



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

CRIMINAL APPEAL NO. 309 OF 2023

Gajanan @ Raju S/o Ajabrao Pendor,
Aged about 38 years, Occ. Driver,
R/o Shirud, Tah. Hinganghat, Dist.
Wardha

...Appellant

// VERSUS //

1. The State of Maharashtra,
through the Police Station Officer of
Police Station Allipur, Hinganghat,
District Wardha
2. Victim S,
through Police Station Allipur,
Hinganghat, Dist. Wardha
3. Victim M,
through Police Station Allipur,
Hinganghat, Dist. Wardha

... Respondents

Shri Yash Bhelande, Advocate for the appellant.

Shri S.S.Hulke, APP for the respondent no.1/State.

Shri Anirudh A. Krishnan appointed Advocate for the respondent no.2.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 25th September, 2025.

Pronounced on : 10th October, 2025

JUDGMENT :

The appellant/accused has preferred the present appeal challenging
the judgment and order dated 01.03.2023 (hereinafter referred to as the

impugned judgment) passed by the learned Additional Sessions Judge, Special Court (POCSO Act), Hinganghat, District Wardha, presided over by the learned Special Judge, in Special (Child) Case No. 04/2017(new)/Special (Child) Case No. 52/2014 (old).

By the impugned judgment, the learned Special Court was pleased to convict the appellant for offences punishable under Section 376(2)(i) read with Section 511, and Section 354A(i)(ii)(iii) of the Indian Penal Code, 1860 (herein after referred to as IPC), as well as under Section 5(m) read with Section 6 and Section 18 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) and is sentenced to suffer Rigorous Imprisonment for 10 (Ten) years and shall pay a fine of Rs.50,000/- (Rs. Fifty Thousand only) for the offence punishable under Section 5(m) read with Sections 6 and 18 of POCSO Act and in default of payment of the fine, he shall suffer simple imprisonment for one year.

2. The case of the prosecution is that victim *S* is the daughter of the informant and was studying in the 1st standard at the time of the incident. Victim *M* is the niece of the informant and cousin of victim *S*. She was studying in Aganwadi at the relevant time. The accused was allegedly a notorious person in their village and worked as a tractor driver.

On 05.02.2014, the informant, her husband, and the parents of victim *M* had gone out for work. When the informant, i.e., the mother of victim *S*, returned home at about 6:00 p.m., victim *S* complained of pain in her vaginal area and stated that it hurt while urinating. The informant applied some powder to the affected area. However, when victim *S* continued to complain of pain, the informant assumed that she might have fallen somewhere and sustained a minor injury.

On 19.02.2014, at about 11:00 a.m., the appellant came near the informant's house to load cow dung into his tractor. At that time, victims *S* and *M* were playing nearby. The appellant allegedly glanced at them with anger, which caused them to run inside the house, frightened and crying. When the informant and her sister-in-law enquired about what had happened, the victims disclosed that on 05.02.2014, during the school recess, while they were playing in the school premises, the appellant had called them outside by offering a guava and then took them to a nearby field, under the pretext of giving them more guava.

3. Further, the case of the prosecution is that the appellant showed obscene videos to the victims on his mobile phone. He then proceeded to remove his pants and undergarments and asked the victims to rub his penis. The appellant

also pressed the breasts of both victims, who asked him to stop due to the pain it was causing them. At that point, the appellant threatened to kill them by throwing them into a nearby well. Frightened, the victim complied and rubbed his penis.

The appellant then removed the undergarments of both victims and forced victim *S* to lie down on the ground, where he attempted to insert his penis into her vagina. Thereafter, he attempted the same act with victim *M*. The victims were in pain and crying throughout the incident. The appellant again threatened them, stating that if they disclosed the incident to anyone, he would throw them into the well. As a result, the victims did not reveal the incident to anybody at that time.

When the victims finally confided in the informant and her sister-in-law on 19.02.2014, the informant attempted to confront the appellant regarding the incident, but he absconded. Later, when the informant, her family members, and other villagers went to the appellant's house, he was not found there. The informant subsequently lodged a First Information Report (FIR) against the appellant on 20.02.2014. (Exhibit 30)

4. Based on the FIR lodged by the informant, crime no. 08/2014 under section 376(2)(i) (before amendment), 354A (1)(i)(ii)(iii) of IPC and Section

5(m) r/w Section 6 of the POCSO Act came to be registered at the police station in Allipur. The printed First Information Report (FIR) is placed on record as (Exhibit 30). Thereafter, the accused was arrested, and the investigation commenced. Police prepared a spot panchnama (Exhibit 34) and recorded statements of the witnesses. The biological samples were seized and sent for chemical analysis. The accused was released on bail. After completing the investigation, the investigating officer concluded that there was sufficient evidence against the accused, and a charge sheet bearing no. 12 of 2014 was filed before the competent court. Thereafter, the learned Special Judge framed the charge (Exhibit 21) under Sections 376(2)(i), 354A(1)(i)(ii)(iii) of the IPC and Section 5(m) read with Section 6 of the POCSO, against the accused, to which the accused pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined thirteen witnesses, Mangala Sanjayrao Katkar (P.W.1) – informant at (Exhibit 27); victim S (P.W.2) at (Exhibit 31); Pravin Babarao Thool (P.W.3) – panch witness – at (Exhibit 33); Suresh Sitaram Sati (P.W.4) – panch witness – at (Exhibit 35); Suraj Manoharrao Lonkar (P.W.5) – panch witness – at (Exhibit 41); Anup Girdharlal Tapale (P.W.6) – who carried *muddemal* articles for C.A. to F.S.L – at (Exhibit 44); Mehar Krushnaji Bangde (P.W.7) – who carried the mobile and memory card and SIM cards to the Forensic Lab in Mumbai – at (Exhibit 48); Rekha Narayanrao

Naik (P.W.8) – who recorded the FIR and registered the offence – at (Exhibit 51); Dr. Rajendrasingh Bisen (P.W.9) – who examined the accused – at (Exhibit 47); Dr. Vandana Warware (P.W.10) – who examined both the victims – at (Exhibit 53); Retd. ASI Vasant Shahane (P.W.11) – who took the accused for medical examination – at (Exhibit 59); Premila Gujarkar (P.W.12) – who took the victims to Wardha for medical examination – at (Exhibit 61); Retd. PI Kale (P.W.13) – investigating officer – at (Exhibit 70).

