

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.543 of 2023

Arising Out of PS. Case No.-81 Year-2017 Thana- NAUBATPUR District- Patna

Govind Ravidas Son of Babuwanand Ravidas @ Shyam Ashish Bhagat R/o
Village- Naubatpur Chamartoli P.S.- Naubatpur Dist- Patna

... .. Appellant

Versus

1. The State of Bihar

2. [REDACTED] Village- Naubatpur Ps- Naubatpur Dist-
Patna

... .. Respondent

Appearance :

For the Appellant	:	Mr. Prakash Ranjan Sinha, Advocate
For the State	:	Ms. Km. Shashi Bala Verma, APP
For the Informant	:	Mr. Umesh Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 26-06-2025

Heard Mr. Prakash Ranjan Sinha, learned counsel for the appellant, Ms. Km. Shashi Bala Verma, learned Additional Public Prosecutor for the State and Mr. Umesh Kumar Verma, learned counsel appearing on behalf of the Respondent no. 2-informant.

2. The present appeal has been preferred for setting aside the judgment of conviction dated 17.03.2021 (hereinafter referred to as the ‘impugned judgment’) and order of sentence dated 20.03.2021 (hereinafter referred to as the ‘impugned order’) passed by learned Additional District and Sessions



Judge-VII-Cum Special Judge, POCSO, Patna (hereinafter referred to as the 'learned trial court') in Special (POCSO) Case No. 47 of 2017 (arising out of Naubatpur P.S. Case No. 81 of 2017) by which the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code (in short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO') Act. He has been sentenced to undergo life imprisonment with a fine of Rs. 50,000/- for the offence under Section 376 IPC and in default of payment of fine, he shall further undergo imprisonment for one year. The appellant has also been sentenced to undergo life imprisonment and fine of Rs. 50,000/- for the offence under Section 4 of the POCSO Act and in default of payment of fine, he shall further undergo one year simple imprisonment. Both the sentences shall run concurrently.

Prosecution Case

3. The prosecution case in short is that the informant, namely, Urmila Devi (PW-1) has given her fardbeyan on 24.03.2017 at 8 PM that on the same day at about 7 PM, that the minor daughter of the informant 'victim' was playing near the house, when she returned home the informant found that there was blood on her pant. On being asked the victim disclosed that



Govind the appellant knocked her down and did '*galat kaam*' with her when she examined her private part, she came to know that her daughter has been raped and she informed this occurrence to her husband. She also went to complain regarding this to Govind Ravidas (appellant) then the appellant replied that he had not done any wrong act with the victim rather he had slapped her. It is written in the *fardbeyan* that the occurrence took place behind the house of Umesh Saw in the field.

4. On the basis of above *fardbeyan* of the informant Naubatpur P.S. Case No. 81 of 2017 was registered against the appellant under Section 376 of the IPC and Sections 4 and 6 of the POCSO Act.

5. After investigation, police submitted charge sheet against the appellant under Section 376 IPC and Section 4/8 of the POCSO Act. After that, the learned trial court took cognizance of the offence.

6. The charges were explained to the accused-appellant to which he denied and claimed to be tried whereafter charges were framed against the appellant for the offence under Section 376 of 'IPC' and also under Sections 4 and 8 of the POCSO Act.

7. In course of trial, the prosecution examined five witnesses and exhibited several documentary evidences. The



description of the prosecution witnesses and the documents brought in evidence are being provided hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Mother of the victim (informant)
PW-2	Victim
PW-3	Father of the victim
PW-4	Mithilesh Kumar (Doctor)
PW-5	Ajeet Kumar

List of Exhibits produced on behalf of the Prosecution

Exhibit 1	Signature of the informant on Fardbeyan
Exhibit 1/1	Signature of PW-3 on the Fardbeyan of the informant
Exhibit 2	Signature of the informant on the seizure list
Exhibit 2/1	Signature of PW-3 on the seizure list
Exhibit 2/2	Seizure list
Exhibit 3	Medical report of the victim
Exhibit 3/1	Medical report of the victim
Exhibit 4	Signature of the then officer-in-charge on the endorsement in respect of registering of the instant case
Exhibit 5	Formal F.I.R.
Exhibit 6	Letter through which the seized article sent to FSL, Patna
Exhibit 7	FSL Report



8. After examination of the prosecution witnesses, the statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. and in that statement, the accused-appellant denied the evidence of the prosecution and pleaded innocence.

