

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta**

C.R.A. 207 of 2018

**Santosh Srivastava @ Manu Srivastava
Versus
The State of West Bengal and another**

For the Appellant: Mr. Sabir Ahmed,
Mr. Ayan Chakraborty,
Ms. Sohini Mukherjee,
Mr. Saikat Mallick

For the State: Ms. Rituparna Ghosh,
Ms. Afreen Begum.

For the Victim: Mr. Shounak Mondal.

Heard on: 09.12.2025.

Judgment on: 09.12.2025.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against judgment and order of conviction dated 14.03.2018 passed by the learned Additional District and Sessions Judge, First Court at Sealdah, South 24 Parganas-cum-Special Judge under POCSO Act, 2012 in Special Case No. 12 of 2017. The appellant was convicted under Section 376 of the IPC and 6 of the POCSO Act.

2. The appellant was sentenced to life imprisonment and was directed to pay a fine of Rs 2,00,000 (two lakhs). 90% of the said amount was directed to

be paid to the victim as compensation in terms of section 357 of the CRPC. Upon the default thereof, the appellant was directed to further undergo a rigorous imprisonment for one year. The detention period already suffered by the appellant was directed to set off in terms of Section 428, CRPC.

THE PROSECUTION CASE:

3. The victim and the appellant were allegedly having a love affair for more than three years prior to the date of lodging of the complaint with the police i.e. 16th March 2017. In course of such love affair, the appellant on several occasions entered into sexual intercourse with the victim. The victim initially protested against the said intercourse. However, she acquiesced when the appellant assured her that he would marry her. The victim was a minor aged 15 years 4 months on the date of the lodging of the police complaint. The victim, therefore, was about 12 years at the inception of the love affair with the appellant.

4. The complaint of the victim resulted in FIR No. 60 dated 16.03.2017 under Section 6 of the POSCO Act, 2015 and 376 of the IPC of the Narkeldanga Police Station against the appellant. The complaint was filed when the victim became pregnant and the family members of the victim confronted the appellant and his family with the fact that the appellant had impregnated the victim minor girl. However, the family of the appellant denied his involvement

5. As per the complaint, the appellant had sexual intercourse for the first time with the victim around 8:30 PM in November, 2016 in his house. The family members of the appellant were not in the house on that day. The victim

at that time aged about 14 odd years of age. Hence the same amounted to an aggravated penetrative sexual assault, defined under the 5(j)/(ii) and 5(l) of the POSCO Act; the punishment whereof is prescribed under section 6 of the POSCO Act read Section 376 of the IPC.

6. The Statement of the victim under Section 164 CRPC indicates that the appellant used to buy her food from time to time and accordingly won her over. After November 2016 the appellant had sexual intercourse with the victim many times thereafter.

7. Admittedly the victim's father was a rickshaw van puller and her mother worked as a housemaid. The victim came from a poor family. The appellant was slightly better off than the victim's family.

8. The last of such penetrative sexual assault occurred by the appellant with the victim occurred in February, 2017 in a hotel at central Kolkata. When the victim discovered that she became pregnant, she told the appellant who ignored the same. When she fell sick at home, she informed her parents. Her pregnancy was confirmed after a medical test performed at home.

9. The appellant was taken into custody and charges were framed by the trial Court on 31.08.2017 under Section 6 of the POCSO Act and Section 376 of the Indian Penal Code. The charge under Section 6 was based on the fact that the appellant committed the offence of aggravating penetrating sexual assault on the victim who was 12 years at that point of time, and on several occasions thereafter is stated to have impregnated her. Consequently, the victim gave birth to a girl child.

10. The first offence under Section 6 of the POCSO Act was committed by the appellant when the victim was neither in a position to consent to marry nor understood the consequences of her actions nor was legally capable thereof.

THE EVIDENCE ON RECORD AND ANALYSIS OF THIS COURT

11. **PW-1 was the victim herself.** She narrated the entire case of the prosecution. Her evidence could not be shaken in cross-examination.

12. **PW-2 was the father of the victim.** He indicated that on 15th March, 2017, he and his wife found that the victim suffering from stomach ache. Upon enquiries being made with the victim, she disclosed that the appellant had physical relations with her. She further informed her parents that the appellant did not pay any heed to her when she told that she was pregnant. The victim gave birth to a female child, who was four years of age as on 7th February, 2018. The evidence of PW-2 could not be shaken in cross-examination.