6. Upon closure of the prosecution's evidence, the accused was examined under Section 313 of the Code of Criminal Procedure, wherein he denied all the incriminating evidence against him and stated that he had been falsely implicated in the present case since he had a dispute with the victim's father.

7. The learned Special Judge, upon a comprehensive appreciation of the evidence on record, was persuaded to hold the appellant guilty of the offences charged. It was observed that the prosecution had successfully established the foundational facts of the case and had proved its case beyond a reasonable doubt on multiple counts. The learned Special Court noted that victim *S* had narrated specific and incriminating facts implicating the accused, which clearly constituted an attempt to commit rape upon victims *S* and *M*. The evidence further established that the accused had criminally intimidated the victims, thereby preventing them from disclosing the incident to their parents. The

victims were so terrified of the accused that, upon merely seeing him glance at them angrily on 19.02.2014, they began crying and ran inside the house in fear.

It was further observed that upon being questioned, the victims confided in their mothers about the incident on 19.02.2014, and an FIR was promptly lodged the following day, i.e., on 20.02.2014, after the informant had approached the *Sarpanch* of the village. The Trial Court also held that the accused had not adduced any evidence in defence to rebut the presumption under Section 29 of the POCSO, 2012. Consequently, the accused failed to discharge the legal and evidentiary burden cast upon him under the said provision.

8. In the present case, the learned trial Court found that the punishment prescribed under Section 5(m) read with Section 6 and under Section 18 of the POCSO Act is greater in degree than that prescribed under the corresponding provisions of the IPC. Consequently, the appellant was held liable to undergo the punishment as contemplated under the POCSO Act.

The learned Trial Court, while convicting the appellant for an attempt to commit an offence of penetrative sexual assault punishable under Section 6 of the POCSO Act, invoked Section 18 of the Act and imposed a sentence of rigorous imprisonment for a term not less than twenty years, with the possibility of imprisonment for the remainder of the natural life of the appellant.

The Trial Court based its sentencing on the amended provision of Section 6, as introduced by Act 25 of 2019, which came into force on 16.08.2019.

However, it is an admitted position that the offence in question occurred on 19.02.2014, i.e., before the said amendment coming into effect. It is a well-settled principle of criminal jurisprudence, as enshrined under Article 20(1) of the Constitution of India, that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Accordingly, the enhanced punishment introduced by the 2019 amendment to Section 6 of the POCSO Act cannot be applied retrospectively to the present case.

At the relevant time, before the amendment, Section 6 of the POCSO Act prescribed a punishment of rigorous imprisonment for a term not less than ten years, which could extend to life imprisonment, along with a fine. Section 18 of the Act, which governs attempts to commit offences under the Act, stipulates that a person who attempts to commit an offence shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of imprisonment for life or one half of the longest term of imprisonment provided for that offence.

In light of judicial precedent, "life imprisonment" for the purpose of computing sentences under such provisions has been construed as equivalent to 20 years. Therefore, for an attempt to commit an offence punishable under the unamended Section 6, the maximum sentence permissible under Section 18 would be 10 years' imprisonment.

Thus, the application of the amended sentencing framework under Section 6, introduced post-2019, to an offence committed in 2014 is legally untenable and constitutionally impermissible. The sentence imposed by the learned Trial Court, being in excess of the maximum permissible sentence under the law as it stood at the time of the offence, cannot be sustained. Hence, the conclusion of the learned Trial Court is legally erroneous and therefore stands corrected.

9. It is pertinent to note that neither the learned counsels appearing before the Trial Court for the respective parties nor those appearing before this Court drew attention to the fact that the invocation of Section 18 of the POCSO Act, and the imposition of one-half of a twenty-year sentence, was based on the amended provision of Section 6 of the POCSO Act, which came into effect after 16.08.2019. As per the said amendment, Section 6 was revised to state that:

"Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for

the remainder of the natural life of that person, and shall also be liable to fine or with death."

Before the said amendment, the unamended Section 6 of the POCSO Act prescribed the following punishment:

"Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment 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."

The offence in the present case occurred on 05.02.2014, which is before the amendment of Section 6 of the POCSO Act. Therefore, the applicable provision for the purposes of sentencing would be the unamended Section 6, which prescribed a minimum punishment of ten years.

10. Section 18 of the POCSO Act contemplates punishment for an *attempt* to commit any offence punishable under the Act and prescribes a sentence of one-half of the punishment for such completed offence. Consequently, in applying Section 18, the trial Court ought to have based the sentence on the punishment as it stood under the unamended Section 6 of the Act.

11. The Trial Court's reliance on the post-amendment provision of Section 6, and imposition of ten years' rigorous imprisonment (being one-half of twenty years), is therefore a clear misapplication of law. The amendment to Section 6, being prospective in nature, cannot be applied retrospectively to

offences committed before 16.08.2019. The sentence imposed, thus, stands vitiated on this count and requires correction in accordance with the law applicable as on the date of commission of the offence.

12. It is also pertinent to note that Section 42 of the POCSO Act does not come into play in the present case, as both Section 6 of the POCSO Act (as it stood before the amendment dated 16.08.2019) and Section 376(2)(i) of the Indian Penal Code prescribe the same minimum punishment of ten years' rigorous imprisonment. Since there is no inconsistency or variance in the quantum of punishment prescribed under the two provisions, the question of applying the overriding clause under Section 42 of the POCSO Act does not arise.

13. Having regard to the aforesaid observations, I now proceed to consider the present appeal, which has been preferred by the appellant, being aggrieved by the judgment and order of conviction and sentence passed by the learned Trial Court.

14. Heard Yash Bhelonde, learned counsel for the appellant, and S.S. Hulke, learned Additional Public Prosecutor for the respondent/ State.