9. Defence has also adduced two witnesses namely Md. Ayub and DW-2- Ramsewak Prasad.

Findings of the learned trial Court

10. Learned trial court after analysing the entire evidences available on the record found that the accused has committed rape on the victim and at the time of alleged occurrence, she was 8-9 years old minor. Learned trial court found from the evidence of the victim that the alleged occurrence had taken place at the house of Umesh Saw. Learned trial court also found that the I.O. (PW-5) has established the place of occurrence as inside the boundary of the house of Umesh Saw. PW-3 has also stated that the place of occurrence is courtyard of the house of Umesh Saw. Hence, learned trial court observed that mere saying different names of the same place, does not change the place of occurrence.

Learned trial court after considering all the facts and circumstances of the case arrived at a conclusion that the prosecution has been able to prove the charges under Section 376



IPC and Section 4 of the POCSO Act beyond all shadow of reasonable doubts against the appellant and accordingly, convicted him for the charges under Section 376 IPC and Section 4 of the POCSO Act.

Submissions on behalf of the appellant

11. Learned counsel for the appellant has submitted that in this case, only three material witnesses are there, they are PW-1 to PW-3. Dr. Mithilesh Prasad is PW-4 who has conducted the medical examination of the victim. He has found no abrasion or bruise mark. No perennial bleeding present but there were redness and inflammation over whole labia minora and posterior angle. In cross-examination, the doctor has stated that he had not found any sign of injury on the whole body of the victim except the private part of the victim and redness found on the private parts of the victim may happen due to several reasons.

12. It has also been submitted that there is no material witness. It has also been submitted by the learned counsel for the appellant that the oral and medical version of the prosecution case is contradictory and oral version does not correlate with the medical version. It has also been submitted that prosecution has not been able to prove the place of occurrence and the manner of occurrence as the statement of the witnesses before the police as



well as in deposition in court are contradictory to each other. Learned counsel for the appellant has also submitted that this case has been filed with a view to falsely implicate the appellant.

Submissions on behalf of the State

13. On the other hand, learned Additional Public Prosecutor for the State has submitted that in this case, learned trial court has considered and appreciated the evidence on record. It has been submitted that it is a case where a minor girl has been raped by the appellant. The evidence of victim is trustworthy and same has been corroborated by medical evidence.

Consideration

14. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court records.

15. PW-1 who is the informant of this case who has stated that the occurrence is of 7 PM, her minor daughter had gone for playing, when she returned back she found blood on her pant, on being asked, the victim disclosed that Govind Ravidas had committed rape with her after knocking her down. When this witness went to ask the accused, she was being abused by the accused. After this, she narrated the story to her husband and went to police station for lodging this case. Written statement was read



over to her and she had put her signature after finding it right. This witness has further stated that the pant which the victim had worn at the time of occurrence was seized by police, it had blood. This witness has also identified her signature on the seizure list which has been marked as Ext-2.

16. In cross-examination, this witness has stated that she is having three daughter and a son. Eldest daughter is aged about 22 years. She has further stated that her daughter had gone for playing at 7 PM and returned after ten minutes. She was playing at a distance of one *baans* from her house. There are many houses near her house, she does not know as to where Govind the appellant was. They had good relation earlier but now the relation is not good. She had reached the police station at 8 PM. She had shown the place of occurrence to the I.O. This witness has also stated that there is no house in the boundary of the place of occurrence. The girl was normal when she returned back. This witness has denied the suggestion of the defence that the appellant used to help her economically. Her daughter was treated at 11 PM at PMCH on same day. This witness has been suggested by the defence that she had demanded Rs. 50,000/- for the marriage of her daughter but when the appellant did not give the advance to her, she had filed the false case against him.



