

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.802 of 2025

Arising Out of PS. Case No.-39 Year-2022 Thana- DIGHA District- Patna

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Jitendra Kumar @ Kunkun Son of Shivji Rai Resident of Village- Sadilopur
@Suhadullapur, Chandani, Mahnar Road, Hazirpur,P.S.- Jahua(Ganga
Bridge), Distt.- Vaisali(Bihar)

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. XXXXXXXXXXXXX

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ramji Kumar, Advocate
For the State	:	Mr. Ramchandra Singh, A.P.P.
For the Respondent No.2:		Mr. Ajay Kumar, Advocate
		Mr. Raj Shekhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT

Date : 20-01-2026

Heard learned counsel for the appellant, learned
counsel for the Respondent No. 2 and learned Additional
Public Prosecutor for the State.

2. The name of the victim has not been disclosed
in the present judgment to protect her privacy, prestige and
dignity.

3. The present appeal is directed against the
judgment of conviction dated 20.01.2025 and order of sentence
dated 24.01.2025 passed by learned Additional Sessions Judge
–Vith cum Special Judge, POCSO Act, Patna in Special
Sessions Trial POCSO Case No. 75 of 2022, arising out of
Digha P.S. Case No. 39 of 2022 whereby and whereunder the



appellant/ Jitendra Kumar @ Kunkun has been convicted for the offences punishable under Section 363 of IPC and has been sentenced to undergo rigorous imprisonment for four years along with fine of Rs. 5,000/- under Section 363 of IPC and in case of default of payment of fine, appellant has to further undergo simple imprisonment for two months.

4. As per prosecution case, informant (PW-2) who is mother of victim, has filed a written statement before SHO, Digha that on 19.01.2022, victim aged about 15 years left the house for coaching at around 9 AM but she did not return home. It is alleged that the appellant is alleged to have taken away the victim who had been residing at the house of informant since two years.

5. On the basis of written statement filed by the informant, Digha P.S. Case No. 39 of 2022 was registered under Sections 363/366A of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet was submitted against the appellant under Sections 363, 366(A), 366 of the IPC. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the



appellant under Sections 363, 366(A), 366 of the IPC and Section 12 of the POCSO Act, 2022. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

6. In order to bring home the guilt of the accused person, prosecution has examined altogether six witnesses. PW-1 victim, PW-2 mother of victim(informant), PW-3 father of victim, PW-4 maternal uncle of victim, PW-5 Rajeev Ranjan Kumar (Investigating Officer) and PW-6 Dr. Abhilasha Kumari (doctor).

7. Prosecution has relied upon following documentary evidence on record:-

Ext. P-1/PW-1- Signature of victim on statement recorded under Section 164 of Cr.P.C.

Ext. P-2/PW-2- Written application submitted before the police

Ext. P-3/PW-5- Registration of case on written application

Ext. P-4/PW-5- Formal FIR

Ext. P-5/PW-5- Memo of arrest

Ext. P-6/PW-5- Charge sheet

Ext. P-7/PW-6- Medical Report

Ext. P-8- Certificate of matric-cum- mark sheet

Ext. P-9- Statement of victim recorded under Section 164 of Cr.PC.



8. However, the defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

9. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the opening paragraph of the judgment.

10. The following submissions have been made on behalf of learned counsel for the appellant:-

11. The learned counsel for the appellant submits that the statement of victim has been improved from the earlier statement recorded under Section 164 of the Cr.P.C. and the statement of PW-3 (father of the victim) regarding providing chips and cold drinks to the victim, and she was given intoxicated materials and victim was forced by the appellant to commit wrongful act, is totally inconsistent with the statement of the PW-5 who is the Investigating Officer of the case. PW-3 has improved his statement from earlier statement which was recorded by the Investigating Officer (PW-5) and the same is evident from the cross-examination of Investigating Officer that how the father of the victim has improved his earlier statement recorded under Section 161 of