15. The learned counsel for the appellant assailed the judgment of the learned Trial Court on grounds of both legal and factual infirmities. It was

contended that the learned Trial Court had erred in convicting the appellant, despite the First Information Report (FIR) having been lodged after an inordinate and unexplained delay of 15 days from the date of the alleged incident. According to the learned counsel, the explanation offered by the informant for such delay was vague, arbitrary, and lacking in credibility.

16. It was further submitted that the conviction was based solely on the testimony of victim *S*, who, the counsel argued, appeared to be a tutored witness. The prosecution's case, it was contended, suffered from material inconsistencies and contradictions. Additionally, during the medical examination of both victims and the accused, no conclusive medical evidence was brought on record to substantiate the allegations of sexual assault.

17. The learned counsel also emphasised that victim *M*, who was allegedly a co-victim and a key eyewitness, was not examined by the prosecution. Apart from the informant and her daughter, victim *S*, no other family members or independent witnesses were examined. According to the appellant, this omission cast serious doubt on the fairness and impartiality of the investigation. Moreover, the deposition of victim *S* was recorded after an inordinate delay of approximately four years and eight months, i.e., on 25.10.2018, which, it was argued, severely undermines the reliability and spontaneity of the testimony. It

was further argued that all witnesses examined by the prosecution were interested parties, either closely related to the victim or having political or personal animosity against the appellant and that no impartial or independent witness had been produced.

18. The learned counsel further submitted that during her cross-examination, placed on record as Exhibit 27, P.W.1 Mangala Katkar (the informant) admitted that the appellant's father had lodged a criminal complaint under Sections 325 and 504 of the Indian Penal Code against the father of victim *S* at Allipur Police Station on 13.01.2014. This, according to the appellant, demonstrated prior enmity between the families and provided a motive for false implication. It was further pointed out that even victim *S*, during her cross-examination (Exhibit 31), admitted that her family members were angry with the appellant and his family because of the said prior police complaint. This, it was argued, lends credence to the defence of false implication on account of prior enmity.

19. Lastly, the learned counsel contended that since the conviction rested solely on the testimony of victim *S*, such testimony ought to have been subjected to scrutiny. In her cross-examination, victim *S* admitted that her parents had instructed her on what to state in court and that she deposed accordingly. She

also stated that she gave her statement to the police at the behest of her parents. In light of this, it was argued that victim *S* was a tutored witness, and her evidence cannot be implicitly relied upon. Given her tender age, it was submitted that she is a pliable witness, susceptible to influence, imagination, exaggeration, and inducement. Therefore, the learned counsel urged the Court to discard her testimony or, at the very least, to treat it with great circumspection.

20. Per contra, the learned Additional Public Prosecutor appeared in support of the impugned judgment and order passed by the learned Special Judge and submitted that the conviction was based on a thorough and careful appreciation of the oral and documentary evidence on record. It was argued that the findings of the Trial Court are well-reasoned, legally sound, and do not warrant interference.

21. The learned APP addressed the issue of delay in lodging the FIR, and submitted that in cases involving sexual offences against minor children, delay in disclosure is both natural and understandable due to fear, trauma, and threats by the perpetrator. In the present case, the delay from 05.02.2014 to 19.02.2014 was caused by the victims' tender age (5½ and 6½ years, respectively) and the threats issued by the accused to silence them. The FIR (Exhibit 30) was lodged promptly on 20.02.2014, the day after the victims

disclosed the incident to the informant. Thus, the delay stands satisfactorily explained and cannot be treated as fatal to the prosecution's case.

22. About the appellant's contention that the conviction is based solely on the testimony of victim *S*, the learned APP submitted that the sole testimony of a prosecutrix, particularly in cases of sexual assault, can form the basis of a conviction if it is found to be credible and trustworthy. In this case, the evidence of P.W.2 victim *S* is consistent, coherent, and withstands the test of cross-examination. Her account is also supported by the testimony of P.W.1, the informant and mother of the victim, who duly proved the victim's age through the birth certificate (Exh. 28). No material contradictions were brought out in cross-examination to discredit their version.

23. The learned APP further submitted that minor inconsistencies or omissions in the testimony of the victim are natural, particularly in light of her young age and the delay of approximately four years and eight months in recording her evidence, which was due to procedural delays in the trial. Such minor discrepancies do not go to the root of the matter and do not undermine the overall credibility of the prosecution's case.

24. As regards the non-examination of victim *M*, the learned APP argued that the prosecution is not bound to examine every possible witness. The quality

of evidence, and not the number of witnesses, is decisive. The oral testimony of victim S, found to be cogent and trustworthy, was sufficient to bring home the guilt of the accused. Furthermore, the defence was at liberty to summon any witness, including victim M, but chose not to do so.

25. In response to the allegations of prior enmity and political rivalry raised by the appellant, the learned APP submitted that these claims are unsubstantiated and speculative. The existence of a prior complaint by the accused father against the victim's father does not, by itself, establish a false implication, especially in the absence of any supporting evidence. The victim's emotional reaction upon seeing the accused again and the spontaneous disclosure made thereafter further lend credibility to the prosecution's case.

26. It was also submitted that Section 29 of the POCSO Act creates a statutory presumption in favour of the prosecution upon proof of foundational facts. In the present case, the prosecution successfully discharged its initial burden. However, the appellant failed to rebut the presumption either by leading defence evidence or by offering a plausible explanation. Mere suggestions of tutoring or false implications are insufficient to displace the presumption under law.

27. The learned APP concluded that the prosecution has proved its case beyond a reasonable doubt through credible and legally admissible evidence. The conviction and sentence imposed by the learned Special Judge are in accordance with the law and merit no interference. It was accordingly prayed that the appeal be dismissed.