17. PW-2 (victim)- Before her examination, trial court had taken her competence test and had come to the conclusion that the witness is competent to depose. This witness has stated that she knows the appellant and he had done 'ganda kaam' after disrobing her. This witness has further stated that the occurrence is of 7 PM she was playing in the lane, Govind the appellant took her in his lap and took her in the house of Umesh Saw. He took down her pant and knocked her on the field and after that committed 'ganda kaam'. Whenever she cried, her mouth was being gagged by the accused/appellant after that she started bleeding. She has also stated that there was also blood on her pant. She has further stated that the accused fled away after committing the offence. She came to her house and disclosed the occurrence to her mother. She has specifically stated that Govind had penetrated his penis and she started bleeding. She has also stated that her medical examination was conducted.

18. In cross-examination, she has stated that she does not know the name of her neighbour. Madam Asha is her teacher, there are three male and one female teacher in her school. Kajal is the girl who brings the attendance register. This witness has further stated that she had worn the same frock on the date of occurrence which she was wearing on the date of cross-examination. She has



stated that she was playing alone when she was taken away by the appellant, there was darkness. There was no one in the house of Umesh on that day. She had not give a teeth bite to the accused when she was being gagged. She had not been told by her mother as to what is to be deposed. She has categorically stated that she had told the same thing to police which she was deposing before the court. She knows the name of the appellant prior to the occurrence.

19. PW-3 (father of the victim)- He has stated that at the time of occurrence, he has gone to work for his livelihood and he came to know about the occurrence from his wife and his daughter. He had also seen the blood on pant and private part of his daughter. His daughter was weeping. This witness has also stated that he had handed over the bloodstained cloth to police which was being seized by the police. This witness has identified his signature on the seizure list which has been marked as Ext-2/1. This witness has also stated that his wife had given her *fardbeyan* to the *daroga* and he had put his signature on that statement. He has identified his signature on the *fardbeyan* which has been marked as Ext-1/1.

20. In cross-examination, this witness has stated that the house of the appellant is beside the house of Mohan Ravidas. He



does not remember as to where he had gone to work on the date of the occurrence. On the date of the occurrence, the victim had not gone to play with anybody. They reached police station at 8 PM and the same is at the distance of 15-20 minutes of walk. This witness has further stated that he keeps a mobile but he did not inform the police through mobile. This witness has stated that he had not found any injury on knee, back, cheek and lip of the victim. This witness was suggested that he had taken advance and he could not return the advance, for that reason, this case has been filed.

21. PW-4 is the doctor- we reproduce the examination-in-chief of the Doctor hereunder for ready reference:-

1. On 25-03-17 I was posted as a medical officer at Gardanibagh Hospital. On that day at 12:15 p.m. I examined [REDACTED] brought by A.S.I. of Naubatpur Md. Jalaluddin. Before examination a written consent of her father was taken and found following:-

MI- a mole on right side of cheek, old scar mark on lower end of right upper arm.

2. On examination she came with changed clothes. The clothes which she was wearing during occurrence was kept by Police at thana. She is conscious, cooperative and of average built.

Height- 4 feet 1", Weight 20 Kg. Teeth - upper 9 and lower 11.

3. Secondary sexual character not developed. There is no mark of violence on her body, except private parts.

4. Private part examination. There was no foreign hair present, no discharge present except old blood clot.

Perinial part- Offensive smell coming from private parts.



Hymen torn. There is lacerated wound about half cm long extending to vaginal canal. Vaginal swab taken and sent to microbiology, Pathology dept, PMCH for examination.

For age determination she is referred to PMCH, radiology dept for Xray of different part of body.

Opinion There is injury present on private parts, old blood also present.

Opinion of age reserved till report is received from PMCH, radiology dept.

5. This report is written in my pen and bears my signature. Mark it as exhibit

6. I perused radiological and pathological report and I found it on 17-04-17.

Report Vaginal swab examination received on 17-04-17, from dept of pathology, PMCH dt 27.03.17, no. 110 dt 25.03.17--- Spermatozoa not seen.

Xray report and Xray plated from dept of radiology, PMCH. Xray no. 345, dt 27.03.17--1. Xray both elbows- There is incomplete fusion of the epiphysis of the medial epicondyle of humerus of both sides. In female fuses at 14 years. There is incomplete fusion of the head of radius on both sides. It fuses at 14 years. 2. Xray wrist both--- There is incomplete fusion of distal ulnar epiphysis on both sides, it fuses at 17 years. There is incomplete fusion of distal radial epiphysis, it fuses at 16.5 years.