Cr.P.C. He further submits that PW-2 who is the informant of the case, has improved her version at the time of adducing evidence which was not recorded when she made her statement before the Investigating Officer (PW-5). He further submits that the statement of Investigating Officer is quite evident that how the mother of the victim has changed her earlier statement at the time of adducing evidence before the court. The statement of Investigating Officer (PW-5) is quite evident that how the statement of victim has been improved at the time of adducing evidence. He further submits that how the statement of victim's father has been improved though it was clearly absent when the statement was recorded by Investigating Officer and the victim's mother who is the informant of the case how she has changed her earlier statement at the time of adducing evidence. In this way, their statements are full of inconsistencies, discrepancies and infirmities. In this way, prosecution has failed to prove the case beyond the reasonable doubt and the concerned court has also recorded the reasoning as to how the prosecution has failed to prove the case under Section 12 of the POCSO Act. In this way, the prosecution has failed to prove the case under Section 363 of IPC.

12. Learned counsel for the Respondent No. 2



submitted that the age of the victim has already been proved in accordance with the statutory provisions by the concerned court. It has been submitted that the age of victim is not in dispute in present case as no objection was raised at this point on behalf of the defence counsel and the concerned court, after an elaborate discussion of the relevant statutory provisions, has given a finding that victim was found to be minor. From the perusal of statement of victim recorded under Section 164 of Cr.P.C and her statement while adducing evidence before Court, it is crystal clear that on the point of taking away the victim, the statement was quite consistent that victim was taken away by the appellant and the victim is a minor and victim was taken without taking consent of the lawful guardian. It has been submitted that though PW-2 and 3 are guardians, they have already admitted that victim has already been taken away. On the point of taking consent, PW-2 and PW-3 have already put their grievances. Informant has already admitted that she has lodged FIR regarding taking away of her minor child against the appellant. It has been submitted that PW 3 (father of victim) has also asserted the same statement on the point of taking away the victim. The statement of PW 5 are consistent and at last victim was recovered from Bairgania Border. In this way,



there is no reason to differ from the finding of the concerned court that the victim was minor and no consent was taken from the lawful guardian who have already adduced their evidences before the Court that victim has been taken away by the appellant. It has been submitted that victim has also asserted the same statement that she was being taken away by the appellant. However, learned counsel for the respondent no. 2 submits that the sentence awarded to the appellant by the learned trial court is inadequate and the quantum of sentence should be maximized. Learned counsel for the respondent no. 2 further submits that there are sufficient material to convict the appellant under Section 12 of the POCSO Act and for the said purpose, victim/respondent no. 2 has also filed Cr. Appeal (SJ) No. 1724 of 2025.

13. The learned counsel for the State submits that the judgment of conviction and order of sentence passed by the learned trial court are justified and legal as the same have been passed on the basis of material available on record. Hence, no interference is needed.

14. The question which arises for consideration is:-

"Whether offence under Section 363



of IPC is made out in the light of given facts and circumstances of the case or not ?"

15. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

16. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

17. It is necessary to discuss the evidence of victim who is said to have been taken away by the appellant and her statement is recorded under Section 164 of Cr.P.C. which is as follows:-

“On 19.01.2022 at about 9 AM, she proceeded for coaching and she has stated that Jitendra Kumar was working under his papa and in the way, the appellant made an offer for tour when the victim replied regarding permission from house upon which the appellant replied that he had taken permission from victim’s father and the victim sat on cab with appellant by relying on the said version of appellant and both went to Hajipur station and thereafter they went to Delhi and from Delhi to Gurgaon and finally went to Kathmandu, Nepal



for touring purpose. The victim requested for returning to her house upon which Kunkun/ appellant denied on one or another pretext. In para 6, victim has stated that she saw the facebook post of her mother and the appellant made arrangement to communicate with victim's mother and victim's mother was weeping and the appellant dropped the victim on India-Nepal border at the behest of victim and the victim's mother took her to Patna and she has stated in para 7 that appellant has not committed any wrong with her. She has stated that she came with her parents and she desired to go with them."

