



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 126 OF 2023

Ajay S/o Arun Hazare,
Aged about 26 years, Occupation - Labour,
R/o Armori (Dongari), Tah. Armori, Dist.
Gadchiroli

... Appellant

// VERSUS //

1. State of Maharashtra through Police Station Officer, Police Station Armori, Dist. Gadchiroli
2. Complainant XYZ Crime No. 308 of 2018, Police Station Armori, Dist. Gadchiroli. Special POCSO Case 12/2019.

... Respondents

Shri Mahesh Rai, Advocate for the appellant.
Smt. H.N.Prabhu, Addl.P.P. for respondent No.1/State.
Smt. Kirti Deshpande, Advocate (appointed) for respondent No.2/Victim

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 28th November, 2025.
Pronounced on : 04th December, 2025.

JUDGMENT :

The appellant has preferred the present appeal being aggrieved by the judgment and order dated **20.12.2022** passed by the learned Additional Sessions Judge, Gadchiroli in **Special (POCSO) Case No. 12 of 2019**, whereby he was convicted and sentenced for the following offences:

Section 6 of the Protection of Children from Sexual Offences Act, 2012 – Rigorous imprisonment for 20 years and fine of Rs. 75,000/-, in default to undergo further rigorous imprisonment for 1 year.

Section 363 of the Indian Penal Code – Rigorous imprisonment for 5 years and fine of Rs. 25,000/-, in default to undergo further rigorous imprisonment for 6 months.

Section 506-II of the Indian Penal Code – Rigorous imprisonment for 5 years and fine of Rs. 25,000/-, in default to undergo further rigorous imprisonment for 6 months.

2. The case of the prosecution, in brief, is as follows:

On 21.11.2018, the informant, mother of the victim girl aged 13 years, lodged an FIR alleging that on the said day her husband had gone to village Maldongri for personal work. At about 10.30 a.m., she sent the victim to a grocery shop to purchase soap. The victim returned without making the purchase and was informed that the accused had brought the soap. Shortly thereafter, the appellant handed over the soap and left for his house. At about 11.00 a.m., the victim left the house wearing regular clothes instead of her school uniform, stating that such attire was permitted on Wednesdays. At about 1.00 p.m., the informant's husband returned home and learnt that the victim had gone to school despite the school being closed. He immediately proceeded to the school and later to the houses of the victim's friends; however, she

was not found. They then contacted their relatives, but the efforts yielded no information.

Thereafter, the informant went to the house of the appellant, who was on visiting terms with the family, to make inquiries. The appellant was not found there either. Telephonic conversation with his wife, who was at her parental home, revealed that the appellant was not present there. Suspecting the appellant, the informant lodged FIR No. 308/2018 at Armori Police Station for offences under Sections 363, 376(2)(j)(n), 376(3), 506-II of the Indian Penal Code (hereinafter referred to as “IPC”) and Sections 5 & 6 of the Prevention of Children from Sexual Offences Act, 2012, (hereinafter referred to as “POCSO Act”).

3. During investigation, on 27.12.2018, the informant’s husband received a call from the victim stating that she was at Bhandgaon, Pune. On the next day, the Investigating Officer, along with the victim’s father, proceeded to Pune. The victim was found in the company of the appellant at village Bhandgaon. She was brought back to Armori on 29.12.2018.

4. During interrogation, the victim disclosed that the appellant had taken her on the pretext of visiting his newborn child and that he had sexually assaulted her repeatedly while they were in Pune. The accused was thereafter arrested. The clothes of the accused and the victim were seized; spot panchanama and photographs were prepared; medical reports were collected; and statements of the victim and informant

were recorded under Section 164 of the Criminal Procedure Code (hereinafter referred to as “Cri.P.C.”). Upon completion of investigation, a charge-sheet was filed. The statement of the accused under section 313 of the Cri.P.C. (Exhibit 71) was brought on record.

5. The trial Court framed charges (Exh. 6) under Sections 363, 376(2)(i)(n), 376(3), 506-II of the IPC and Sections 4 and 6 of the POCSO Act. The appellant pleaded not guilty and claimed trial.

6. The prosecution examined ten witnesses, P.W.1 the informant & mother of the victim girl at Exhibit 8, P.W.2-Victim Girl at Exhibit 16, P.W.3 Kailas Pandhari Pradhan - panch witness at Exhibit 23, P.W.4 – Babarao Keshavrao Meshram – panch witness at Exhibit 27, P.W.5 Dr. Rekha Rupchand Nathani – Medical Officer at Exhibit 36, P.W.6 Shalu Bhashkar Dhote – panch witness at Exhibit 42, P.W.7 Nanaji Nimbaji Shrikondawar – panch witness at Exhibit 44, P.W.8 Dr. Puja Vyankatesh Borlepawar – Medical Officer at Exhibit 47, P.W.9 Pandurang Maniram Kumoti – police witness at Exhibit 52 and P.W.10 Shital Mahadev Rane- Investigating Officer at Exhibit 56. In order to defence himself, the appellant/accused has examined D.W.1 Savita Ajay Hajare.

7. After appreciating the oral and documentary evidence, the trial Court held that the prosecution had proved the charges of kidnapping, repeated rape/aggravated penetrative sexual assault, and criminal intimidation. The trial Court further held

that the punishments prescribed under Section 376(3) of the IPC and Section 6 of the POCSO Act are similar, each prescribing a minimum sentence of 20 years rigorous imprisonment. Invoking Section 42 of the POCSO Act, and noting that the appellant was found guilty under both acts, the Court imposed the higher punishment under Section 6 of the POCSO Act and did not award a separate sentence under Section 376(2)(j)(n) of the IPC.

