22. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per [Section 94\(2\)\(iii\)](#) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating "that the age of the said girl would be more than 18 years and less than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor". This finding is, in this court's considered view, incorrect and erroneous.

23. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94 (2) (i) mandates; nor are they in accord with Section 94 (2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with [Section 94](#) of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9".

In view of this Court, a case against any accused has to be proved beyond reasonable doubt meaning thereby, if there is an element of doubt, such benefit to be given in favour of the accused. Here in this case, since the school record had been virtually, disbelieved and discarded and questioned by the defence, and except School Certificate, no Birth Certificate issued by any Corporation or Municipal Authority or Panchayat, was produced, the age of the victim was required to have been determined on the basis of ossification report. In *Anurudh (supra)*, it is held thus:

"12. Let us now turn our attention to the provisions of law involved. The purpose of doing so is to examine whether the directions issued by the High Court to mandatorily conduct a test for age verification at the inception of the investigation is sustainable in law, if this question of law is examined as divorced from the aspect of jurisdiction.

13. At the outset of this analysis, it is important to delve into the scope and ambit of the [POCSO Act](#). Pardiwala J, writing for the Court in *Just Rights for Children Alliance v. S. Harish*²², examined 2024 SCC OnLine SC 2611 in detail, the objects, reasons and scope of the legislation. Relevant paragraphs of the decision are extracted hereinbelow:

"43. The Statement of Objects and Reasons for the enactment of the POCSO makes it abundantly clear that since the sexual offences against children were not adequately addressed by the existing laws and a large number of such offences were neither specifically provided for nor were they adequately penalized, the POCSO has been enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and for matters connected therewith and incidental thereto.

44. It further states that the POCSO is a 'self-contained comprehensive legislation' for the purpose of enforcing the rights of all children to safety, security and protection from sexual abuse and exploitation countered through commensurate penalties as an effective deterrence for sexual offences and pornography and has been enacted keeping in mind [Articles 15](#) and [39](#) of the Constitution respectively and the United Nations Convention on the Rights of the Children. ...

45. The primary legislative intent behind the enactment of the POCSO was to create a comprehensive legal framework that would not only punish offenders but also provide a child-friendly system for the recording of evidence, investigation, and trial of offenses. The POCSO was designed to cover all forms of sexual abuse against children, including sexual harassment, child pornography, and aggravated sexual assault, among others. It aimed to ensure the safety and dignity of child victims during the legal process, with specific provisions that mandate in-camera trials, the presence of a trusted adult during the proceedings, and the prohibition of aggressive questioning of child victims.(emphasis in original).

Determination of the age of the victim - At what stage and by whom

13.1 [Section 2\(d\)](#) of the POCSO Act defines a child as any person below eighteen years. So, for the provisions of this Act to be applied, the person against whom the offence in question has been perpetrated must necessarily be below 18 years of age. This is the sine qua non. The natural question which then arises is how the age of victim is to be determined. [Jarnail Singh v. State of Haryana](#)²³ put this question to rest as follows:

"23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our

view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of (2013) 7 SCC 263 Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.” (emphasis supplied).

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007²⁴ it must be noted, provides the same hierarchy of documents as has been provided by [Section 94](#) of the JJ Act. The same is reproduced below for felicity of reference:

Rules 2007 “12.Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose. (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

- (a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause

(a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, [Section 64](#) of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

14. The High Court held that since the presumption of correctness attached to age-related documents under [Section 94](#) JJ Act is rebuttable, challenge to the same would be open at the stage of bail and the view taken by the Court in such a challenge, would be “tentative”. Analysis of the judgments referred to by the Court would be apposite.

14.1 In [Abuzar Hossain](#) (supra) a bench of three judges held as under:

“39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters’ list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In [Akbar Sheikh](#) [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and [Pawan](#) [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in [Jitendra Singh](#) [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant’s age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.”

14.2 In [Parag Bhati](#) (supra) a co-ordinate bench held as under:

“34. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the [JJ Act](#). But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.

35. The benefit of the principle of benevolent legislation attached to the [JJ Act](#) would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.

36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in [Abuzar Hossain v. State of W.B.](#), (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83, an enquiry for determination of the age of the accused is permissible which has been done in the present case.” (emphasis supplied)

14.3 In [Sanjeev Kumar Gupta](#) (supra) the question was whether the accused was entitled to claim the benefit of juvenility for an offence committed on 18th August 2015. The Juvenile Justice Board²⁵ at first allowed the plea but then on demand, eventually decided otherwise and rejected the said having considered evidence in that regard. The High Court reversed holding that the

matriculation certificate issued by the CBSE would be given precedence over the opinion of the Medical Board. The former recorded his date of birth as 17 th December 1998 whereas the latter recorded that on 9th November 2016, he was approximately 19 years of age. This Court set aside the findings of the High Court and restored the rejection of the plea of juvenility as returned by the JJB, having considered evidence on affidavit and arriving at the conclusion that his age would be determined as per the date of birth - 17th December 1995.