18. PW-1 (X) is the victim of the present case and her statement during the course of adducing evidence is totally different from what she has asserted in her statement under Section 164 of Cr.P.C. as in her statement under Section 164 of Cr.P.C. she has stated that when she was going to her coaching, the appellant met her and offered her for tour, but while adducing her evidence before the Court she has improved her version and has stated that Jitendra Kumar/appellant was present with vehicle on the way and he prevented the victim from going to the coaching and he stated that on the said date coaching was closed and her father had asked him to bring the victim back. Believing his statement, victim sat in the said cab



and appellant gave lays and Thumbs Up and after that she did not remember anything. When she regained consciousness, she heard the sound of train and after that when she opened her eyes she found herself at the lonely place at a room and the room was closed. After calling repeatedly, the appellant came and he gave food to the victim. She always asked the appellant to take her home but appellant did not take her to her home. In para 3, she has stated that about after 14 days, appellant stated to drop the victim at her house. She has stated that she had been residing with the appellant for five months. She has stated that first of all the appellant brought her in Delhi, thereafter, Motihari then took away to Nepal. During the said period, the appellant gave threatening to victim that he would kill the father and brother of victim. In para 5, she has stated that appellant has tortured the victim mentally and emotionally. In this way, the said version of the victim is inconsistent with her statement recorded under Section 164 of Cr.P.C. Further, in examination-in-chief, she has stated that appellant touched her and did indecent behavior against her whereas in cross-examination, she has stated that appellant did not commit any wrong act, prior to 19.01.2022. She has stated that police had got her statement recorded under Section 164 of Cr.P.C. before



the learned Magistrate upon which she put her signature which is marked as Exhibit P/1-PW1. She has stated that after many days of returning home, she told her mother about the incident. The statement of victim with regard to giving Thumbs up and Lays was totally inconsistent with the statement recorded under Section 164 of Cr.PC. During the course of statement recorded under Section 164 of Cr.P.C., in para 7 she has stated that appellant has not committed anything wrong against her and she has admitted that appellant left her at India-Nepal border at the behest of the victim but during the course of adducing evidence before the Court, victim has improved her statement that appellant parked the vehicle in the way and he was standing there and stopped the victim and told her that her coaching was closed on that day. The said version was totally inconsistent with the version recorded by the victim under Section 164 of Cr.P.C.

19. PW-2 :- She is the mother of the victim and informant of the present case. In para 2, she has stated that her daughter/victim had gone to coaching at 8 AM. At 1:06 PM, she received a message from the appellant stating that he was taking the victim away and that she (PW2) should not search for them. She further stated that the appellant was taking the victim



away from her (PW-2) and that appellant had been in love with the victim for the past eighteen months. The statement of PW-2, who is informant of the case, is quite inconsistent with the version of Investigating Officer (PW-5). PW-2 has supported the initial version of prosecution story that the victim went to coaching in the morning but she has improved her version by stating that she received one message from appellant that he took informant's/PW-2 daughter and it was told that appellant was in love with informant's daughter since eighteen months. She has made effort to search her daughter and in para 9, she has stated that her daughter (victim) was found sitting under a tree near Bairgania border and she was frightened and after that she came to civil court with her daughter/victim. In para 13, PW-2 has stated that victim has stated all things to her that had happened against her. She has stated that victim has pointed out that appellant used to assault and behaved indecently with the victim and appellant did not provide food and keep the door closed and tried to persuade to make physical relationship. She has stated that age of victim at the time of occurrence is 15 years and 3 months and the date birth of victim on school certificate is mentioned as 15.09.2006. During the course of cross-examination, she has stated that appellant took away her



daughter and on the point of taking away her daughter, statement of PW-2 is quite intact and there is no reason to disbelieve the statement of informant who has stated in the initial version of prosecution story that appellant is said to have taken away her daughter and during her deposition before the Court that informant's daughter has been taken away by the appellant and age of victim has been pointed out on the basis of certificate issued by school.

20. PW-3 is father of the victim and he has also stated that victim went to coaching and he received a call from his wife who informed him that accused Jitendra Kumar @ Kunkun sent a message on her mobile that Jitendra Kumar @ Kunkun had taken away victim. On the basis of message of his wife received on mobile, PW-3 has stated that he made contact with the mother and father of appellant and both of them started abusing PW-3. Then, PW-3 went to the house of appellant and the family members of appellant started abusing him and stated that appellant would marry the victim. PW-3 returned back and the PW-3 has stated that in para 6, after about four months, the victim called her mother through unknown mobile number and told her mother that victim was at Bairgania Border, Nepal and on the basis of said information,