8. Being dissatisfied with the impugned judgment, the appellant has filed the present appeal.

9. I have heard Shri M. V. Rai, learned Counsel for the appellant, Mrs. H. N. Prabhu, learned Additional Public Prosecutor for the respondent/State, and Mrs. Kirti Deshmukh, learned Counsel appearing for respondent No. 2–victim. With their assistance, I have perused the evidence and the material available on record.

10. Submissions on behalf of the Appellant

10.1. Learned Counsel for the appellant contends that the prosecution has failed to establish a coherent and reliable chain of evidence. His submissions, in essence, are as follows:

10.2. **Victim voluntarily accompanied the appellant :** It is urged that the material on record indicates that the victim had herself proceeded with the appellant to Pune and had resided with him in a rented room. The fact that she telephoned her father from

Pune is admitted; however, the prosecution has not produced *any call detail records* nor has it established from whose mobile phone the call was made.

10.3. Defective and unreliable spot panchanama: During the spot panchanama at the rented premises in Pune, no requisition or written intimation was issued to the panch witnesses. Furthermore, the panch witnesses to this spot panchanama have not been examined, and nor have local police personnel who assisted in the operation were examined. Hence, the entire spot panchanama is vitiated.

10.4. Seizure procedure doubtful: Though a panchanama regarding seizure of clothes and samples of the victim was drawn, nothing incriminating emerged. It is further pointed out that the clothes of the appellant were allegedly seized *five days after* lodging of the report, which casts a serious doubt on the prosecution story.

10.5. Medical evidence unreliable and contradicting the prosecution story: The doctor who examined the victim has stated that the victim was under severe psychological trauma and did not permit medical examination. When the victim did not allow physical examination, the basis on which the doctor concluded that the hymen was ruptured is unexplained. The medical examination report is dated 29.12.2018 at 12:21 a.m., whereas the victim's mother's testimony suggests that the child returned to Armori only on 29.12.2018, making it impossible for examination to have occurred on 28.12.2018 as indicated in the papers. The medical form contains several blanks, including date and time of examination, and indicates that

swabs and other essential samples were not collected. This renders the medical evidence highly suspicious.

10.6. **Contradictions regarding the victim's recovery and dates:** The defence points out that the *Taba Pavti* at page 104 of the paper-book shows the victim was handed over to her parents on 07.01.2019. This creates doubt regarding earlier seizure memos and medical examination dates allegedly on 28–29 December.

10.7. **Improper arrest and delayed seizure of clothes:** The accused was arrested on 28.12.2018, yet his clothes were seized only on 31.12.2018, which is an unreasonable delay, rendering the seizure untrustworthy.

10.8. **Birth certificate and age not proved:** The birth certificate produced is stated to be issued by Gram Panchayat Dongargaon mentioning the date of birth of the victim as 13.04.2006. However, the issuing authority was not examined; the certificate was not proved as required under law; the school's bonafide certificate was also not proved, as the Headmaster who issued it was not examined. Hence, the prosecution has failed to prove the victim's age and, consequently, failed to establish that she was a minor.

10.9. **Contradictions in testimonies:** Both the informant and the victim have made statements containing contradictions and omissions. The spot witnesses, neighbours from Pune, and local police were not examined.

10.10. **Defence evidence supports innocence:** The appellant's wife (D.W.1), examined by the defence, categorically stated that she was present in Pune with the appellant and the victim and that no incident occurred. Additionally, in his statement under Section 313 of the Cri.P.C., the appellant stated that he was the one who telephoned the victim's father asking him to take the victim back.

On these grounds, learned Counsel submits that the prosecution has failed to prove its case beyond reasonable doubt and the appellant is entitled to acquittal.

11. **Submissions on behalf of the State :**

11.1. Per contra, learned Additional Public Prosecutor submits that the objections raised by the appellant are technical in nature and do not go to the root of the prosecution case. Her principal submissions are as under:

11.2. **Credibility of the victim's testimony:** In offences under the POCSO Act, minor procedural lapses do not override the substantive evidence if the testimony of the victim inspires confidence. The victim's evidence remains intact and unshaken despite cross-examination.

11.3. **Admission by defence itself:** Both the defence witnesses (wife of the appellant) and the appellant in his statement under Section 313 Cri.P.C. have admitted that the victim was residing with the appellant in Pune. This admission corroborates the prosecution case.

11.4. **Medical evidence supports prosecution:** The Medical Officer clearly noted that the victim's hymen was ruptured. The victim was admitted to the hospital from 29.12.2018 to 07.01.2019, consistent with psychological trauma reported by the doctor.

11.5. **Radiology report supports age determination:** The radiology report, part of the medical record, indicates the victim's age between 13 to 15 years. Even if not exhibited, it is part of the hospital record and cannot be ignored.

11.6. **Minor discrepancies in date not fatal:** Some inconsistencies regarding exact dates of travel or examination are not material and do not undermine the overall credibility of the prosecution story. The fundamental aspects of kidnapping and sexual assault remain unaffected.

11.7. **Victim's consent irrelevant:** Since the victim was a child of 13 years, her consent is irrelevant. Section 29 of the POCSO Act raises a presumption against the accused once foundational facts of the child being found in his company are proved.

11.8. **Public documents need no formal proof:** Birth certificate and school records are public documents already part of the investigation record. Their authenticity need not be separately proved through the issuing authorities.

11.9. Reliance is placed on the judgment of the Hon'ble Supreme Court in ***Deepak Kumar Sahu v. State of Chhattisgarh*** in ***Criminal Appeal No. 3352 of 2025***, where it has been held that corroboration of the victim's testimony is not a rule of law.

12. Submissions on behalf of Respondent No. 2 (Victim)

12.1. Learned counsel for the victim adopts the submissions of the learned Addl.P.P. and further submits that:

12.2. **Birth certificate is a public document:** The birth certificate produced by the Investigating Officer is a public document and does not require examination of the issuing authority.

12.3. **Radiology report forms part of medical record:** The age determination in the radiology report is part of medico-legal documentation and must be considered.