7. Opinion- Co relating dental examination, physical examination and radiological findings- The age of the concerned is 8 to 10 years. Her private part injury present, hymen torn, lacerated wound half cm extending to vaginal canal, blood clot also present.

8. This report is also written in my pen and signature. Mark it as exhibit.

22. In cross-examination, she has only written 9/11 teeth she has not specified the molar and premolar and incisor teeth. She has also stated that offensive smell in private parts may be due to some infection and itching is also possible. She



has further stated that due to itching, laceration in internal part is possible.

23. PW-5 (I.O.)- This witness has stated that the endorsement on the *fardbeyan* of the informant is in the handwriting of Avinash Kumar Singh, this witness has identified the handwriting of Avinash Kumar Singh and the same is marked as Ext-4. Formal FIR is in the handwriting of Munsii Sandeep Kumar and the same has been marked as Ext-5. This witness has described the place of occurrence as a room in the house of Umesh Saw. He has visited the place of occurrence on the identification of victim and her mother. Victim was aged about 7 years that is why her statement under Section 164 Cr.P.C. was not recorded. This witness has stated that he had seized a black colour bloodstained pant. A seizure list was prepared. Avinash Kumar Singh, SHO and this witness has identified the signature of Avinash Kumar Singh and the same has been marked as Ext-2/2. The seized pant was sent to Forensic Science Laboratory ('FSL') on the order of the court. This witness has also stated that the letter for sending the exhibit was written by him and on his identification, the same has been marked as Ext-6.

24. In cross-examination, this witness has stated that the FIR was sent to the court on 27.03.2017. The distance of



Patna Court from Naubatpur is 25 kilometers and it is connected by motorable road, it will take one hour to reach court. This witness has stated that the distance between the house of the victim and the appellant is 100 meter and there are many houses nearby. Indal Paswan, Jitendra Paswan, Ramsewak Prasad and Dinesh Paswan have their houses there. Their statements were recorded by this witness. This witness has stated that the medical examination of the appellant was not conducted. When he was recording the statement of the victim, a lady constable was present. It has also been stated by this witness that no DNA test of the appellant has been conducted. He has not verified the age of the victim.

25. The defence witnesses namely, Md. Ayub and Ramsewak Prasad have straightforwardly denied the occurrence.

26. In this case, the victim is aged about seven years. We are conscious of the position of the law that in a case of rape, conviction can be upheld even on the solitary evidence of prosecutrix. In this case, the victim is minor aged about 8 years. The evidence of child has to be appreciated with great circumspection.

27. Hon'ble Supreme Court in the case of State of Madhya Pradesh v. Balveer Singh reported in SCC OnLine



SC page 390 has held regarding the parameters for appreciation of child witness in para '58' of this case which is being reproduced hereunder for ready reference:-

“58. We summarize our conclusion as under: -

(I) The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence cannot be rejected outrightly.

(II) As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.

(III) Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.

(IV) The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the Trial Court.

(V) The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.

(VI) The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.

(VII) There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.

(VIII) Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.

(IX) Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely



on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

(X) The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in *toto*, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -

. **Opportunity of Tutoring of the Child Witness in question** whereby certain foundational facts suggesting or demonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.

. **Reasonable likelihood of tutoring** wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.

(XI) Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.



(XII) Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness.”

28. The evidence of minor victim should be appreciated with great circumspection. This is a case under Protection of Children from Sexual Offences Act (POCSO Act) and in POCSO Act, there is presumption of offences which is mentioned in Section 29 of the POCSO Act which is being reproduced hereunder for ready reference:-

“**29.** Presumption as to certain offences. - Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

29. In this case, the victim has been examined as PW-2 and before her examination, trial court has recorded its satisfaction that the witness is competent. This witness has categorically stated that the appellant took her in his lap, went to the house of Umesh Saw and there knocked her down and committed rape with her.

30. PW-4 is the doctor and this witness has stated in his examination-in-chief that offensive smell coming from private parts, hymen torn. There was a lacerated wound about ½ cm long extending to vaginal canal. In his opinion, the doctor has stated that



there was injury present on private part and old blood was also present. The age of the victim was assessed between 8 to 10 years.

