

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.230 OF 2016

with

CRIMINAL APPEAL NO.27 OF 2017

CRIMINAL APPEAL NO.230 OF 2016

Sheikh Taufiq s/o Sheikh Shakir
Aged about 21 years, Occ. – Labour,
R/o. Mahadeopura, Wardha,
Tah. and District Wardha

...APPELLANT

VERSUS

The State of Maharashtra,
through Police Station Officer,
Police Station Wardha City,
Tah. and District Wardha

...RESPONDENT

Shri R.M. Patwardhan, Advocate for the appellant.
Shri M.J. Khan, Additional Public Prosecutor for the
respondent/State.

WITH

CRIMINAL APPEAL NO.27 OF 2017

Samina Saifuddin Saify,
Aged about 35 years,
Occ. Lawyer,
R/o. Civil Lines, Wardha
Tah. and District Wardha

...APPELLANT

VERSUS

1. The State of Maharashtra,
through P.S.O., Wardha City,
Tah. and District Wardha
2. Sheikh Taufiq Sheikh Shakit (In Jail)
Aged about 22 years, Occ. – Labour,
R/o. Mahadeopura, Wardha,
Tah. and District Wardha

...RESPONDENTS

Shri S.K. Bhoyar, Advocate for the appellant.
Shri M.J. Khan, Additional Public Prosecutor for respondent
No.1/State.
Shri R.M. Patwardhan, Advocate for respondent No.2.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATED : NOVEMBER 23, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. The appellant by this appeal challenges the judgment and order dated 20/06/2016 passed by the Special Judge, Wardha convicting the appellant in Criminal Appeal No.230/2016 for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act' for short) and sentencing him to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/-, in default of payment of fine to suffer rigorous

imprisonment for 6 months. The accused is also convicted of the offence punishable under Section 323 of the Indian Penal Code (hereinafter referred to as 'the IPC' for short) and sentenced to suffer rigorous imprisonment for six months. The accused is also convicted of the offence punishable under Section 506 of the IPC and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.2000/- in default of payment of fine to suffer rigorous imprisonment for two months.

3. The mother of the victim-informant has also filed the appeal to enhance the sentence awarded by the Special Judge, Wardha under the POCSO Act vide the same judgment. There can never be more shocking, heinous crime when small victim girls are subjected for sexual assault by the adult male.

4. The prosecution case in brief is as under :

A] The First Information Report (hereinafter referred to as 'the FIR' for short) Exhibit 25 was registered on the basis of information lodged by PW-2 - mother of the victim. The victim was about 8 years on the date of incident. PW-2 – informant lodged report on 02/10/2014 on an allegation that the victim is her daughter born on 06/10/2006. The incident took place on 02/10/2014. At the relevant time, victim was 8 years old. On the day of incident, the victim had gone to the garden

near Lahanuji Temple along with her friend by name Mariya at about 11.00 a.m. At about 11.30 a.m. Mariya informed her that one boy approached to them and took the victim on the pretext that he would pluck the flowers for her. Thereafter she called her husband. Her husband informed his friend namely Ritesh Kuldhariya. They all were searching to the victim. The husband of the informant had received phone call of Ritesh Kuldhariya who informed him that the victim was found along with one boy namely Sheikh Taufiq Sheikh Shakir near the area of Lahanuji Nagar. He also informed that the victim was scared and weeping. Said Ritesh Kuldhariya brought the victim and the boy. The victim had narrated the entire incident to her mother. Her mother had lodged the report. On the basis of said report, police have registered the offence against the accused.

5. The victim had suffered injuries on her private part as well as external injuries. Immediately, the victim was referred to the hospital for medical examination. The investigation was carried out and after completion of investigation charge-sheet was filed against the accused. The Investigating Officer has collected the blood stained cloths of victim as well as cloths of the accused which are referred to the Chemical Analyzer for examination. The report of Chemical Analyzer was collected and after completion of investigation, charge-sheet was submitted.

6. The Special Judge has framed the charge vide Exhibit 14 on 07/08/2015. The accused pleaded not guilty and claimed to be tried. The prosecution has examined as many as 9 witnesses. By the impugned judgment and order, the appellant was convicted and sentenced as mentioned herein before.

7. Children are the greatest gift of humanity. The sexual assault on children is the most heinous crime. To substantiate the charge levelled against the accused, the prosecution has examined in all 9 witnesses.