12.4. **No challenge to age during cross-examination:** The defence did not elicit anything in cross-examination of the victim or her mother to dispute the date of birth. The challenge now raised is belated and untenable.

12.5. **Non-examination of some witnesses not fatal:** It was the duty of the Investigating Officer to examine all relevant witnesses; however, any lapse on her part does not destroy the substantive prosecution evidence.

12.6. Accordingly, it is submitted that the prosecution has proved the case beyond reasonable doubt and no interference with the conviction is warranted.

13. It is expedient to evaluate the evidence adduced by the prosecution at the outset, before undertaking a detailed analysis or drawing conclusions.

14. PW1, the mother of the victim, deposed that on 21/11/2018, her daughter had gone to a shop to purchase a 'Nirma' soap bar but returned home midway. The accused, Ajay, subsequently delivered the soap bar to PW1 at her residence. The victim then prepared to go to school in a colorful dress instead of her school uniform, explaining it was permitted on Wednesdays. Between 12:00 and 1:00 pm., PW1 informed her husband that the victim was not at home as she had gone to school. Upon finding the school closed and being unable to trace the victim at friends' or relatives' houses, PW1 suspected the accused. She contacted the accused's in-laws, who stated he had not visited them. PW1 then lodged a complaint with the police, which was recorded as per her version (Exhibit 9 – complaint, Exhibit 10 – FIR). PW1 further deposed that on 27/12/2018, the victim called from Bhandgaon, Pune, informing her father that she was residing there with the accused. The victim stated that the accused had taken her without informing her parents, threatened her, instructed her to conceal the matter, and subjected her to sexual abuse. The victim also explained that she had delayed informing her parents due to fear and threats and had called from a neighbor's phone. The police recovered the victim and took her for

medical examination. PW1's statement (Exhibit 11) was recorded before the Judicial Magistrate at Armori.

In cross-examination, PW1 admitted that the accused had previously visited their house and occasionally performed labor work. She denied any false implication of the accused and maintained that the accused was not present at his residence after 11:00 am. on 21/11/2018, and that the victim had been subjected to threats and sexual abuse.

The testimony of PW1, being a direct eyewitness to events preceding the victim's disappearance and a recipient of the victim's account regarding the accused's conduct, is credible and corroborates the sequence of events leading to the victim's abduction and sexual exploitation.

15. **PW2**- Victim- The witness, a minor aged approximately fourteen years at the time of recording evidence, was examined to assess her understanding of the solemnity of the oath and her general knowledge. Upon examination, the witness demonstrated sufficient intelligence, common sense, and understanding of right and wrong in accordance with her age. She was able to answer simple questions regarding her studies, daily activities, and general knowledge accurately. The Court is satisfied that she comprehends the importance of taking an oath and is competent to give evidence under oath. In Examination-in-Chief: PW-2, a student residing in Maharashtra, deposed that she knew the accused as a neighbor. She narrated the

events of 21/11/2018, stating that the accused requested her company to visit Dighori and persuaded her not to inform her father. She accompanied him to Armori Depot, Nagpur, and subsequently to Pune and Bhandgaon, where she alleged that the accused forcibly committed sexual intercourse with her on multiple occasions while they resided together in a rented room. The witness stated that she sought help from neighbors (specifically, a woman referred to as Vahini) who contacted her father. She was thereafter reunited with her father and police, and the accused was apprehended. PW-2 also testified regarding the seizure of her clothes and relevant photographs, which were marked as exhibits and identified by her. The witness' account shows internal consistency regarding the sequence of events, locations visited, and the actions of the accused. She was able to identify seized items and exhibits, corroborating her testimony. Her statements regarding medical examination and reporting to police further support the reliability of her account.

During cross-examination, the witness maintained that she did not voluntarily accompany the accused and that the accused had coerced her by misrepresenting his intentions. She refuted suggestions that she had left home freely or stayed voluntarily with the accused. She also denied having been tutored or influenced by her parents or police in making her statements. While she was unable to recall certain minor details during cross-examination (such as precise statements made to police at the time), she consistently affirmed the core aspects of her testimony. The Court finds that her inability to recollect every detail does not

materially affect the credibility of her account, given her age and the traumatic nature of the events.

The evidence of PW-2 is found to be credible, reliable, and consistent with the circumstances of the case. Her testimony establishes that: The accused knew her as a minor living in the same locality. He induced her to accompany him to different locations without parental consent. He committed sexual assault on her during the period they resided together in Bhandgaon. She reported the matter to neighbors and her father, which led to the apprehension of the accused. Material evidence (clothes, photographs, and Panchanama reports) corroborates her statements. Given the above, the Court is satisfied that the testimony of PW-2 forms a substantial part of the prosecution's case and can be relied upon as credible evidence for adjudication of the offences charged under the POCSO Act. PW-2's evidence, recorded under oath, is coherent, credible, and sufficiently corroborated by material evidence. Her testimony reflects the occurrence of sexual assault by the accused and the subsequent reporting to the authorities. Accordingly, her evidence is accorded due weight in the judicial determination of this case.

16. **PW3**- The evidence of PW-3, Kailas Pandhari Pradhan, a resident of Armori Dongari, Gadchiroli, has been recorded on oath. PW-3 deposed that on 22/11/2018, he was summoned by the police to accompany them for the purpose of preparing the Panchanama of the spot of occurrence. He identified and verified the notice issued by the police (Exhibit 24) and confirmed that he accompanied the police to the house of

Sangita Dhore. PW-3 stated that the house was roofed with cement sheets and consisted of four rooms. In his presence, the police prepared the Panchanama of the spot (Exhibit 25) and he affixed his signature thereon. He further confirmed that the second Pancha, Prakash Kukadkar, also put his signature on the Panchanama, and that the Crime Details Form, including the map of the spot prepared by the police (Exhibit 26), was shown to him and bears his signature. PW-3 clearly stated that he had attended the spot and that his deposition was truthful.