14.4 In [Rishipal Singh Solanki](#) (supra) this Court while dealing with an appeal filed by the father of the deceased noted the difference between the Rules 2007 and the [JJ Act](#) 2015. It was observed:

“29. The difference in the procedure under the two enactments could be discerned as under:

29.1. As per the [JJ Act, 2015](#) in the absence of requisite documents as mentioned in clauses (i) and (ii) of Section 94(2), there is provision for determination of the age by an ossification test or any other medical age related test to be JJB conducted on the orders of the Committee or the JJ Board as per Section 94 of the said Act; whereas, under Rule 12 of the JJ Rules, 2007, in the absence of relevant documents, a medical opinion had to be sought from a duly constituted Medical Board which would declare the age of the juvenile or child.

29.2. With regard to the documents to be provided as evidence, what was provided under Rule 12 of the JJ Rules, 2007 has been provided under sub-section (2) of [Section 94](#) of the JJ Act, 2015 as a substantive provision.

29.3. Under [Section 49](#) of the JJ Act, 2000, where it appeared to a competent authority that a person brought before it was a juvenile or a child, then such authority could, after making an inquiry and taking such evidence as was necessary, record a finding as to the juvenility of such person and state the age of such person as nearly as may be. Sub-section (2) of Section 49 stated that no order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order had been made is not a juvenile and the age recorded by the competent authority to be the age of person so brought before it, for the purpose of the Act, be deemed to be the true age of that person.

30. But, under [Section 94](#) of the JJ Act, 2015, which also deals with presumption and determination of age, the Committee or the JJ Board has to record such observation stating the age of the child as nearly as may be and proceed with the inquiry without waiting for further confirmation of the age. It is only when the Committee or the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, it can undertake the process of age determination, by seeking evidence.

31. Sub-section (3) of Section 94 states that the age recorded by the Committee or the JJ Board to be the age of the persons so brought before it shall, for the purpose of the Act, be deemed to be the true age of that person. Thus, there is a finality attached to the determination of the age recorded and it is only in a case where reasonable grounds exist for doubt as to whether the person brought before the Committee or the Board is a child or not, that a process of age determination by seeking evidence has to be undertaken.”

Then further, it was held-

“33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of [Section 9](#) of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, [Section 94](#) of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of [Section 94](#) of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of [Section 9](#) so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under [Section 94](#) of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under [Section 94](#) of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the [JJ Act, 2015](#), be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide [Section 9](#) of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the [JJ Act, 2000](#) or sub-section (2) of [Section 94](#) of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case. 33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in [Section 94\(2\)](#) of the JJ Act, 2015.” (emphasis supplied)

14.5 Now we proceed to examine the merits of this argument. It is clear from the above that all of these cases discuss the determination of age from the point of view of the offender and not the victim. Although the process to be followed therefor is the same as that for an offender as held by [Jarnail Singh](#) (supra), the question involved in the instant lis concerns the forum and the stage at which the determination of age is to be made. According to the High Court, the bail Court would, if a challenge is presented by the offender, entertain such challenge and take a prima facie view. Here, it becomes important to appreciate the difference between the [JJ Act](#) and the [POCSO Act](#).

14.5.1 [The JJ Act](#) is primarily focused on dealing with children in conflict with law and children in need of care and protection, rather than victims of offences who are minors. The Preamble and [Section 1\(4\)](#) of the Act expressly state that its purpose is to provide for the care, protection, treatment, development, and rehabilitation of such children and for the adjudication of matters relating to children in conflict with law. [The Act](#) establishes the JJB (under [Sections 4–9](#)) to handle cases involving juvenile offenders, and the Child Welfare Committee²⁶ (under [Sections 27–30](#)) to deal with children who require care and protection. Neither of these bodies are vested with jurisdiction over cases concerning child victims of crime. The definitions provided under the Act, of a child in conflict with law and a child in need of care and protection, also clearly underscore this. [The Act](#) draws a fundamental distinction between two principal categories of children – children in conflict with law and children in need of care and protection each grounded in the philosophy of welfare, rehabilitation, and reintegration. A child in conflict with law refers to a person who has not completed eighteen years of age and is alleged or found to have committed an offence under any existing

law. To fall under this category, the requirements are, first, that the person must be below eighteen years of age at the time of the commission of the alleged offence, and second, that there is an allegation or finding of CWC involvement in an act constituting an offence. [The Act](#) thus rejects the traditional punitive model of criminal jurisprudence and adopts a reformative, restorative approach, recognizing that a child's deviant conduct often arises from a coming together in an unfortunate array of circumstances, of structural neglect, social disadvantage, or exposure to adversity. The focus, therefore, is on correction, guidance, and social reintegration through child-friendly processes before the JJB, ensuring that such children are treated not as offenders but as individuals in need of direction and support.