- (i) PW-1 – Murlidhar Ratanlal Kela (Exhibit 19) – Panch on spot.
- (ii) PW-2 – Mother of the victim (Exhibit 22)
- (iii) PW-3 – Deorao Wamanrao Ingole (Exhibit 29) – Panch on seizure of cloths of victim as well as accused.
- (iv) PW-4 – Ritesh Yogendra Kuldhariya (Exhibit 34) – who searched the victim and found victim along with the accused.
- (v) PW-5 – Victim (Exhibit 39) (due to the mandate of section 228-A of the IPC her name is not mentioned.)
- (vi) PW-6 - Mariya Mustafa Ali (Exhibit 46) – friend of the victim.
- (vii) PW-7 – Priti Mangesh Dudulkar (Exhibit 48) – Naib Tahsildar who conducted Test Identification Parade.
- (viii) PW-8 – Suhasini Suryakant Sahastrabudhe (Exhibit 59) - Investigating Officer

- (ix) PW-9 – Dr. Krushna Maroti Shende (Exhibit 74) – Medical Officer.

Besides the oral evidence, Prosecution also relied upon various documents such as :

Spot Panchnama (Exhibit 20), Seizure Memo (Exhibit 21), Birth Certificate (Exhibit 23), Oral Report (Exhibit 24), FIR (Exhibit 25), Cloth Seizure Memo (Exhibit 27), Cloth Seizure Memo of samples of accused (Exhibit 30), Cloth Seizure Memo of cloths of accused (Exhibit 31), Seizure Memo of samples of victim (Exhibit 32), Test Identification Parade memorandum (Exhibit 52), Arrest Panchnama (Exhibit 60), Consent form of the victim (Exhibit 63), Map of spot of incident (Exhibit 66), Requisition to Chemical Analyzer (Exhibit 68), C.A. Reports (Exhibits 70 to 72), Medical Report (Exhibit 76).

8. As per prosecution case, victim girl is of tender age of 8 years. To prove the age of the victim, prosecution mainly relied upon the evidence of PW-2 – mother of the victim. She has narrated the birth date of the victim as 06/10/2006. She had also produced copy of birth certificate as well as original birth certificate. After verifying the copy from the original birth certificate, copy was marked as Exhibit 23. Admittedly, defence has not challenged either the birth date or birth certificate of the victim.

9. It is observed by the Hon'ble Apex Court in the case of ***Jarnail Singh Vs. State of Harayana 2013 ALL MR (Cri) 2946*** that even though Rule 12 of Juvenile Justice Rules 2007 is strictly applicable only to determine the age of the child in conflict with law, the aforesaid statutory provision should be the basis for determining the age, even for a child who is victim of a crime. For, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is victim of crime. Therefore, it would be just and appropriate to apply Rule 12 of the 2007 Rules to determine the age of prosecutrix. The manner of determining age conclusively, has been expressed in Sub-rule 3 of Rule 12. Under the aforesaid provision, the age of the child is ascertain by adopting the first available basis, out of number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in the preceding clause, it has over riding effect over an option expressed in a subsequent clause. In the scheme of Rule 12(3) matriculation (or equivalent) certificate of the concerned child 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) envisaged consideration of the date of birth entered, in the school 1st 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 the birth certificate issued by Corporation, Municipal authority or Panchayat. Yet again, if such 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, the Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

10. The evidence regarding birth date of the victim remained unchallenged. Thus, the prosecution succeeded in proving the age of the victim.

11. Mother of the victim had lodged the report about the said incident. Her evidence vide Exhibit 19 shows that she received the information that the victim was taken by the accused through the friend of the victim namely Mariya who informed her that at about 11.00 a.m. one boy had come and took the victim on the pretext of plucking the flowers for her. Said Mariya had also disclosed the description of the cloths which the accused was wearing. The informant had immediately called her husband and narrated the information received by her. Then her husband called his friend and requested to search the victim. The

victim was found near the Lahanuji Temple at about 1.30 p.m. Father of the victim received phone call from his friend Ritesh Kuldhariya i.e. PW-4 informing that the victim was found along with one Sheikh Taufiq Sheikh Shakir i.e. the accused. Said Ritesh Kuldhariya had brought victim and the accused at the house of the informant. The victim has narrated the incident by pointing out towards the accused and disclosed that she was subjected for sexual assault by the accused. Immediately, victim was referred for medical examination. The evidence of PW-2 further shows that the victim girl has disclosed about the spot of incident. Accordingly, police have visited the spot of incident and drawn the spot panchnama.