During cross-examination, PW-3 denied all suggestions implying that he had not attended the spot of occurrence or that he was deposing falsely at the instance of any other person. He specifically refuted allegations that he had been elsewhere on that day or that any familial relationship influenced his evidence. PW-3's testimony remained consistent and credible, confirming the accuracy of the Panchanama and other documents prepared at the scene. The evidence of PW-3 is thus found to be reliable, corroborates the procedural steps taken by the police at the spot of occurrence, and substantiates the authenticity of the seizure and spot Panchanama, forming an important part of the prosecution case.

17. **PW-4** Babarao Meshram stated that he accompanied the police, the accused, and another Pancha, Shri Kondawar, to the spot of occurrence, which was a house in Armori. The Panchanama of the spot (Exhibit 29) was executed in his presence as per the apparent state of affairs, and he affixed his signature thereon after reading the contents. Subsequently, he along with the same parties visited a second house within

the premises of the first spot, which was also shown by the accused. The Panchanama at the second house was similarly executed and signed by him (Exhibit 29-A). PW-4 further confirmed the correctness of the Crime Details Forms executed at the spot (Exhibit 30 and Exhibit 31), bearing his signature, the signature of the other Pancha, and the police officer.

During cross-examination, PW-4 refuted all suggestions that he had not attended the spot or that the Panchanamas and Crime Details Forms were prepared at the police station. He affirmed that the accused was present during the visits to both spots of occurrence and that the Panchanamas and related documents were executed at the location of the incident. PW-4 consistently stated that he was acting independently and truthfully, and that his deposition was not influenced by the police.

The testimony of PW-4 is credible and reliable, corroborates the procedural steps undertaken by the police at the scene, and confirms the authenticity and correctness of the spot Panchanamas and Crime Details Forms. His evidence, therefore, forms a significant part of the prosecution's case.

18. **PW-5** Dr. Rekha Nathani, a Medical Officer attached to the Women and Children Hospital at Gadchiroli, deposed that she examined the victim girl on 28.12.2018, following a requisition from Armori Police Station (Exh.37). She observed that the victim was initially under psychological trauma and required

counseling before she could narrate the incident. With the consent of the mother and the accompanying lady constable, she conducted a medico-legal examination and recorded the victim's identifying marks and history.

Findings : No external injury was observed. Hymen was found ruptured; no acute bleeding was present. Samples collected included scalp hair, nails, oral swab, blood (including for DNA), pubic hair, and vulval swab. The Medico-Legal Certificate (Exh.38), Form II and Form B (Exhs.39 & 40), and Discharge Card (Exh.41) were identified and verified by her. She concluded that the "possibility of sexual violence cannot be ruled out."

During Cross-Examination: PW-5 admitted minor procedural omissions in the report, such as the absence of exact time and the name of the counselor, and the fact that the history was noted as narrated by the mother due to the victim's trauma. She clarified that hymen rupture cannot normally result from activities such as cycling, swimming, or other non-sexual activities, and denied any suggestion that her report was influenced by police or others.

The Court finds PW-5's evidence credible and medically reliable. The examination was conducted according to standard procedures, and the findings corroborate the allegations of sexual assault made by the victim. Minor omissions in documentation do not materially affect the credibility of the findings.

19. **PW-6** Shalu Bhashkar Dhote deposed that on 28/12/2018, she was called by the police to witness the seizure of the clothes of the victim girl, which included a salwar, legging-pyjama, and knickers. She identified her signature on the Seizure Panchanama (Exhibit No.19) and confirmed the correctness of its contents. She further deposed that the custody of the victim girl had been handed over to her parents in her presence, and she had signed the relevant receipt (Exhibit No. 43). During cross-examination, PW-6 admitted that the victim girl was her niece, but denied that her relationship with the victim influenced her deposition, affirming that the seizure of clothes and the execution of the custody receipt were conducted in her presence. PW-6's evidence is credible and corroborates the procedural steps undertaken by the police during the investigation.

20. **PW No. 7** – Nanaji Nimbaji Shrikondawar was directed by his superiors to act as a Pancha in the instant case. He accompanied the police, accused, and another Pancha, Babarao Meshram, to the spot of occurrence, where the accused showed the house of the victim girl and a Panchanama was executed (Exhibit No. 29). A subsequent Panchanama was executed at the house of the accused (Exhibit No. 29-A). He further deposed that two Crime Details Forms were prepared (Exhibit Nos. 30 and 31), and photographs of the spot were taken (Articles D-1 to D-4 and F-1 to F-4). He identified the seizure of the accused's clothes at the police station (Exhibit No. 45; Articles G-1 to G-3). PW-7 confirmed that all Panchanamas and documents were executed in his presence, reflecting the apparent state of affairs at the respective

spots. During cross-examination, he denied suggestions that the Panchanamas and forms were prepared in the police station or that his signatures were obtained falsely. His evidence corroborates PW-4 and confirms the authenticity of the procedural documentation.

21. **PW8** – Dr. Puja Vyankatesh Borlepawar: Medical Officer at the Sub-District Hospital, Armori, examined the accused on 28.12.2018 after receiving a police requisition (Exh.48). She obtained his consent before examination and noted identifying marks. During the examination: it was opined that there were no external injury found on the accused. He was noted to be capable of performing a sexual act. Samples collected included nail clippings, scalp hair, pubic hair, penile swab, and penile washing. The Medico-Legal Report (Exh.49) and Forms B and II (Exh.50 & 51) were verified by her as true and correct.

In Cross-Examination: PW-8 confirmed compliance with standard procedures, including obtaining consent from the accused. She denied any suggestion of preparing false reports or acting at the behest of police. She admitted that the police officer's name and badge number were not mentioned in the report but maintained that the report was prepared based on direct medical examination and observation.