13. **PW-3 was Sumitra Dey**, who was declared hostile.

14. **PW-4 was Dr. Palash Paul**, R.M.O.-cum-Clinical Tutor of N.R.S. Medical College and Hospital, Calcutta. He has deposed that he has examined the victim, who according to him aged about 15 years 4 months. The victim was brought by an Sub-Inspector of Police, namely, Prosen Das of Narkaldanga Police Station for examination. He found the victim pregnant.

15. **PW-5 was Dr. Sayan Biswas**, Demonstrator at N.R.S. Medical College and Hospital, who examined the appellant. He has deposed that the appellant was 23 years of age at the time of examination and was found to be potent and capable of entering into physical relations.

16. **PW-6 was the mother of the victim.** She confirmed that sometime in 2017 in the evening at about 5:00 P.M., she noticed that her daughter was suffering from stomach ache. She was then informed by her daughter that the appellant had entered into physical relations with her. She brought a home pregnancy test kit which indicated that her daughter was pregnant. She deposed that a complaint was thereafter lodged with Narkaldanga Police Station. The police examined PW-6 and her husband. The Birth Certificate of the victim was seized by the police and the same was marked "X" for identification in the evidence. The said document was liable to be admitted and marked as exhibited in view of the cross-examination of PW-6, on the said document.

17. **PW-7 was the Aunt of the victim.** She confirmed that on 15th March, 2017 when she went to the house of the victim the victim told her that she is suffering from stomach ache and the appellant had entered into physical relation with her. The victim confirmed that she missed her menstrual cycle and was pregnant. The home kit pregnancy test on the victim was done in presence of PW-7. She thereafter confirmed that the victim's father and mother went to the house of the appellant, who refused to accept the allegations of the victim on the appellant.

18. **PW-8** was a neighbour, who worked as a maid Servant.

19. **PW-9** was a neighbour and worked as a labourer. He was the uncle of the victim and deposed on the lines of aunt, father and mother of the victim. He confirmed in cross-examination that the appellant had a love affair with the victim.

20. **PW-10 was Dulali Das** posted at Narkaldanga Police Station at the time of complaint of the victim. She was the investigating officer of the case. She recorded the statement of the victim. The statement of the victim was exhibited as Exhibit-5. She sent the victim for medical examination and collected the report. She sent the victim thereafter for recording her statement under Section 164 of the Code of Criminal Procedure. She seized the birth certificate of the victim under the seizure list and the medico legal documents. The entire seizure list was marked as Exhibit-7.

21. The accused/appellant was thereafter examined under Section 313 of the Code of Criminal Procedure where he denied all the circumstances confronted to him.

22. The defense made strenuous efforts to shake the evidence of PW-10, more particularly the age of the victim girl.

23. Mr. Ahmed, learned Counsel for the appellant has argued that the age of the victim has not been clearly proved. The said submission is contrary to the evidence on record. PW 10 has clearly deposed that the birth certificate of the victim was seized, and that the same along with other documents were collectively marked as Exhibit 7 before the Trial Court. Thus, the age of the victim is proved in terms of Section 294 of the CrPC.

24. Section 34 of the POSCO Act is relevant in this regard. Sec. 34 mandates that the Special Court shall determine the age of the victim, only when there is a question as regards the age. The defense must therefore raise a dispute as regards the age of the victim warranting a formal determination of the age of the victim in course of trial.

25. **Sec.34 (supra)** is set out herein below:-

“34. Procedure in case of commission of offence by child and determination of age by Special Court-

(1)#####

(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.

Emphasis applied

26. Section 34 must be read with Section 94 of the Juvenile Justice (Care and Protection of Children) Act 2016. Sec. 94 mandates upon the concerned authority to ascertain the age of the victim when there is doubt on his/her age. However, when from the appearance of the victim, it is clear that the person brought before the authority is a child, the concerned authority must proceed considering the person before it as a child without any further enquiry. Section 94 (supra) is set out 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.**

Emphasis applied

27. A conjoint and purposive reading of sections 34 and 94 establishes that the age of the victim needs to be ascertained by following the procedure prescribed under Section 94 of the Act of 2015, namely by calling for the birth certificate or bone ossification test, when there is a dispute as regards

the age. Reference in this regard may be made to the decision in **P. YUVAPRAKASH v. STATE REP. BY INSPECTOR OF POLICE, reported in 2023 INSC 676**, wherein it was held as follows:-

13. 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.