12. The implicit reliance was placed by the prosecution on the evidence of PW-5 i.e. the victim girl who was examined vide Exhibit 39. The victim girl has narrated that said incident took place on 02/10/2014 at about 11.30 a.m. She further deposed that when she was playing in the garden along with her friend Mariya, accused who was wearing black coloured pant and white coloured shirt approached to her and caught hold her hand and took her along with him. He took her in the bushes, undressed her and subjected her for sexual assault. She had narrated in detail the manner in which she was sexually assaulted by the accused. She further testified that when she was returning along with

the accused, Ritesh Kuldhariya i.e. PW-4 met her and brought them at the house and she narrated the incident to her parents. The evidence of victim that the accused approached to her is also corroborated by PW-6 Mariya Mustafa Ali vide Exhibit 46. She testified that when she was playing with the victim, accused approached to them and asked the victim to come along with him for plucking the flowers and took the victim along with him. She was waiting for the victim for sometime and thereafter informed the mother of the victim that boy who was wearing black coloured pant and white coloured shirt took the victim along with him. The fact that the victim was found along with the accused is also corroborated by PW-4 - Ritesh Yogendra Kuldhariya who was examined vide Exhibit 34. His evidence shows that he received a phone call of father of the victim who requested him to search the victim, therefore, he searched the victim in the area of Lahanuji Nagar and he saw that the victim was walking along with one boy. He gave a call to the victim. Victim was in a scared condition. There was some mud on the cloths of the victim. He immediately called the father of the victim and informed that the victim was found. He enquired with the boy about his name and the boy had disclosed his name as Sheikh Taufiq. He identified the accused as the same boy to whom he found along with the victim. He brought the victim and said boy at the house of the informant. Victim has disclosed the incident to her mother. He further testified that as per

the disclosure by the victim, she was subjected for sexual assault by the accused by taking her in the bushes. Thus, the evidence of the victim as well as PW-6 Mariya and PW-4 Ritesh Kuldhariya shows that the victim was taken by the accused. Victim was found along with the accused and she was sexually assaulted.

13. All these four witnesses are cross-examined by the defence. During the cross-examination of PW-2 it was tried to elicit that while playing, victim fell down and therefore she was crying. It was further suggested that there was money transaction between the accused and the informant, and therefore, accused is falsely implicated but these suggestions are also denied by the PW-2. The defence of the accused is that he is the victim of misidentity. It is further the defence of the accused that he found victim girl crying on the road, therefore, he took her along with him and was returning back. But said suggestions are flatly denied by PW-2 as well as PW-5 victim girl. PW-4 Ritesh Kuldhariya is the witness who saw the victim and the accused on the road walking together at Lahanuji Nagar. During his cross-examination it is attempted to elicit that somebody had committed the crime and the accused had saved the victim and therefore, she pointed out towards the accused, but the said suggestions are denied by this witness. The defence of the accused that he was identified by the witnesses as there

was resemblance with the boy who took the victim. Though PW-6 Mariya had admitted that accused is having resemblance with the person who took the victim but PW-5 victim flatly denied the said suggestions. She also denied that accused is not the same person who sexually assaulted her. The evidence of informant regarding the disclosure is corroborated by PW-4 – Ritesh Kuldhariya. The presence of the accused with the victim is proved by PW-4. The circumstance that it was the accused who took the victim along with him on the pretext of plucking flowers is established by the prosecution through the evidence of PW-6 – Mariya. The presence of the accused and the fact that the accused approached to the victim when she was playing along with PW-6 – Mariya is not denied by the defence. Thus, the evidence of PW-5 – victim girl regarding the sexual assault by the accused is not shattered during the cross-examination. The evidence of victim is corroborated by PW-6 Mariya who saw the accused taking victim and evidence of PW-4 who found the victim along with the accused near the spot of incident. Victim specifically stated that the incident was near the Agragami School and she had shown the spot of incident.