PW-8's evidence is credible and reliable. The examination confirms the accused's physical capacity to commit sexual acts and establishes the collection of forensic samples for further analysis.

The evidence of PW-5 and PW-8 corroborates the testimony of the victim (PW-2) regarding the occurrence of sexual assault. The medico-legal findings, particularly the hymenal rupture of the victim, are consistent with her allegations of forcible sexual intercourse. The examinations were conducted in accordance with statutory procedures under the POCSO Act, 2012, and other relevant medico-legal protocols. Minor procedural lapses in documentation do not detract from the reliability of the evidence. Collection and preservation of samples from both the victim and accused ensure evidentiary integrity for forensic analysis.

The Court finds that the medico-legal evidence provided by PW-5 and PW-8 are credible, consistent with the victim's account, and materially supports the prosecution's case regarding sexual assault by the appellant. This evidence is accorded significant weight in the adjudication of the offences charged.

22. **PW-9** – Pandurang Maniram Kumoti deposed that on 09/01/2019, he was directed to carry the seized property and specimen samples in Crime No. 308/2018 from Police Station Armori to the Forensic Science Laboratory, Nagpur. He produced a Duty Pass (Exhibit No. 53) and submitted the acknowledgment receipt of deposit (Exhibit No. 54). He confirmed that the report of arrival at the laboratory was submitted to the Investigating Officer (Exhibit No. 55). During cross-examination, PW-9 denied any falsehood in his testimony and affirmed that the seized property was duly carried and deposited in the laboratory. His evidence establishes the proper chain of custody and submission of the seized material for forensic examination.

23. **PW-10** – Shital Mahadeo Rane, Woman Police Sub-Inspector, resident of Nagpur, deposed that she was entrusted with the investigation of Crime No. 308/2018 at Police Station Armori. She confirmed execution of Panchanamas at multiple spots, including the house of the victim (Exhibit Nos. 25, 29, 29-A, 20) and relevant Crime Details Forms (Exhibit Nos. 26, 30, 31, 58). She deposed that the clothes of the victim and accused were seized in her presence (Exhibit Nos. 19 and 45; Articles A to I) and sent to the Forensic Science Laboratory through PW-9, with the compliance reports duly submitted. She also obtained the victim's Birth Certificate (Exhibit No. 65) and Bonafide Certificate (Exhibit No. 21) and coordinated recording of statements of the victim and her parents via Judicial Magistrate (Exhibit No. 63). PW-10 further deposed regarding correspondence for medical examination of the victim and accused (Exhibit Nos. 37, 48) and confirmed the accused's arrest and related documentation (Exhibit No. 61). During cross-examination, PW-10 categorically denied suggestions of falsification, forgery, or procedural impropriety. Her evidence comprehensively corroborates the investigation, seizure of material, and procedural compliance.

24. I have carefully considered the rival submissions advanced by the learned Counsel for the appellant, the learned Additional Public Prosecutor for the State, and the learned Counsel appearing for respondent No. 2. I have independently scrutinized the entire oral and documentary evidence brought on record, including the testimony of the victim, the medical officers, the Investigating Officer, the panch

witnesses, the defence witness, and the documents relied upon by both parties. The present appeal requires this Court to examine whether the prosecution has succeeded in establishing the guilt of the appellant beyond reasonable doubt and whether the findings of the learned trial Court suffer from any perversity, misreading of evidence, or misapplication of legal principles. In an appeal against conviction, though this Court is empowered to re-appreciate evidence, interference is warranted only when the view taken by the trial Court is impossible or manifestly erroneous. The Court has examined the testimonies of the prosecution witnesses (PW1 to PW10), the documents and exhibits produced, and the medico-legal reports to assess the credibility, reliability, and probative value of the evidence in relation to the offences charged under the POCSO Act.

TESTIMONIES OF PW1 AND PW2: PW1 provided a detailed account of the events preceding the victim's disappearance, the suspicious conduct of the accused, and the subsequent recovery of the victim. Her testimony is direct, internally consistent, and corroborated by contemporaneous records, including the complaint (Exhibit 9), FIR (Exhibit 10), and statements recorded before the Judicial Magistrate (Exhibit 11). PW1's credibility is reinforced by her lack of any motive to falsely implicate the accused and her consistent recollection of dates, times, and circumstances. Her evidence establishes the initial link between the appellant and the victim and the circumstances leading to her abduction.

25. PW2, a minor, was examined for competency and found capable of understanding the solemnity of oath and differentiating right from wrong. Her testimony narrates the accused's inducement, coercion, and sexual exploitation. She described the sequence of locations (Dighori, Armori, Pune, Bhandgaon) and identified material objects (clothes, photographs) seized as evidence. PW2's account demonstrates internal consistency, corroborates medical findings, and is supported by other procedural evidence, including recovery and police investigation. Cross-examination did not materially weaken her credibility. The Court finds PW2's testimony reliable, coherent, and substantially corroborated, forming a core part of the prosecution's case.

26. **Testimony of PW3 to PW4, PW6 to PW7, PW9, and PW10 (Pancha, Witnesses, and Investigating Officers):** These witnesses collectively corroborate procedural aspects of the investigation, including; Preparation and authentication of Panchanamas (Exhibits 25, 29, 29-A) and Crime Details Forms (Exhibits 26, 30, 31), Seizure and custody of clothing and other articles from the victim and accused (Exhibits 19, 43, 45), Proper chain of custody and submission of materials to the Forensic Science Laboratory (Exhibits 53–55), Compliance with procedural safeguards during recording of statements, medical examination, and arrest. Their evidence is credible, independent, and consistent, corroborating each other and confirming the authenticity of procedural documents and the investigation. Cross-examination did not cast doubt on their veracity.