28. Let us deal with the testimonies of the prosecution witnesses. PW1 - Victim's Mother examined at (Exh. 27) PW1, mother of the victim 'S', deposed that her daughter was born on 10.08.2007 (birth certificate marked as Exhibit 28). In 2014, both victims 'S' and her niece, victim 'M', were attending school and Anganwadi, respectively. On 05.02.2014, upon returning from the field at 6:00 PM, her daughter complained of pain in her private parts and pain while urinating. On 19.02.2014, the victim S narrated that the accused, Gajanan, had taken both girls during school recess, shown them obscene photos on his mobile phone, touched them inappropriately, and attempted to insert his penis into their vagina, threatening to throw them into a well if they disclosed the incident. The incident was reported to the local Sarpanch, who advised complaining. A police report was lodged, and medical examinations were conducted. The Victim 'S' and 'M' were hospitalised from 20.02.2014 to 22.02.2014. In cross-examination, PW1 acknowledged political rivalry and existing legal disputes between her family and the accused family. She admitted understanding the importance of

prompt reporting but explained the delay due to the accused absconding when confronted, his absence from his home and by the time the families had consulted PW3, Sarpanch and decided to lodge a report, it had been night. She confirmed that the school had teachers and a compound. Despite minor weaknesses in explaining delays and family enmity, her testimony is consistent and corroborated by documentary evidence.

29. PW2- Victim 'S' (Exhibit 31), the minor victim testified that during school recess, the accused lured her and victim 'M' with guavas, forcibly took them to a field behind the school, showed them obscene videos on his black mobile phone, and made them imitate the acts shown. He unzipped his pants, removed their undergarments, and attempted to insert his penis into their vagina. He threatened to throw them into a well if they disclosed the incident. They returned to school without informing anyone due to fear, but later disclosed the incident to their parents. Police were informed the following day, and she identified the mobile phone used by the accused in court. In cross-examination, she admitted being illiterate at the time and that her statements to the police were as per what her parents told her. There were minor omissions in her earlier statements. She confirmed a history of conflict between the accused and her own family. PW2 has provided a detailed and consistent account of the assault. The evidence of the PW2 is challenged by the defence counsel on the

grounds of credibility, given her illiteracy, lack of immediate disclosure and contradiction in medical history and inter-family conflict.

30. PW3- Pravin Babarao Thool (Sarpanch) examined at (Exhibit 33). PW3, the then Sarpanch of the village, confirmed being informed by the victims' families about the incident. He advised them to lodge a police complaint and was present during the police visit to the crime scene and the preparation of the spot panchanama (Exhibit 34). In the Cross-Examination, he denied any collusion or influence and affirmed that the spot panchanama was prepared in his presence.

31. P.W.4-Suresh Sitaram Sati testified that the accused stated under Section 27 of the Indian Evidence Act before the police that he had hidden his mobile phone and his *knickers* at his residence. Notably, these *knickers* were hidden away by the accused underneath a mattress. These items were recovered in the presence of P.W.4, other panch witnesses to the seizure panchnama, the police and the accused. The seizure panchnamas are at the Exhibit 37 and Exhibit 38, while the statement of the accused, that the mobile phone and his underwear are at his house, under Section 27 of the Indian Evidence Act, is at Exhibit 36 and bears his signature. In his cross-examination, the witness affirmed the confessional statement and denied any fabrication or influence. This witness

testimony strongly supports the prosecution's case, particularly on the recovery of incriminating material pursuant to the accused's statement.

32. PW5- Suraj Manhoarrao Lonkar (Seizure Witness) examined at (Exhibit 41). The witness was present when the purple knicker of the victim was handed over to the police by her father. The item was sealed, and a seizure panchanama (Exhibit 42) was prepared and signed. In Cross-Examination, PW5 denied that the seizure had occurred and admitted friendly relations with villagers, including the victim's family.

33. PW6-Anup Girdharlal Tapale (Police Constable) (Exhibit 44) testified about transporting the seized articles, which included blood phials of the victims and accused, their inner-wear and sealed pubic hair and vaginal swabs to the CA office, Nagpur, in two rounds. Proper entries were made and challans received. In cross-examination, PW6 confirmed correct procedure was followed, though some internal documentation was not filed. This testimony confirms the chain of custody.

34. PW7-Mehar Krushanaji Bangale (Exhibit 48) was deputed to transport the mobile phone and memory card to the forensic lab in Mumbai, as recorded in Exhibit 48. PW7 confirmed proper handling and identification of items. In cross-examination, she admitted standard procedures were followed and

denied any falsification. The testimony further affirms the chain of custody and handling of digital evidence.

35. PW8-Rekha Naryanrao Naik (Lady Head Constable) recorded the oral report, which is produced at Exhibit 29, and registered the offence against the accused. In her cross-examination, she denied any pressure or improper conduct and confirmed procedural compliance in the registration of FIR and referral.

36. PW9-Dr. Rajendranisingh Bisen (CMO) (Exhibit 47) conducted the medical examination of the accused. He found no injuries but confirmed that the accused was capable of sexual intercourse. He then, in his medical report (Exhibit 48), collected and sealed biological samples. In cross-examination, he denied mishandling of evidence or fabrication. Though the absence of injury weakens the immediacy of the event, it is not inconsistent with the prosecution's case.

37. PW10- Dr Vandana Marotrao Waware (Gynaecologist) (Exhibit 53) medically examined both victims and found no external or internal injuries. She then collected and sealed their samples, which included blood samples and vaginal swabs. Victims were admitted due to their young age. In Cross-Examination, she acknowledged that medical history was taken from the mothers due to the age of the victims and noted the absence of injuries.

38. PW11- Vasant Shahane (Police Jamadar) (Exhibit 59), testified that he escorted the accused to the hospital for his examination and handled his medical samples. He confirmed the seizure of the accused samples (Exhibit 60).

39. PW12- Premila Gujarkar (Female Police Constable) (Exhibit 61) escorted the victims to the hospital, witnessed their medical examination, and handled medical samples which were later seized by the IO in her presence (Exhibit 62). In her cross-examination, she denied the defence's allegations of fabrication.

40. PW13-Investigating Officer (IO) (Exhibit 70) described the course of investigation, from recording statements to arrest, seizure of muddemal articles, site inspection, and submission of articles to forensic labs. He confirmed recovery of medical articles and corroborated all procedural documents.

41. This Court has undertaken a comprehensive evaluation of the oral and documentary evidence placed on record. The Court proceeds to analyse the evidentiary value of the same in the context of the charges alleged against the accused. PW2, the minor victim 'S', has provided a detailed, consistent, and cogent narration of the incident. Despite her admission of illiteracy and some minor contradictions about her initial disclosure and medical history, her testimony withstands the test of credibility. The lapse in prompt reporting is

reasonably explained by the threats administered by the accused and the natural fear induced in a child of such tender age. The specific details relating to the accused's conduct luring the victims, showing obscene content, and making physical advances were consistent in cross-examination and corroborated by PW1 (victim's mother), who also described the child's immediate complaints of pain and distress on the day of the incident.