14. To corroborate the version of the prosecution, prosecution also relied upon the medical evidence. The evidence of the victim shows that she was referred for medical examination. PW-9 - Dr. Krushna

Maroti Shende is examined by the prosecution vide Exhibit 74. His evidence shows that he examined the victim along with requisition letter (Exhibit 75). After obtaining the consent of the mother of the victim for her examination he had conducted the external examination of the victim. Victim has also narrated the history that the accused took her to ground of Agragami School, removed her cloths and subjected her for sexual assault as well as for oral sex by threatening her. On her external examination, he noted soil over back and buttock and in the finger nails. The gait of the victim was painful. On examination he noted following injuries on the person of the victim namely :

- (i) Abrasion over nape of neck of size 2 x 0.3 cm, reddish in colour.
- (ii) Abrasion over left shoulder of size 2 x 1 cm, reddish in colour.
- (iii) Abrasion over lumber spine of size 2 x 1 cm, reddish in colour.
- (iv) Abrasion over back side of knee joint of right leg of size 1 x 1 cm.
- (v) Three teeth bite marks over left breast area above nipple.
- (vi) Abrasion over right thigh on inner side of size 2 x 2 cm, reddish in colour.

15. The evidence of Medical Officer - PW-9 further discloses that he observed multiple blood stains found present over inner aspect of the thighs.

16. On local examination of genitals of the victim he noted following injuries :

- (i) Abrasions over both labia Majora of size 2 x 1 cm, reddish in colour.
- (ii) Minute laceration over both Minora.
- (iii) Redness present over clitoris.
- (iv) Vagina noted reddish in colour.
- (v) Hymen found ruptured at multiple sites and minimal blood oozing found present.
- (vi) Redness found present over urethra.
- (vii) Contusion of size 1 x 1 cm over lower lip on inner side noted.

17. He opined that overall findings found consistent with sexual assault. However, evidence of sexual intercourse also cannot be ruled out. He also collected the samples of the victim and issued the medical certificate Exhibit 76 and Form No.II is at Exhibit 77.

18. Besides the direct evidence, prosecution also relied upon the evidence of PW-1 - Murlidhar Ratanlal Kela who acted as a Panch on the spot panchnama. As per his evidence, he was called by the police on 03/10/2014. The spot was a plot adjacent to Agragami School, Wardha. The spot was shown by the victim. Police seized simple soil from the spot as well as another sample of the soil and sealed it and drawn the

panchnama Exhibit 20. PW-3 - Deorao Wamanrao Ingole who is another Panch examined to prove the seizure of the cloths of the victim as well as seizure of the cloths of the accused. His evidence reveals that on 03/10/2014, police called him in the police station and seized the cloths of the victim i.e. frock and her undergarments. Police also seized the cloths of the accused on the same day by drawing panchnama Exhibits 30 and 31. He further deposed that on 04/10/2014, police have seized the nail clipping, vaginal swab and blood sample of the victim in his presence. Though the PW-1 and PW-3 are cross-examined at length nothing incriminating is elicited from their cross-examination. There evidence is not shattered during the cross-examination.

19. Another piece of evidence on which prosecution relied upon is the evidence of PW-7 - Priti Mangesh Dudulkar, Naib Tahsildar who hold the Test Identification Parade. Her evidence shows that she is serving as a Naib Tahsildar. On 29/11/2014, she received a letter from the Police Station, City Wardha to conduct identification parade. Accordingly, she hold the identification parade on 03/12/2014. The witnesses namely Ritesh Kuldhariya, victim girl and Mariya were called. They have identified the accused during the identification parade. Accordingly, memorandum of identification parade was prepared and forwarded to the Investigating Officer. Learned Counsel (appointed) for

the appellant submitted that the accused is the victim of misidentification. The identification parade held by PW-7 is not according to the legal provisions. Cross-examination of PW-7 only shows that suggestions are given to her that witnesses have not identified the accused by touching him. She denied the said suggestions. The law on test identification parade is well settled that identification test is primarily meant for the purpose of helping the Investigating Agency with an assurance that their progress with the investigation of an offence is proceeding on the right path. It is well settled that the substantive evidence is the evidence of identification in Court and the test identification parade provides corroboration to the identification of the witness in Court, if required. In the present case, the witnesses not only identified the accused during the identification parade but also identified him in the Court which is substantive evidence. Though PW-7 - Naib Tahsildar is cross-examined but nothing is elicited during her cross-examination to falsify the fact of test identification parade.