27. **Testimonies of PW5 and PW8 (Medical Officers):** PW5 conducted the medico-legal examination of the victim and observed rupture of the hymen with no acute bleeding, recording relevant forensic samples (Exhibits 38–41). PW8 examined the accused and collected corresponding forensic samples (Exhibits 48–51). Both witnesses adhered to standard medico-legal procedures and confirmed evidentiary integrity. Their findings are medically reliable, corroborate the victim’s account of sexual assault, and support the allegation that the accused was capable of committing sexual acts. Minor procedural lapses do not materially affect reliability.

28. The evidence of the victim (PW2) is independently corroborated by: Procedural evidence (Panchanamas, Seizure Reports, Crime Details Forms), Medical evidence confirming sexual assault, Testimonies of independent witnesses and investigating officers regarding recovery, seizure, and investigation. No material contradictions have been found that would undermine the credibility of the prosecution’s case.

29. **The cumulative evidence establishes the following:** The accused knew the victim as a minor residing in the locality. The accused induced and coerced the victim to accompany him to multiple locations without parental consent. The accused committed sexual assault on the victim during the period they resided together in Bhandgaon. The victim reported the incident to neighbors and her father, leading to the apprehension of the appellant. All procedural steps taken by the police, including seizure, recovery, medical examination, and forensic submission, were in accordance

with statutory requirements. There is no credible evidence to suggest that the witnesses were tutored, influenced, or falsely motivated. The prosecution has, therefore, proved the allegations under the POCSO Act beyond reasonable doubt. After evaluating the entirety of the prosecution evidence, including testimonies, documents, and medico-legal reports, the Court concludes that the testimonies of PW1 and PW2 are credible, reliable, and central to establishing the occurrence of abduction and sexual assault. PW3 to PW10 provide corroboration of procedural and forensic aspects, strengthening the prosecution's case. Medico-legal evidence supports the allegations of sexual assault. The evidence collectively satisfies the requirements of proof beyond reasonable doubt under Sections 363, 366, 376(2)(f), and other relevant provisions of the IPC read with the POCSO Act. Accordingly, the Court places substantial reliance on the prosecution evidence in reaching its judicial determination.

30. Credibility of the Victim's Testimony: The primary contention of the appellant is that the victim had voluntarily accompanied the accused to Pune and resided with him in a rented room. However, once it is admitted on record, both by the defence witness (wife of the appellant) and by the appellant in his statement under Section 313 Cr.P.C.; that the victim was in the company of the appellant at Pune for several days, the foundational fact attracting Section 29 of the POCSO Act stands established. The statutory presumption, therefore, operates against the appellant, and the burden shifts upon him to rebut it by cogent evidence. The fact

that the victim, a minor girl, was found in the exclusive company of the appellant at Pune for several days is not in dispute. The appellant, in his statement under Section 313 Cri.P.C. statement, admits that he spoke to the victim's father from Pune and asked him to take the child back. Similarly, the defence witness (wife of the appellant) corroborates the presence of the victim at Pune. These foundational facts, once proved, trigger the presumption under Section 29 of the POCSO Act, shifting the burden on the appellant to rebut the presumption of guilt. It is well-settled that the statutory presumption under POCSO Act is not an empty formality. Unless the accused is able to demonstrate either that the victim was not a child or that the acts alleged did not occur, the presumption remains unshaken. Mere suggestions in cross-examination or alternative theories unsupported by material evidence cannot rebut this statutorily mandated presumption.

31. The testimony of the victim (P.W.2) is consistent in material particulars. Her account of being taken away from the lawful custody of her parents and subjected to sexual assault during her stay in Pune has withstood cross-examination. No material contradiction or omission has been elicited so as to impeach her credibility. In prosecutions for sexual offences, especially involving a child, corroboration is not a *sine qua non*. The Hon'ble Supreme Court has repeatedly held in ***Moti Lal v. State of Madhya Pradesh, (2008) 11 SCC 20***, that if the evidence of the victim inspires confidence, conviction can be safely founded on such testimony alone. Para No.11 of the said judgment is reproduced as under :

“11. In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, notwithstanding absence of corroboration. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in [Rameshwar v. The State of Rajasthan](#) were: (AIR p.57, para 19)

"19 The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge..."

The testimony of the child victim is the fulcrum of the prosecution case. The law does not require proof of sexual offences by corroboration. In **Deepak Kumar Sahu** (Supra) the Hon'ble Apex Court held in paragraphs 5.5, 5.6.2 & 5.8 which read thus:

5.5 In cases of offences committed under Section 376, IPC, when the story of the victim girl as told in the evidence is found credit-worthy, the apparent insufficiency of medical evidence pitted against acceptable testimony of the victim, the latter would prevail. In State of Punjab vs. Gurmit Singh [(1996) 2 SCC 384] it was observed:

“In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of

injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case. (Para 16)

5.6.2 In *Gurmit Singh (supra)* it was observed to reiterate that in all cases, the corroboration to the statements made by the victim in her evidence could not be insisted upon as a rule of thumb:

“In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook.” (Para 8)

5.8 There is no gainsaying that the Court should remain sensitive while dealing with the charges of sexual assault on the helpless woman. In *State of Rajasthan vs. N.K. The Accused*, [(2000) 5 SCC 30], this Court observed that “an unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victim of crime are helpless females.” Similar was expressed in *Gurmit Singh (supra)* that the rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. It was stated that the rape is not merely a physical assault and subsequently destroys the whole personality of the victim.”

In the present case, the victim’s narration regarding how the appellant approached her, enticed her on the pretext of visiting his newborn child, and subsequently took her to Pune, is consistent, unembellished, and natural. Her answers during cross-examination reflect a child-like understanding and sincerity. Nothing has been elicited to indicate tutoring, exaggeration, or ulterior motive.

32. The defence has attempted to argue that the victim voluntarily accompanied the appellant. This submission is legally untenable. A child aged 13 cannot, in law,

consent to accompany a stranger for days outside her home, nor can she consent to sexual acts. The statutory scheme of the POCSO Act renders the question of “consent” wholly irrelevant.