Emphasis applied

28. In the present case, the defense has not disputed the age of the victim. It has been argued for the first time in this appeal that the birth certificate was not properly exhibited. However it is clear from record the Birth Certificate has been lawfully exhibited in course of trial.
29. Even otherwise, the debate as regards the age of the victim pales since the cross-examination of the PWs, more particularly the PW 1 (the victim herself) and PW 10, on the age of the victim has clearly brought on record that the victim was a minor on the date of complaint.
30. Mr. Ahmed, learned Counsel appearing on behalf of the appellant next submits that the accused had suspected fidelity of the victim and therefore, had refused to marry her. He further submits that a Co-ordinate Bench of this Court has recorded that DNA report of the foetus of the victim, stated that it cannot be ruled out that the appellant was not the father of the victim. Such report is inconclusive and therefore, the benefit of doubt will come to the appellant.
31. The relevant extract of the DNA report (supra) is set out below:-

"From the DNA profiling results of the above individuals and from the interpretations thereof:

Santosh Srivastava (Ex-A) **cannot be excluded** as the biological father of this female CHILD in focus [Ex-C], deducing that the VICTIM##### represented by Ex. B is the biological mother of the CHILD in focus"

Emphasis applied

32. The DNA report in the instant case, therefore, has not given a clean chit to the appellant. The expression 'cannot be excluded' clearly indicates that the appellant could very well be the father of the child of the victim. The said DNA report instead corroborates and enhances the reliability of the oral evidence on record.

33. A DNA report is a vital evidence in a trial under 376 and under the POCSO Act. It corroborates the oral evidence. It provides scientific basis and clarity to the oral evidence. Reference in this regard may be made to the decision in **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, reported in (2024) 7 SCC 773**, wherein it was held as follows:-

37. With the advancement of science, DNA profiling technology which is a tool of forensic science can, in case of disputed paternity of a child by mere comparison of DNA obtained from the body fluid or body tissues of the child with his parents, ***offer infallible evidence of biological parentage....'***

Emphasis applied

34. In the present case, the evidence of the prosecution witnesses coupled with the medical report confirming that the victim was pregnant, supported by the DNA report that the appellant could not be excluded from being the father of the girl child of the victim, clearly establishes that the appellant has entered into a several acts of penetrative sexual assault with the victim who was a minor.

35. The evidence of the victim minor girl, PW 1, has further established that the appellant had first entered into a sexual intercourse with the victim when she was 12 years old and thereafter persisted with it on a promise of marriage to the victim. Whenever the victim protested against the said sexual intercourse, the appellant reaffirmed his promise.
36. The evidence of the victim in a rape case yields a higher level of sanctity. It does not require any further corroborative evidence to bring home the guilt of the perpetrator. Section 29 of the POSCO Act fortifies the said sanctity by shifting the burden of proof to the accused when the prosecution has been able to prove foundational facts.
37. In the present case, the victim has been candid and truthful since she stated that she loved the appellant. They shared a friendly and intimate relationship. The same, however, was turned into a sexual relationship at the behest of the appellant, who was a major of 23 years in the relationship.
38. The burden, therefore, shifted to the appellant to prove that he did not have any access to the victim. In the present case, the appellant has not been able to establish that he had no access to the victim. Section 29 mandates the appellant to establish that he had no access to the victim when the complaint and oral evidence of the victim has clearly implicated the appellant.
39. The object of Sec. 29 is to bring the perpetrators of sexual offences against the children to justice in view of the fact that a child would not ordinarily be able to shout out and resist the assailant. Hence there would be no eye witness to crime except the victim herself or himself. Reference in

this regard may be made to the decision in **Bhanei Prasad v. State of H.P., reported in 2025 SCC OnLine SC 1636**, wherein it was held as follows:-

5. The jurisprudence under the POCSO Act has evolved as a bulwark against the predatory crimes targeting the innocence of childhood. Section 29 of the POCSO Act creates a statutory presumption of guilt, **once foundational facts are established**. In the present case, this presumption stood un rebutted. **The victim's testimony was unwavering, medically corroborated, and free from embellishment. Her disclosure, though delayed, was truthful and borne out of perennial trauma and threats she has undergone.**

6. ***It is now well settled that the testimony of a child victim, if found credible and trustworthy, requires no corroboration.*** The Courts below have not merely accepted the victim's account, they have validated it through unimpeachable scientific evidence. The DNA report sealed the evidentiary chain and has dispelled all doubts in the prosecution case which is sought to be assailed by the petitioner.