42. It is well-settled that the sole testimony of a child victim in a sexual offence case can form the basis of a conviction if found to be reliable and truthful. The testimony of PW2 meets that threshold. Moreover, her deposition is substantially corroborated by PW1 and the contemporaneous medical and forensic evidence, even though there is an absence of physical injuries. The testimony of P.W.2, the victim, deposition before the trial court, though recorded after a delay of nearly four years and eight months, is found to be natural, consistent, and free from any material contradiction. Despite her tender age at the time of the incident, she has clearly deposed regarding the acts committed by the appellant, including luring her and victim M away from the school premises, showing them obscene content, making them touch his private parts, and attempting penetrative sexual assault.

44. Her deposition has been duly corroborated by P.W.1, the mother of the victim, who testified about the victim's complaints of pain on 05.02.2014, and her subsequent disclosure of the incident on 19.02.2014. The conduct of P.W.1 in immediately approaching the Sarpanch and thereafter promptly lodging the FIR on 20.02.2014 shows that there was no undue delay once the facts became known, and the steps taken were consistent with the conduct of a parent acting upon a traumatic disclosure made by a minor child.

45. The defence sought to discredit the prosecution's case on the grounds of a delayed FIR and inter-family rivalry. However, PW1 satisfactorily explained that the delay was occasioned by the young age of the victims, the fear instilled by the accused, and the initial uncertainty in confronting such a grave issue. It is also pertinent to note that the FIR was lodged soon after the victims disclosed the incident to their parents and the local Sarpanch. PW3 (Sarpanch) corroborated this timeline and confirmed that he was approached immediately upon disclosure. He further affirmed his presence during the preparation of the spot panchnama.

46. As for the alleged political rivalry, while PW1 admitted the existence of disputes, mere animosity is not sufficient to discard otherwise credible testimony, especially when corroborated by independent and procedural

witnesses. The defence has emphasised the delay in lodging the FIR. However, in the context of the facts of the present case, this Court finds that the initial delay is satisfactorily explained. The victim, aged only about 6½ years at the time of the incident, was threatened by the appellant not to disclose the offence. It was only upon seeing the accused again on 19.02.2014 that she and her cousin broke down and disclosed the incident to their family members. The FIR was registered the next day, i.e., on 20.02.2014, after consultation with the village Sarpanch. Such delay is not unnatural in cases involving minor victims, and the explanation offered is both reasonable and credible.

47. As regards the delay in recording the testimony of P.W.2 before the trial court, the same is attributable to procedural delays in the trial process, and no inference of falsity or fabrication can be drawn from it. The defence had a full opportunity to cross-examine the witness, and the testimony of P.W.2 has remained consistent.

48. Though victim M, the cousin of victim S, was also allegedly subjected to the same acts, the non-examination of victim M is not fatal to the prosecution. It is well-settled that the quality of evidence prevails over the quantity, and in this case, the evidence of victim S is sufficient to establish the

essential elements of the offence. Moreover, the defence had the liberty to summon any material witness, including victim M, but chose not to do so.

49. The prosecution has successfully established the recovery of material evidence. PW4 (Panch-Witness) attested to the seizure of the accused's mobile phone and the victims' undergarments based on the accused's disclosure statement. This was duly recorded under Section 27 of the Indian Evidence Act and was not effectively rebutted during cross-examination.

50. PW5 confirmed the seizure of the purple undergarment of the victim, and PW6 and PW7 (Police Constables) corroborated the proper chain of custody of the seized articles sent to the forensic laboratories. PW8 (Lady Head Constable) established procedural compliance with FIR registration and medical referrals. These procedural steps are further substantiated by the Investigating Officer (PW13), who detailed the entire investigative process.

51. P.W.10 – Dr Vandana Waware, who examined the victim on 21.02.2014, noted that there were no external injuries or signs of penetration. However, the medical opinion does not rule out the possibility of an attempt or non-penetrative acts of sexual assault. It is by now settled in law that the absence of physical injury does not negate the commission of an offence under the POCSO Act, especially when the victim is of tender age and the accused is

known to the victim. The medical evidence, therefore, does not discredit the version of the prosecution. The medical evidence rendered by PW10 (Gynaecologist) notes the absence of external injuries but does not negate the possibility of sexual assault or attempt thereof, particularly given the age of the victims. The testimony confirms that due to the young age and nature of the act, the absence of physical injury does not rule out the occurrence of the offence. This position is supported by settled law, which recognises that medical evidence is only corroborative and not conclusive. PW9 (CMO) confirmed the accused's capability to perform sexual intercourse, and the collection of relevant biological samples was properly recorded and sealed.

52. The prosecution has proved the minor status of the victim through the birth certificate (Exhibit 28), which shows that she was born on 10.08.2007. This document was produced by P.W.1 and remained unchallenged during the trial. It is thus established that the victim was approximately 6½ years old at the time of the incident, attracting the provisions of Sections 5(m) and 6 of the POCSO Act, which pertain to aggravated penetrative sexual assault on a child below twelve years.

53. According to the Chemical Analyser's report, he received phials of blood and underwear of the accused and the victim, and samples of pubic hair of

the accused and vaginal swabs of the victim for testing. At Exhibit 75 (3 and 4), the blood groups of victims M and S could not be established due to inconclusive findings. Exhibit 75(1) shows that the accused has blood group AB. Examination of the accused's underwear, as documented in Exhibit 75(2), revealed it had been washed, though traces of human blood of group A were detected. The prosecution has not presented any evidence demonstrating that either the victims' vaginas or the accused's penis was bleeding during the alleged assault. Consequently, while the medical evidence and Chemical Analyser reports do not reveal or suggest anything regarding penetrative sexual assault, this does not impact the case's substance with respect to the charge of attempted sexual intercourse.