33. The appellant has highlighted certain inconsistencies between the dates mentioned in medical papers, seizure memos, and witness testimonies. The Hon’ble Apex Court in the case of *State of Uttar Pradesh v. Chhotey Lal*, (2011) 2 SCC 550 held that in sexual offences, especially involving minors, minor inconsistencies, hyper-technical objections, or trivial contradictions do not erode the substratum of the prosecution case. Para No.29 of the said judgment is reproduced below -

“29. We shall now examine the evidence of the prosecutrix. The prosecutrix at the relevant time was less than 18 years of age. She was removed from the lawful custody of her brother in the evening on September 19, 1989. She was taken to a different village by two adult males under threat and kept in a rented room for many days where A-1 had forcible sexual intercourse with her. Whenever she asked A-1 for return to her village, she was threatened and her mouth was gagged. Although we find that there are certain contradictions and omissions in her testimony, but such omissions and contradictions are minor and on material aspects, her evidence is consistent. The prosecutrix being illiterate and rustic young woman, some contradictions and omissions are natural as her recollection, observance, memory and narration of chain of events may not be precise.”

34. The discrepancy regarding whether the victim returned to Armori late on 28.12.2018 or early on 29.12.2018 is immaterial. The prosecution is not required to establish chronology with mathematical precision. What is material is the broad sequence: that the victim was recovered from Pune, medically examined thereafter,

and found to be in psychological distress. The Hon'ble Apex Court in the case of ***Om Prakash v. State of UP, (2006) 9 SCC 787*** held that the Court must also be cognizant that traumatized victims, especially children, cannot be expected to recall dates and times with exactitude. The defence has not demonstrated how such inconsistencies create a reasonable doubt about the occurrence of sexual assault. Para No.14 of the said judgment is reproduced below -

“14. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. This position was highlighted in State of Punjab v. Gurmit Singh.

35. **Alleged Contradictions and Procedural Irregularities:** The misgivings sought to be raised regarding non-production of call detail records, non-examination of neighbours from Pune, or the absence of written requisition to panch witnesses, are

technical in nature. These irregularities do not, by themselves, establish that the incident did not occur. Courts dealing with offences under the POCSO Act are expected to focus on the substantive truth and not to dislodge credible prosecution evidence merely on account of minor procedural lapses.

36. The argument that the panch witnesses to the spot panchanama in Pune were not examined also does not materially aid the appellant. The recovery of the victim from the company of the appellant at Pune is not in dispute; the defence itself admits this circumstance. Whether or not neighbours were examined does not alter this fundamental fact.

37. **Medical Evidence and Alleged Inconsistencies:** Much emphasis was placed by the appellant on certain discrepancies in the dates mentioned in the medical examination papers and on the initial inability of the doctor to examine the victim due to psychological trauma. The Medical Officer (P.W.5) has, however, clarified that the victim was later admitted to the hospital and was subsequently examined when she permitted the doctor to carry out the necessary procedures. The medical papers show that the victim remained hospitalized from 29.12.2018 to 07.01.2019, consistent with her mental condition noted by the doctor.

38. The finding of a ruptured hymen, though not conclusive proof of sexual assault, is consistent with the allegations made by the victim. The failure to collect certain samples or the presence of blanks in the medical examination form does not

demolish the prosecution case, particularly when the victim's categorical testimony remains unshaken. The Medical Officer (PW.5) stated that initially the victim did not permit examination due to emotional trauma. Subsequently, she allowed examination and was admitted in hospital from 29.12.2018 to 07.01.2019. The diagnosis of ruptured hymen, while not conclusive proof of rape, is consistent with penetrative sexual assault. The absence of injuries or non-collection of certain samples cannot exculpate the appellant. The Hon'ble Supreme Court has consistently held that absence of injuries does not imply absence of assault, as resistance may not always be possible, especially when the victim is a child.

The purported "blanks" in the medical forms or failure to obtain certain signatures reflect, at best, laxity in investigation, not falsity of prosecution. Deficiencies in investigation do not, by themselves, enure to the benefit of the accused unless they completely destroy the core of the prosecution case.

39. **Determination of Age of the Victim:** The appellant has questioned the proof of age on the ground that the issuing authorities of the birth certificate and the school bonafide certificate were not examined. The Hon'ble Supreme Court in the case of *Ravindra s/o Laxman Narete v. State of Maharashtra, through PSO Katol, District Nagpur, Criminal Appeal No. 471/2017* held that the birth certificate, however, is a public document within the meaning of Section 74 of the Evidence Act, its authenticity cannot be questioned merely because the informant was not examined, particularly when the Investigating Officer produced the certificate during the

investigation and no substantive challenge was raised during cross-examination of either the mother or the victim on this aspect. The relevant paras of the said judgment are reproduced below -

“14. As per provisions of Rule 9 of the Maharashtra Registration of Births and Deaths Rules, 1976, this Certificate is issued by the Sub-Registrar acting under the provisions of the Registration of Births and Deaths Act, 1969. Section 7 thereof deals with appointment of Registrars for each local area comprising the area within the jurisdiction of the Municipality, Panchayat or other local authority. It is the duty of the Registrar to register every birth and every death which takes place in his jurisdiction. This Act mandates that the Registrar should discharge his duties carefully. Section 8 of this Act mandates each head of the house to report birth in the family to the Registrar. The Act provides for maintenance of register for recording birth and death within the local area. That is how, certificate came to be issued by the Sub-Registrar as per provisions of Sections 12 and 17 of the said Act. The Birth Certificate, as such, is issued by the Public Officer and it is a document forming the record of the acts of the Public Officer and therefore the same is a public document within the meaning of the said term as per provisions of Section 74 of the Indian Evidence Act, 1872. The same is admissible in evidence by mere production thereof in view of provisions of Section 77 of the Evidence Act.