31. The oral version of the prosecution as deposed by the victim gets its corroboration from medical evidence. Not only that, the clothes of the victim were sent for FSL examination and in FSL examination revealed as under:-

“1. Blood has been detected at the places in the exhibit marked ‘A’.
2. Blood mixed semen has been detected in the exhibit marked ‘A’.
3. Serological report on origin and group of blood and semen would follow.
Exhibit Mark ‘A’ is the old, dirty black pants which bore reddish brown stains at places. It also bore some reddish greyish white stains which were stiff to feel and produced characteristic bluish white fluorescence in ultra violet light.
This report is Ext-7.”

32. Other witnesses who have been examined by prosecution, have also supported the occurrence and the timeline of this occurrence is worth mentioning. The occurrence is of 24.03.2017 at 7 PM and it was reported to police at 8 PM. FIR was lodged on same day. The victim was examined on 25.03.2017. The evidence of child witness has got its corroboration from other evidences medical and oral as well.

33. The defence of the appellant is not specific. Defence has suggested to the informant that she was demanding rupees fifty thousand for the marriage of her daughter whereas to the husband of the informant, namely, Lalan Paswan (PW-3) it has been suggested that he had taken a loan.



34. The injury and the condition of private parts of the victim which has been described by the doctor is not self created one.

35. We are of the considered opinion that prosecution has been able to prove the charges beyond all reasonable doubts. Moreover, it is a case under POCSO Act and in view of section 29, a presumption is also raised against the appellant and since the prosecution has proved the foundational facts, the onus is shifted on the appellant to prove his innocence. Though, the burden of proof on the appellant is not of that category which is required from prosecution. The defence has only to prove the broader probabilities. Defence has adduced two witnesses, they have straightforward denied the occurrence. Defence has not been able to create a reasonable doubt.

36. The impugned judgment is well discussed. The trial court has committed no error with the order of conviction, however, from perusal of the order of the trial court it transpires that the occurrence is of 24.03.2017, the trial court has sentenced the appellant under Section 376 of the IPC and Section 4 of the POCSO Act both. Here we find it expedient to reproduce Section 42 of the POCSO Act as under :-



“42. Alternate punishment.—

Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code (45 of 1860) or section 67B of the Information Technology Act, 2000 (21 of 2000), then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

37. Section 376 of the IPC provides “sentence of rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine,” whereas, Section 4 of the POCSO Act prior to its amendment w.e.f. 16.08.2019, reads as under:-

4. Punishment for penetrative sexual assault.- Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

The clause provides for punishment for penetrative sexual assault. It provides that whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. (Notes on Clauses).”

38. Learned trial court has awarded sentence of life imprisonment for the offence punishable under Section 376 IPC and also sentenced the appellant for life imprisonment under Section 4 of the POCSO Act. The fine of rupees fifty thousand was also imposed. Admittedly, this is case of 24.03.2017 and on that date, the punishment for offence under Section 376 IPC was as under which is being reproduced hereunder for ready reference:-



“¹[376. Punishment for rape. - (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which ²[shall not be less than ten years, but which may extent to imprisonment for life, and shall also be liable to fine].”

1. Subs. By Act 13 of 2013, s. 9 (w.r.e.f. 3-2-2013). Prior to substitution, section 376, stood as under:

“376. *Punishment for rape.* - (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven be for or term less the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,-

(a) being a police officer commits rape-

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed: or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him: or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him, or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital: or

(e) commits rape on a woman knowing her to be pregnant, or

(f) commits rape on a woman when she is under twelve years of ages or

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.- Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.- Women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widows' home or by any other name, which is established and maintained for the reception and care of woman or children.

Explanation 3.- "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation”.



39. As far as the punishment for Section 4 of the POCSO Act is concerned, it was not less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

40. In view of the above discussions, we are of the view that having regard to the scheme of the Section 42 of the POCSO Act, the punishment under Section 376 IPC was greater in degree, as such, we maintain the sentence awarded to the appellant under Section 376 IPC. No separate sentence is required to be imposed for the offence punishable under Section 4 of the POCSO Act.

41. The appeal is dismissed.

42. Let a copy of the judgment along with the records of the trial court be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Shubham/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.07.2025
Transmission Date	11.07.2025