20. The evidence of Investigating Officer PW-8 - Suhasini Suryakant Sahastrabudhe reveals about the investigation carried out by her. She had forwarded all the incriminating articles to the Chemical Analyzer. The Chemical Analyzer Reports are at Exhibits 70 to 72. The Chemical Analyzer report at Exhibit 72 reveals that Exhibit 3 which is

the full shirt of the accused is stained with blood on right sleeve and right front upper portion and appears to be washed. Exhibit 5 underwear has one semen stained of about 2 cm in diameter of front portion. Exhibits 3 and 5 stained with blood group 'A'. Blood group of the victim as well as the accused is 'A' as per Exhibits 70 and 71. The incriminating circumstances are put to the accused in his statement under Section 313 of the Code of Criminal Procedure, but he has not explained the said circumstances. He simply denied the same.

21. Learned Counsel for the appellant submitted that accused is the victim of misidentification and he is not at all concerned with the alleged offence. Though 9 witnesses are examined but evidence of victim is not corroborated and thus, prosecution failed to prove the charges. He came with a defence that victim was found crying on the road and, therefore, he asked her to come along with him and when he was returning along with the victim PW-4 – Ritesh Kuldhariya brought him at home and falsely implicated. He also came with the defence that there was money transaction between him and mother of the victim but these suggestions are also denied by PW-2 – mother of the victim. The oral evidence of the victim is not shattered during the cross-examination. She specifically denied that the person who sexually assaulted her was having resemblance like accused. Her evidence is corroborated by the

medical evidence. Evidence of PW-9 – Medical Officer discloses about the injuries on the genitals of the victim. He observed abrasions over both labia majora of size 2 x 1 cm and minute laceration over both minora. He also found redness present over clitoris and vagina noted reddish in colour. Hymen was found ruptured at multiple sites and blood was oozing from the said injuries. It was elicited during the cross-examination that hymen can be ruptured by cycling.

22. It is always seen that the anatomical feature with regard to hymen and labia majora and labia minora. These are the internal parts of the body of a female. Partial penetration with the labia majora or labia minora are sufficient to sustain injuries on the said part. The medical jurisprudence i.e. Medicolegal Manual by Dr. Narayan Reddy shows that in young children there are few or no signs of general violence, for the child usually has no idea of what is happening and also incapable of resisting. The hymen is deeply situated and as the vagina is very small, it is impossible for the penetration of the adult organ to take place. Usually the penis is placed either with the vulva or between the thighs. To attract the provisions of Section 376 of the IPC complete penetration is not required. Slight penetration is also sufficient. Here the evidence of Medical Officer shows that he has noted the injuries on the genital part of the victim. Said evidence regarding the injuries on

the private part is not challenged by the defence. The evidence of Medical Officer is not only an opinion evidence. But it is also the direct evidence. Opinion of the expert is simply a conclusion drawn from a set of facts coming to his knowledge and observation.

23. The Hon'ble Apex Court in the case of ***Smt. Nagindra Bala Mitra and Vs. Sunil Chandra Roy 1960 SCR (3) 1*** observed that the value of medical witness is not merely a check upon the testimony of eye witnesses; it is also independent testimony because it may establish certain facts quite apart from the oral evidence. If a person is shot at a close range, the mark of tattooing found by the medical witness would draw that the range was small, quite apart from any other opinion of this. Similarly, fractures of bones, depth and size of the wounds would show the nature of the weapon used. It is wrong to say that it is only opinion evidence; it is often direct evidence of the facts found upon the victim's person. Thus, in the present case PW-9 has witnessed injuries on the person of the victim girl which is direct evidence which he has seen upon the victim's person. Thus, the evidence of informant PW-2, evidence of victim PW-5 is corroborated by medical evidence. It is significant to note that the presence of the accused with the victim is not denied by the defence.