14.5.2 Conversely, a child in need of care and protection denotes a child whose condition of neglect, abuse, abandonment, or deprivation necessitates intervention by the State to secure their safety, welfare, and development. This classification embraces children who are orphaned or abandoned; those found begging, working, or living on the streets; those who are victims of cruelty, exploitation, or trafficking; those who are physically or mentally challenged and without adequate family support; and those at imminent risk of early marriage or neglect within the home, (which in a given case, could also be a victim). The essence of this definition lies in the child's exposure to vulnerability and the corresponding necessity of care, protection, and rehabilitation through the mechanisms of the CWC. [The Act's](#) protective framework thus ensures that children who are deprived of a nurturing environment are restored to stability, dignity, and opportunity through institutional or family-based care.

14.5.3 While these two categories emerge from different factual matrices, one involving alleged delinquency and the other deprivation, they converge upon a shared humanitarian foundation. Both are guided by the principle that every child is entitled to protection, dignity, and development, and that the justice system must operate with sensitivity and compassion. This Court has many-a-time emphasised that the administration of juvenile justice must rest on care and rehabilitation rather than punishment, highlighting the State's duty to protect all children from circumstances that impede their growth and well-being.

14.5.4 It is, however, imperative to recognise that neither of these statutory classifications - the child in conflict with law or the child in need of care and protection expressly includes within its ambit the category of child victims. Although both categories are designed to shield children from neglect and marginalisation, the Act does not explicitly address the position of children who are victims of offences, as those under [POCSO Act](#). Unless such victims independently satisfy the definitional parameters of vulnerability or abandonment, they fall outside the direct purview of these classifications. This reveals a conceptual gap, as the legislative scheme, while comprehensive in its welfare orientation, does not formally integrate the rehabilitative and procedural rights of child victims within its framework. Nevertheless, the broader spirit of the Act, anchored in compassion, protection, and restorative justice demands that child victims, too, be accorded equivalent care, support, and rehabilitative attention, ensuring that every child, irrespective of circumstance, is empowered to reclaim their dignity and future.

14.6 Having discussed thus, the two separate fields that these two legislations govern, we now turn back to the question of age determination. [If the POCSO Act](#) is examined, it can be found that the Act does not prescribe a manner for determination of the age of the victim. As we have already noticed, it is an established position in law that the procedure under [Section 94](#) of the JJ Act is to be applied. [See: [Section 34](#) of the Act] When the question of determination of age of a child in conflict with the law emerges for the first time before a Court, the concerned legislation provides the procedure as housed in its [Section 9](#) of the Act lays down the procedure to be followed when a person is brought before a Magistrate who is not empowered under the Act, and there arises a claim or reasonable doubt that such person is a child. In such cases, the Magistrate must conduct an inquiry to determine the person's age in accordance with [Section 94](#) of the Act, which prescribes the method for age determination. If, upon inquiry, the Magistrate finds that the person was a child at the time of commission of offence, the case must be immediately forwarded to the JJB having jurisdiction, which will thereafter deal with the matter as per the provisions of the [JJ Act](#). Conversely, if the person is found not to be a child, the Magistrate proceeds with the case as per the regular criminal procedure. The object of [Section 9](#) is to ensure that no juvenile offender is tried as an adult merely due to an initial misclassification and to safeguard the rehabilitative and welfare-oriented spirit of the juvenile justice system by ensuring that every child in conflict with law is tried by the appropriate forum, i.e., the JJB.

14.7 As held in *Rishipal Singh*, extracted (supra) the determination of the age when done by a Court stands differently to that done by the JJB. There are two possibilities provided for. There is no determination of age by a JJB - like body when it comes to the victim. If there is a question about the age, it has to be dealt with by the Court, as per the procedure of [Section 94](#), JJ Act. It is when the Court is undertaking the exercise of determination, that the defense of an accused can challenge the veracity of these documents, since the presumption under this section is rebuttable.