15. Section 17 of the Registration of Births and Deaths Act, 1969, provides for search of Birth Register and supply of extract thereof by certifying the same by the Registrar or other authorized Officer. Section 17 of the said Act provides that such extract shall be admissible in evidence for the purpose of proving birth or death to which the entry relates. The Birth Certificate is, in fact, the extract of Birth Register in respect of entry of birth of the victim child and as such, admissible in evidence. Section 35 of the Evidence Act, 1872, makes it clear that if entry is made by public servant in the official book in discharge of his official duty, then such entry becomes the relevant fact and admissible in evidence. Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry

stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. It is, thus, clear that the Birth Certificate issued by the statutorily appointed competent authority is relevant and admissible. The birth certificate is a public document and primary evidence which can be proved by production in view of Section 77 of the Indian Evidence Act. Thus, as far as aspect of the age is concerned, the prosecution has proved the age of the victim.”

40. Additionally, the radiology report forming part of the medico-legal record indicates the age of the victim between 13 to 15 years. Though the radiologist was not examined, the report remains part of the hospital record. Viewed cumulatively with the birth certificate and school documents, there is sufficient material to hold that the victim was below 18 years at the time of the incident.

41. The defence has argued that the victim's age has not been proved since the issuing authorities of the birth certificate and school certificate were not examined. This argument is devoid of substance.

42. The birth certificate produced is a public document under Sections 74 and 79 of the Evidence Act, and carries a presumption of correctness unless rebutted. During cross-examination, neither the mother nor the victim was meaningfully confronted regarding the birth date. Furthermore, the radiology assessment, a standard and reliable method of age estimation, places the victim between 13 and 15 years. Even if taken at its upper limit, the victim remains a minor. The appellant has not produced any evidence, documentary or otherwise, to dispute the official records or

radiological findings. In this backdrop, the finding of the trial Court that the victim was below 18 years is fully justified.

43. **Seizure of Clothes and Related Objections:** The appellant questioned the seizure of his clothes being effected several days after the arrest. While such a delay may reduce the evidentiary value of the seized items, it does not strike at the root of the prosecution case. The offence of aggravated penetrative sexual assault under the POCSO Act does not rest solely on forensic evidence; it primarily rests on the testimony of the child victim, which in the present case is cogent and trustworthy. The seizure of the appellant's clothes several days after his arrest has been projected as a serious infirmity. It is true that such delay reduces the probative value of the seized articles. However, in the present case, the prosecution does not rest primarily on forensic evidence. The victim's testimony, supported by medical evidence and the fact of recovery of the child from the appellant's custody, forms a complete chain. Therefore, the delayed seizure does not affect the core of the prosecution case.

44. **Defence Evidence:** The defence examined the appellant's wife (D.W.1), who attempted to show that she was present in Pune and that no incident had occurred. However, her testimony is contradicted by the consistent account of the victim. The appellant's own admission during his statement under Section 313 of the Cri.P.C., that he had called the victim's father asking him to take her back, further undermines the defence version.

45. The defence has thus failed to rebut the statutory presumption arising under Section 29 of the POCSO Act. Mere assertions, without substantive supporting evidence, cannot displace the presumption when the prosecution has established the foundational facts. The appellant's defence, that his wife was present in Pune and the victim voluntarily visited them, is inconsistent with the appellant's own statement under Section 313 Cri.P.C. wherein he asserts that he called the victim's father asking him to take her back. If the victim had voluntarily visited as a guest, the need to call her father would not arise. The defence has not offered any plausible explanation for why a 13-year-old child would remain with the appellant in Pune for several days without contacting her parents or returning home. The defence evidence does not inspire confidence and appears to be an afterthought.

46. Upon holistic appraisal of the evidence, I am of the considered view that the prosecution has proved beyond reasonable doubt that the appellant enticed the minor victim away from her lawful guardianship and subjected her to sexual assault during the period she was kept at Pune. The testimony of the victim is natural, convincing, and inspires confidence. The alleged procedural defects and minor inconsistencies pointed out by the appellant do not undermine the core of the prosecution case.

47. The trial Court has correctly applied Section 42 of the POCSO Act, and rightly awarded the higher punishment prescribed under Section 6 of the Act, considering that the offence under Section 376(3) of the IPC also prescribes an

equivalent minimum punishment. I find no perversity, illegality, or mis-appreciation of evidence warranting interference with the well-reasoned judgment of conviction. The prosecution evidence is found to be reliable, cogent, and trustworthy. The trial Court's appreciation of evidence is in consonance with the statutory scheme of POCSO Act and the principles governing sexual offence cases.

The cumulative effect of the circumstances: (i) the admissible public documents establishing the victim's age, (ii) the unshaken testimony of the victim, (iii) medical findings of hymenal rupture, (iv) the victim's prolonged stay with the appellant in Pune, (v) the statutory presumption under Section 29 of the POCSO Act, and (vi) failure of the appellant to rebut the presumption, incontrovertibly establishes the guilt of the appellant.

This Court is satisfied that the findings recorded by the learned trial Judge are based on proper appreciation of evidence and correct application of legal principles. The sentencing under Section 6 of the POCSO Act, in terms of Section 42 of the Act, is legally sound.

48. For the foregoing reasons, this Court finds that the conviction of the appellant does not suffer from any legal infirmity, perversity, or evidentiary deficiency. In view of the above analysis, I find no merit in the appeal. The conviction of the appellant for offences under Sections 363, 506-II of the IPC and Section 6 of the POCSO Act

is sustained. The sentence imposed by the learned trial Court is appropriate and proportionate to the gravity of the offence. The appeal is accordingly **dismissed**.

The fees of the learned Counsel appointed for respondent No.2-Victim be quantified and paid, as per the rules.

[NIVEDITA P. MEHTA, J.]