54. In paras 8 and 21 of *State of Punjab v. Gurmit Singh* (1996 SCC (2) 384), the Hon'ble Apex Court has held as under in paras 8 and 21 -

“8. The grounds on which the trial court disbelieved the version of the prosecutrix are not at all sound. The findings recorded by the trial court rebel against realism and lose their sanctity and credibility. The court lost sight of the fact that the prosecutrix is a village girl. She was a student of Xth class. It was wholly irrelevant and immaterial whether she was ignorant of the difference between a Fiat, an Ambassador or a Master car. Again, the statement of the prosecutrix at the trial that she did not remember the colour of the car, though she had given the colour of the car in the FIR was of no material effect on the reliability of her testimony. No fault could also be found with the prosecution version on the ground that the prosecutrix had not raised an alarm while being abducted. The prosecutrix in her statement categorically asserted that as soon as she was pushed inside the car she was threatened by the accused to keep quiet and not to raise any alarm, otherwise

she would be killed. Under these circumstances to discredit the prosecutrix for not raising an alarm while the car was passing through the bus adda is a travesty of justice. The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. The trial court fell in error for discrediting the testimony of the prosecutrix on that account. In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. The prosecution has explained that as soon as Tirlok Singh PW 6, father of the prosecutrix came to know from his wife, PW 7 about the incident he went to the village Sarpanch and complained to him. The Sarpanch of the village also got in touch with the Sarpanch of Village Pakhowal, where in the tubewell kotha of Ranjit Singh rape was committed, and an effort was made by the panchayats of the two villages to sit together and settle the matter. It was only when the Panchayats failed to provide any relief or render any justice to the prosecutrix, that she and her family decided to report the matter to the police and before doing that naturally the father and mother of the prosecutrix discussed whether or not to lodge a report with the police in view of the repercussions it might have on the reputation and future prospects of the marriage etc. of their daughter. Tirlok Singh PW 6 truthfully admitted that he entered into consultation with his wife as to whether to lodge a report or not and the trial court appears to have misunderstood the reasons and justification for the consultation between Tirlok Singh and his wife when it found that the said circumstance had rendered the version of the prosecutrix doubtful. Her statement about the manner in which she was abducted and again left near the school in the early hours of next morning has a ring of truth. It appears that the trial court searched for contradictions and variations in the

statement of the prosecutrix microscopically, so as to disbelieve her version. The observations of the trial court that the story of the prosecutrix that she was left near the examination centre next morning at about 6 a.m. was “not believable” as “the accused would be the last persons to extend sympathy to the prosecutrix” are not at all intelligible. The accused were not showing “any sympathy” to the prosecutrix while driving her at 6.00 a.m. next morning to the place from where she had been abducted but on the other hand were removing her from the kotha of Ranjit Singh and leaving her near the examination centre so as to avoid being detected. The criticism by the trial court of the evidence of the prosecutrix as to why she did not complain to the lady teachers or to other girl students when she appeared for the examination at the centre and waited till she went home and narrated the occurrence to her mother is unjustified. The conduct of the prosecutrix in this regard appears to us to be most natural. The trial court overlooked that a girl, in a tradition-bound non-permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from her reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy. Therefore her informing her mother only on return to the parental house and no one else at the examination centre prior thereto is in accord with the natural human conduct of a female. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. 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. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts

should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. In State of Maharashtra v. Chandraprakash Kewalchand Jain [(1990) 1 SCC 550 : 1990 SCC (Cri) 210] Ahmadi, J. (as the Lord Chief Justice then was) speaking for the Bench summarised the position in the following words: (SCC p. 559, para 16)

“A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach

in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

9 to 20.....

21. 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 courts, 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.

55. Learned counsel for the appellant has placed reliance upon the decision in *Sanjay v. The State of Maharashtra & Ors.*, Maharashtra (2013) ALLMR (Cri) 1302, wherein the Aurangabad Bench of this Court held that a conviction based solely on the testimony of the prosecutrix must rest on evidence of sterling quality, consistent, credible, and, where possible, corroborated by other material on record. However, the reliance on *Sanjay* is misplaced in the present case. Unlike the facts in *Sanjay*, where the conviction was founded solely on the uncorroborated testimony of the victim, the prosecution in the present matter has led substantial independent corroborative evidence in support of the victim's account.

This includes, the statement of the accused regarding the location of his knickers and mobile phone (Exhibit 36); recovery of the said articles from the accused's house, including the mobile phone concealed under a mattress, and knickers, in the presence of independent panch witnesses (Exhibits 37, 38); the immediate complaint of pain in private parts by victim 'S' on 05.02.2014 before any formal disclosure or opportunity for tutoring; the independent testimony of

the Sarpanch (PW3), who first received and heard the victims' account; mutual corroboration between the two child victims whose core narratives remained consistent despite minor omissions during cross-examination and behavioural evidence, including the victims' visible fear upon seeing the accused, their ability to identify the location of the offence, and their consistent identification of the field belonging to one Urkudkar as the place of occurrence. Most significantly, the charge in the present case pertains to an *attempt* to commit aggravated penetrative sexual assault. The medical evidence showing an intact hymen and absence of penetrative injuries is not inconsistent with the prosecution's case; considering the time gap between the date of incident and the date of medical examination of the victim and their tender age rather, it affirms the attempt as described by the victims that the accused attempted to insert his penis but was unsuccessful. Therefore, *Sanjay* is distinguishable on facts and does not advance the appellant's case.

56. The appellant further relies on the judgment of the Hon'ble Supreme Court in *Digamber Vaishnav & Anr. v. State of Chhattisgarh*, (2019) 4 SCC 522 (para 21), wherein it was observed that evidence given by child witnesses must be subject to scrutiny, as children are more susceptible to influence and tutoring. While the principle laid down is sound, it does not, however, apply adversely to the prosecution in the present case. Despite the tender age of the victims and an

admission by one of them (PW2) that her parents advised her to "state the factual position," she clearly clarified during examination that she was instructed to tell the truth. Moreover, the evidence of tutoring is unsupported by any material inconsistency or embellishment. On the contrary, the following factors lend credibility and authenticity to the testimony; immediate physical complaint of pain by the victim on 05.02.2014, which preceded any formal disclosure or interaction with the police; the discovery of the accused mobile phone and undergarments based on his statement (Exh.36), under panchnama (Exh.37, 38), corroborated by independent panch witnesses (PW4, PW5); testimony of PW3 (Sarpanch), an independent witness; consistency in the core allegations of both victims, coupled with behavioural signs of trauma and fear upon seeing the accused and the identification of the place of offence by both victims during the spot panchanama conducted by the investigating officer (PW13). These elements constitute independent corroboration that goes beyond the apprehensions contemplated in *Digamber Vaishnav*. Thus, the judgment is clearly distinguishable.