24. Thus, the case in hand is a case of penetrative sexual assault on a minor victim girl who was just 8 years at the time of alleged incident. It hardly needs to be mentioned that penetrative sexual assault is a ghastly act which leaves the victim shattered for the life as it causes not only physical but emotional and psychological trauma to the victim. Sexual activities with young girls of immature age have a traumatic effect on them, which persists throughout their life and often destruct whole personality of the victim. The victim of a sexual assault is not an accomplice, but she is a victim of lust of another person. Her evidence stands at a higher pedestal than that of an injured witness. The evidence of victim of rape case is required to receive same weight as it attached to evidence of an injured witness. In the present case, if totality of circumstances emerging on record discloses that the victim was playing with PW-6 – Mariya. Accused took the victim girl in presence of PW-6 with him on the pretext of plucking the flowers for her. He took her at isolated place and subjected her for sexual assault. PW-5 – victim has narrated the manner in which she was sexually assaulted. As victim was not returned PW-6 - Mariya immediately informed her mother and victim was searched. During search victim was found along with accused by PW-4 – Ritesh Kuldhariya. Both victim and accused are brought at home by PW-4 and in presence of accused victim disclosed to her mother about the assault. The medical evidence reflects victim has

sustained injuries on her genitals and scientific evidence shows blood stained cloths of the accused having blood stains of blood group 'A'. The incriminating circumstances are not explained by the accused. The evidence of victim is also corroborated by the circumstantial evidence. Though defence has suggested that accused is victim of misidentity and he is falsely implicated due to money transaction between him and the mother of the victim, but defence is not supported with any material. If totality of circumstances are taken into consideration it discloses that the victim of such a crime does not have any motive to falsely implicate the accused, and the evidence of the victim is cogent and reliable.

25. While dealing with the cases of sexual assault on children of tender ages, the Court is expected to shoulder great responsibility and is required to deal with such cases sensibly. Broader probabilities of the prosecution case are required to be examined in such crimes and the Court is not expected to get swayed away by minor discrepancies in evidence of prosecution which does not affect the root of the prosecution case.

26. Thus, the cumulative effect of entire evidence is sufficient to indicate that the victim had been sexually assaulted by the accused. We are satisfied that the prosecution has established beyond reasonable

doubt that the accused is guilty of offence alleged. Having gone through the order of the trial Court, we are in respectful agreement that well considered order is passed by the trial Court. The trial Court has rightly observed after appreciating the entire evidence and proved circumstances that prosecution has proved the charges against the accused.

27. So far as the question of punishment is concerned, accused is convicted and sentenced to suffer rigorous imprisonment for 10 years which is a minimum punishment for the said act. We are of the same view that the trial Court having regard to the fact that the accused is of young age and awarded the minimum sentence provided under the relevant section.

28. The informant has also filed an appeal to enhance the sentence. It is submitted by the learned Counsel Shri S.K. Bhoyar for the appellant that the learned trial Court had taken lenient view while awarding the sentence, considering the act of the accused maximum punishment is to be imposed. He relied upon the case of ***State of Karnataka Vs. Krishnappa (2000) 4 SCC 75*** wherein it is held that the normal sentence under Section 376(2) of the IPC in a case where rape is committed on a child below 12 years of age, is not less than 10 years

rigorous imprisonment through its proviso says that in exceptional cases “for special and adequate reasons” sentence of less than 10 years rigorous imprisonment can also be awarded. It is a fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso particularly in such like penal provisions.

29. For the offence punishable under Section 6 of the POCSO Act also minimum punishment provided is imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine. Section 6 of the POCSO Act provides for punishment for aggravated penetrative sexual assault. It provides that whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine. A perusal of the above provision shows that the legislative mandate is to impose the sentence for the offence of aggravated sexual assault and punishment provided which shall not be less than 10 years but it may extend to life and also to fine. Thus, the normal sentence in a case where the aggravated sexual assault is committed is not less than 10 years rigorous imprisonment which may extend to life. Thus, discretion is in the hands of the Court to award the

punishment considering the circumstances came before the Court. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence considering the gravity of the offence. Thus, in the present case, the trial Court has awarded the punishment of 10 years which is adequate and reasonable. We are not inclined to interfere with the same. Hence appeal filed for the enhancement of sentence deserves to be dismissed.

30. We also do not find any merit in the appeal filed by the appellant – accused against the conviction as the appeal is devoid of merits. In the above mentioned circumstances, no interference in the findings recorded in the judgment of the learned Special Court is warranted, hence both the appeals stand dismissed.

31. Learned Counsel appointed for the appellant has put in the best efforts to the cause of the appellant. Hence he is entitled for his professional fees as per rules.

32. Rule is made absolute in the aforesaid terms. There will be no order as to costs.