Emphasis applied

40. Mr. Ahmed, learned Counsel appearing on behalf of the appellant next argued that delay in lodging the FIR may be fatal to the prosecution case. The love affair between the appellant and the victim started since the year 2014. If physical relations against the wishes of the victim occurred, right from the inception of the affair i.e. 2014 the lodging of the FIR in 2017 is a mere afterthought and an attempt to implicate the appellant, argued Mr Ahmed.
41. This Court notes that the first instance of offence under Section 6 of the POCSO Act, 2012 and physical relations between the victim and the appellant occurred sometime in November, 2016.
42. The victim was a minor and incapable of giving valid and legally enforceable consent. She still however believed and relied upon the appellant that he would marry her. The complaint was lodged after the victim discovered that she was pregnant and the appellant ignored the victim after being informed as such.

43. As held under paragraph no. 5 of ***Bhanei Prasad (supra)***, the late disclosure of the sexual assault by a minor rape victim is not fatal provided that the said disclosure is truthful. As already observed hereinabove, the evidence of the victim has been candid. She admitted to having a love affair with the appellant. The love affair, which began in 2014, the real intention of the appellant was revealed in 2016 when the appellant entered into sexual intercourse with her despite her protest. The appellant silenced her on the promise that he will marry her.

44. The delay in lodging the complaint was thus based on the love of the victim for the appellant, and further on the hope that the sexual relationship which started on the wrong and illegal side would be regularised by the passage of time and conduct of the appellant. A child may not know the consequences of sexual relation. The victim in this case discovered her pregnancy and only then confronted the appellant. Thus, it is inconsequential as to when the complaint was filed in view of the clear evidence of aggravated penetrative sexual assault by the appellant on the victim.

45. In the facts and circumstances of the case, this Court is of the view that the delay in lodging the FIR and the complaint is not relevant in the context of a conviction under Section 6 of the POCSO Act, 2012. There is a presumption under Section 29 of the POCSO Act, 2012 as regards the commission of the offence unless contrary is proved. The evidence on record has clearly established that the appellant has on several occasions entered into physical relations with the victim. The offence committed by the appellant was a continuous one.

46. Mr. Ahmed, learned Counsel appearing on behalf of the appellant lastly argued that investigation could have been more comprehensive and less perfunctory and hence, FIR being lodged on the basis of an Aadhaar Card which was neither seized nor exhibited and the said document being the birth certificate which was initially marked for identification indicates a rather casual and perfunctory investigation.

47. It is now well-settled that even if there are some loopholes in the investigation, the main crux of the offence having been established against the appellant, the same cannot stand in the way of conviction, particularly in respect of the offence under Section 6 of the POCSO Act, 2012 and Section 376 of the Indian Penal Code. The evidence of the PWs has remained uncontroverted.

48. Having regard to the above discussions, this Court is of the clear and unequivocal view that the conviction of the appellant under Section 6 of the POCSO Act and Section 376 of the Indian Penal Code, calls for no interference at all. C.R.A. 207 of 2018 shall stand dismissed.

49. This Court is of the view that the fine imposed by the trial Court on the appellant may not in fact be paid by the appellant. Let 90% of the fine of Rs. 2 lakhs i.e. Rs. 1,80,000/- be paid by the State Legal Services Authority (SLSA) within 15 days of receipt of this judgment. If the appellant pays the fine of Rs. 2 lakhs, Rs. 1,80,000/- shall go to the SLSA. The balance shall be paid to the State. If the appellant does not pay the same, the SLSA shall bear the expense.

50. In addition to the aforesaid, the SLSA shall pay a further sum of Rs. 2 lakhs to the victim from its own funds.

51. The payments to the victim as ordered hereinabove shall be enforced by the Trial Court.

52. The impugned judgment shall stand modified to the extent indicated above.

53. The trial court records along with a copy of this judgement be sent down at once to the learned trial court for necessary action. The appellant shall suffer the punishment as imposed by the Trial Court.

54. The appellant if on bail, shall forthwith surrender before the jurisdictional court or shall be forthwith be taken into custody and made to serve the sentence.

55. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)