57. Lastly, the learned counsel for the appellant has placed reliance upon the judgment of the Hon'ble Supreme Court in *K. Venkateshwarlu v. State of Andhra Pradesh*, wherein it was held that moral considerations cannot replace

legal evidence, and conviction must rest on the strength of legally admissible material, not on emotional appeal or the nature of the allegation. This Court is in full agreement with the principle so laid down. However, the prosecution in the instant case has not relied on moral outrage or societal expectations as a substitute for legal proof. Rather, it has adduced a cogent chain of legally admissible evidence comprising the accused own statement leading to the recovery of incriminating material (Exhibit 36); recovery of the accused mobile phone and his knickers under seizure panchnamas (Exhibits 37, 38, 42) in presence of independent witnesses (PW4 and PW5); the mutual corroboration in the testimony of two minor victims (PW1 and PW2), especially regarding being taken to the Urkudkar field and the attempted act; medical examination records (Exhibits 55, 78) documenting the examination, sample collection, and physical condition of the victims; testimony of PW3 (Sarpanch) who independently received the spontaneous disclosure and behavioural evidence such as fear displayed by the victims upon confrontation with the accused and their accurate identification of the scene of offence. Thus, the conviction in this case is based not on moral sentiment, but on a well-established evidentiary foundation within the framework of the Indian Evidence Act. Accordingly, the reliance on *K. Venkateshwarlu* does not assist the appellant.

58. For the reasons mentioned in this paragraph, it is observed that, the learned Special Court has not appreciated the evidence available on record in its correct perspective while coming to the conclusion that, the accused/appellant has only committed an attempt to commit an offence and therefore, liable for half of the punishment provided for the offence.

As per section 375 of IPC, a man is said to commit “rape” if there is penetration of penis to any extent into the vagina, mouth, urethra or anus of a woman on insertion to any extent of any object or part of the body not being penis or manipulation of any part of woman so as to cause penetration or application of mouth to vagina of woman or to be penis of a man. Similar is the definition of “penetrative sexual assault” as defined under section 3 of POCSO Act, 2012 and when, such penetrative sexual assault is committed upon a child below 12 years of age, the offence of “aggravated penetrative sexual assault” provided u/s 5 of POCSO Act gets attracted which is punishable with minimum imprisonment of 10 years, as it then stood before the amendment dated 16.08.2019. Thus, even the slightest penetration is sufficient to constitute such offence and if the victim is minor/child, the theory of consent is wholly immaterial.

Now, whether the accused Gajanan has committed the alleged offence of “rape” and “penetrative sexual assault upon the victim/child or he just attempted to do so, can be evaluated from the evidence of the victim and her mother.

The unshaken testimony of PW-1/mother of the victim would reveal that, initially on 05.02.2014 around 6:00 pm, the victim “S” has complained about pain in her private part at the time of urination. Further, though, the alleged incident of rape upon the victim happened on 05.02.2014, however, it was informed to the PW-1 be-lately on 19.02.2014 by the victim and immediately thereafter, the report was lodged on 20.02.2014 and the victim was then medically examined on 21.02.2014.

The unshaken testimony of PW-2/victim “S” would reveal that, on the fateful day (i.e. on 05.02.2014 around 2:00 pm), the accused Gajanan allured the victims and took them with him in the field situated behind there school when they came out of the school while playing. The accused had shown obscene pictures of naked men and woman to the victims on his mobile and asked them to act accordingly. The accused undressed himself and also the victims and then, took out his penis and tried to insert into the vagina of victim “S” due to which she suffered pain. The accused then committed similar act with victim “M” also. Thereafter, the accused threatened them not to disclosed the incident to anybody and ran away.

A perusal of the charge-sheet would reveal that, the alleged incident found place not only in the oral report and statement of mother of victim (PW-1) but also, in the statement of victim “S” (PW-2) recorded on 20.02.2024 and 21.01.2024 by the investigating agency. Nothing is extracted in the cross examination of these two witnesses by the defense in respect of the alleged incident and even, no specific suggestion were given about the alleged incident and neither, their own statements were shown to the witnesses during their cross examination for bringing out material omission of the alleged incident of rape committed by the accused upon the victim.

From the testimonies of these two witnesses, it is clear that, the act of “rape” and/or “aggravated penetrative sexual assault” committed by the accused upon the child would be complete and constituted as soon as he put his penis into the vagina of the victims and the extent of penetration is immaterial in law. Simply because, in the medical examination conducted of the victim after more than 15 days, no injuries were found upon the person of victim including her private parts due to her tender age, the alleged act committed by the appellant cannot be termed as an “attempt” to discard the otherwise reliable and trustworthy testimony of the victim and her mother in respect of the alleged incident of rape. As such, taking the overall view of the matter, it can be safely concluded that, the learned Special Court has missed this crucial aspect and

erroneously come to the conclusion that, it was just and attempt on the part of the accused inviting half of the punishment for the said offence.

59. Therefore the acts committed by the accused, as described by the victim, constitute:

- i) An offence of aggravated penetrative sexual assault under Sections 5(m) r/w Section 6 of the POCSO Act;
- ii) An offence under Section 376(2)(i) r/w 511 of the IPC;
- iii) Sexual harassment within the meaning of Section 354A (i) (ii) (iii) of IPC.