14.8 As is obvious and as we have observed, the victim being a child is sine qua non for the application of the [POCSO Act](#). If a charge-sheet is filed and it contains charges against a person under the [POCSO Act](#), it is but obvious that such an accused would challenge the same at the first available instance in the Court concerned, or in other words, at the inception of trial, so as to ensure that the foundation of the trial is correctly in place before it proceeds further. The Court would then undertake the exercise as provided for, and in accordance with the result obtained therefrom, proceed further, either under the [POCSO Act](#) or under the provisions of the [IPC](#), as the case may be. Should the accused be dissatisfied with the manner in which the result has been drawn by the Trial Court, an appeal from such determination would have to be filed and only when the question of age is set at rest can the trial proceed forward on firm footing.

14.9 Unlike an offender who can claim benefit of juvenility at any point in time, even after completion of proceedings given the beneficial nature of the [JJ Act](#), a victim of a crime cannot claim to be a juvenile at any point in time, for the charges against which an offender is tried, are intrinsically tied to the age of the victim. If a victim of a sexual offence was allowed to claim juvenility at any stage of the proceedings, in the same manner that an offender can under [Section 9](#) of the JJ Act, it would have serious procedural and substantive consequences. For instance, an accused may have been charged under [Section 376](#) IPC which applies when the victim is an adult. However, if the victim is later determined to be below eighteen, the offence would fall under the [POCSO Act](#), where consent is irrelevant and the punishments are more stringent. This would mean that the earlier trial, framing of charges, and recording of evidence were all conducted under an incorrect legal framework. The proceedings would therefore be vitiated, and the trial could be rendered a nullity, necessitating the reframing of charges and a fresh trial under the correct statute.

14.10 As can be seen from *Mahadeo v. State of Maharashtra*²⁷, and *Sanjeev Kumar Gupta* (supra) the consideration of the documents enumerated in [Section 94](#), JJ Act is a matter of consideration of evidence since it may involve the examination of witnesses to prove the veracity of the documents. That can only be done by the Trial Court. Contra evidence to challenge the documents, can also be presented only before the Trial Court. In our considered view, therefore, the High Court fell in error in holding that a Court in bail jurisdiction is empowered to entertain a challenge to the (2013) 14 SCC 637 documents as [Section 94](#) would not apply at the bail stage".

Section 34 of POCSO Act lays the procedure regarding commission of offence by child and determination of age by the Special Court. In view of the same, this Court also found the relevancy of Section 94 of Juvenile Justice Act, 2015 regarding presumption and determination of age. Conjoint reading

of both the provisions express that if any dispute with respect to the age of a victim under the POCSO Act arises, in that case, the court has to take recourse as per Section 94 of the Juvenile Justice Act, 2015. Section 94(2)(iii) of the Act, 2015 indicates preference of date of birth certificate from school or matriculation or equivalent certificate issued by the Examination Board. In absence of the same, birth certificate issued by Municipal Authority or local Panchayat and lastly, in absence of such, the age of the victim has to be ascertained through ossification test or any other medical tests. In the instant case, only a school certificate of the victim (Exbt.3) was taken into consideration which indicates that the victim was minor at the time of commission of offence, but the birth certificate or equivalent certificate of the victim was not produced by the prosecution. Burden always remains with the prosecution to establish its case, and the prosecution could not fall back upon a document to hold that the victim was minor when the offence was committed. Thus, safely it could be held that the prosecution failed to prove/ establish the victim to be a minor at the time of commission of offence and that too, deposition of PW-13 reveals that there was no sign of recent sexual intercourse or the victim had faced any penetrative assault. The entire evidence that has come on record is that the victim was well capable of understanding the consequence of her act. Therefore, this Court is of the view that the learned trial court has committed error in conviction the accused-appellant under Section 363 IPC

12. In conclusion, having regard to these overall factors,, viz., shaky documentary evidence; contradictory testimony regarding the victim's date of birth or the age of the victim at the time of commission of offence, and the accused-appellant being the participant in enticement, we are in total

disagreement with the findings of the trial Court. At this stage, this Court also considers the submission of Mr. Datta, learned counsel for the appellant that the victim is presently leading her peaceful conjugal life with another person and the wife of the appellant who is elder sister of the victim also desires the appellant to be acquitted. In this respect, there is no serious objection from the prosecution side.

13. Under such circumstances and in view of discussion *supra*, the appeal is allowed. Accordingly, the conviction and sentence imposed on the accused-appellant, vide the impugned Judgment and Order of conviction and sentence of the Trial Court dated 15.02.2024 in Special (POCSO) 24 of 2021, is set aside. The Appellant is hereby acquitted of the offence under Section 363 IPC and Section 4 of the POCSO Act, and thereby set at liberty forthwith, if not required to be detained in any other case.

14. With the above observations and directions, the instant appeal stands allowed to the extent as indicated above, and thus, disposed of.

Pending applicant(s), if any, also stands disposed.

Send down the LCRs.

S.DATTA PURKAYASTHA,J

DR.T. AMARNATH GOUD,J

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