60. In view of the above analysis, this Court finds that the evidence of P.W.2, though delayed, is consistent, credible, and inspires confidence. The testimony of P.W.1, corroborated by other prosecution witnesses, supports the prosecution's case. The delay in lodging FIR and recording of testimony is satisfactorily explained. The presumption under Section 29 of the POCSO Act remains un rebutted. The defence has failed to create any reasonable doubt or lead any evidence in rebuttal. The allegations of tutoring or false implication are unsubstantiated and speculative. The conviction recorded by the learned Special Judge is well-reasoned, legally sound, and based on proper appreciation of evidence.

The evidence of PW6 and PW7, who handled the escort and medical samples, and PW13 (IO), who supervised the investigation, reinforces that all procedural safeguards were observed. There is no material contradiction or procedural lapse that would vitiate the investigation.

61. The cumulative effect of the victim's testimony (PW2), the corroborating deposition of PW1, the independent affirmation by PW3 (Sarpanch), the recovery of incriminating material through PW4 and PW5, and the consistent chain of custody through PW6 to PW13, leads this Court to conclude that the prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt.

62. The minor contradictions and the absence of physical injuries, in the context of the age of the victims and the nature of the alleged act and delay in medical examination of victim, do not detract from the otherwise cogent and reliable evidence led by the prosecution. This Court, therefore, finds no merit in the appeal.

63. In the present case, the accused has been convicted under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of 10 years and pay a fine of Rs. 50,000/-. In default of payment of the fine, he shall suffer simple imprisonment for 1 year. The incident in question

occurred on 19.02.2014. It is pertinent to note that the amendment to Section 6 of the POCSO Act, which enhanced the minimum prescribed sentence to 20 years, came into effect only on 16.08.2019.

Article 20(1) of the Constitution of India embodies the principle of *nullum crimen sine lege, nulla poena sine lege*; no person shall be convicted of any offence or subjected to a penalty greater than that which could have been imposed under the law in force at the time of commission of the offence. It is a well-settled principle that penal laws, unless expressly provided, cannot be applied retrospectively to the detriment of the accused.

64. The Hon'ble Supreme Court, in *Rattan Lal v. State of Punjab*, AIR 1965 SC 444 (para 3), laid down the principle of beneficial construction, holding that an ex post facto law can be applied retrospectively only when it operates to the benefit of the accused, but never to his disadvantage. Similarly, in *Kedar Nath Bajoria v. State of West Bengal*, AIR 1953 SC 404, the Court reaffirmed the constitutional bar against retrospective application of enhanced punishment.

65. More recently, in *Sachin v. State of Maharashtra*, 2025 INSC 716 (para 35), the Hon'ble Supreme Court reiterated that an enhanced punishment under an amended provision cannot be applied to acts committed prior to the

coming into force of such amendment. The Court further observed that where an appeal is preferred by the accused, the appellate court cannot enhance the sentence *suo motu* unless the State has filed a separate appeal under Section 377 of the Code of Criminal Procedure. Enhancing the sentence in such cases would have the effect of penalising the accused for exercising his statutory right of appeal, which is impermissible.

66. Accordingly, the sentence under Section 6 of the POCSO Act must be determined based on the unamended provision as it stood in 2014, which prescribed a minimum punishment of 10 years' rigorous imprisonment, extendable to imprisonment for life, and shall also be liable to fine. The application of the post-amendment minimum sentence of 20 years, either directly or by implication, is therefore legally impermissible and violative of Article 20(1) of the Constitution. The approach adopted by the learned Trial Court in this regard is thus legally unsustainable and warrants correction.

67. The Trial Court has erred in its application of Section 42 of the POCSO Act. The learned Trial Court relied upon the amended provision of Section 6 of the POCSO Act introduced vide amendment dated 16.08.2019, which prescribes a minimum punishment of 20 years' rigorous imprisonment,

and on that basis, concluded that the punishment under the POCSO Act is greater in degree than that under the Indian Penal Code.

68. However, such a comparison is legally untenable, as the offence in the present case occurred in the year 2014, prior to the said amendment. Therefore, the applicable provision is Section 6 of the POCSO Act as it stood at the time of the offence, which prescribed a minimum sentence of 10 years' rigorous imprisonment, extendable to life imprisonment, along with fine.

69. Since the offence in question falls under the provisions of the POSCO Act, which is a special enactment, the punishment prescribed under Section 6 of the said Act shall prevail and is to be taken into consideration while sentencing the accused. It is also pertinent to note that Section 376(2)(i) of the Indian Penal Code prescribes a minimum punishment of ten years, which may extend to life imprisonment. However, in view of the special legislation, the provisions of the POCSO Act shall have an overriding effect as per Section 42-A of the said Act, and the sentence shall accordingly be governed by Section 6 of the POCSO Act.

In light of the foregoing discussion, it is held that the sentence awarded to the appellant Section 5(m) read with Section 6 of the POCSO Act stands affirmed to the extent that it is in conformity with the minimum prescribed

punishment of ten years' rigorous imprisonment, as per the unamended provision applicable on the date of the offence, i.e., prior to the amendment that came into force on 16.08.2019.

The Trial Court's reliance on the amended provision of Section 6, prescribing a minimum sentence of twenty years, as well as its invocation of Section 18 of the POCSO Act for the purpose of calculating sentence, is found to be legally erroneous and unsustainable. Consequently, the reference to Section 18 of the POCSO Act in the sentencing portion of the impugned judgment is hereby set aside.

However, since the sentence of ten years' rigorous imprisonment awarded by the Trial Court aligns with the minimum punishment prescribed under the law as applicable at the time of the offence, no interference with the quantum of sentence is warranted.

Accordingly, the sentence imposed on the appellant is liable to be modified in consonance with the unamended provisions of the POCSO Act. The appellant is hereby sentenced to undergo rigorous imprisonment for a term of 10 (ten) years, along with payment of fine as imposed by the Trial Court, and in default of payment of such fine, to further undergo the default sentence as directed therein.

The conviction and sentence under Section 6 of the POCSO Act, as modified above, are maintained. Resultantly, I pass the following order.

ORDER

- i. Criminal Appeal stands dismissed.
- ii. Fees of the learned appointed Advocate Shri Anirudh A. Krishnan for the respondent no.2/Victim be quantified as per the Rules and be paid to him within four weeks from today.

[NIVEDITA P. MEHTA, J.]

SKNair,PS