wife of PW-3 went to Bairgania border and victim was brought to Patna and statement of victim under Section 164 of Cr.P.C. was recorded before the Magistrate. He has stated that victim was nervous and after 10 to 15 days victim told her mother regarding the incident which had happened against her. He has stated in para 8 that victim has stated to her mother that appellant used to assault and made indecent behavior and used to administer medicine to develop the body of victim as adult so that appellant could marry the victim. He further stated in para 9 that victim has stated that cold drink was given by the appellant and chips were also provided and after taking the said drink and chips she became unconscious and after gaining consciousness she found herself in Delhi. He has stated that victim was in Delhi and she was placed in a room where one woman resided. He has stated that the appellant took away the victim from Delhi to Nepal and he has stated that appellant had made some indecent behavior and used to feed intoxicated medicine. In para 4 of the examination in chief of PW-3, PW-3 has stated that he went to the house of appellant where all the family members of the appellant started abusing him and all the family members told P.W-3 that the accused would marry the victim but the IO (PW-5) during the course of cross-



examination, in para 20, has stated that PW-3 had not stated before him that when PW-3 went to the house of appellant, all the family members started abusing and made indecent behavior with PW-3 but the said version of PW-3 is quite inconsistent with the version of PW-5 who is the Investigating Officer (PW-5) as mentioned in para 20. The statement regarding providing the cold drinks and chips to the victim was not stated before the Investigating Officer by PW-3. The statement of taking victim from Delhi to Nepal was also not stated by this witness to Investigating Officer (PW-5). PW-3 who has stated in para 11 that appellant used to talk his brother, father, mother, brother-in-law and cousin through phone and internet but the victim was not allowed to talk to anyone but during the course of cross-examination of PW-5 (Investigating Officer), it has been clarified in para 27 that PW-3 had not made any statement before him as he had stated in para 11 while adducing evidence during the course of examination in chief.

21. From the deposition of father of victim (PW-3), it is evident that despite being embellishment and improvisation in the version of PW-3, it is clear that appellant has taken away the victim without consent of the father of the



victim (PW-3) and the said statement is quite intact with the statements of other prosecution witness, victim as well as victim's mother (PW-2).

22. PW-4 is the maternal uncle of the victim. He has stated that victim's mother (PW 2) is informant of the case, is also his sister, called him around 2 PM that appellant had fled with the victim. He further stated that he went to victim's home and his sister told him that appellant had taken him away. In para 3, he has stated that the victim's mother went to thana for lodging the FIR. In para 4, he has stated that on 22.05.2022, victim's mother called and informed him that the victim had been found and was at the Nepal border. He further stated that he went to victim's house and then, went to the Nepal border with the victim's mother. In para 6, he has stated that he did not know about as to how many days victim lived with the appellant. In para 7, PW-4 has stated that victim did not tell about the incident to him. He further stated that victim told her mother about the incident. During the course of cross-examination, in para 26 he has stated that victim has not stated anything regarding the occurrence till today.

23. PW- 5 (Rajeev Ranjan Kumar) is the investigating officer of the present case and he got the charge



of investigation of Digha P.S. Case No. 39 of 2022. In para 4, he has stated that after getting charge of investigation, he recorded the statement of informant and inspected the place of occurrence which is the house of informant situated in Ramjichak Mohalla under Digha Police Station. In para 7, PW-5 has stated that he has also recorded the statement of father of victim and maternal uncle of the victim. In para 9, he has stated that on 20.01.2022, he verified the age of victim and her date of birth, according to her school certificate, was found to be 15.09.2006. During the course of cross-examination, in para 19, PW-5 has stated that PW-3 has not stated before him that PW-3 had made a phone call to the mother of appellant to inform her about the incident, then, mother of appellant told that her son was not of such a nature who could take away the victim. In para 20, PW-5 has stated that PW-3 has not stated before him that when PW-3 had gone to the house of appellant, the entire family of appellant began abusing PW-3 and they claimed that the accused would marry the daughter of PW-3. Thereafter, PW-3 left. In para 21, PW-5 has stated that PW-3 has not stated before him that PW-3 repeatedly visited police station to report the incident. It is also not pointed out before PW-5 that during that period, the appellant had changed thirty



mobile SIM cards and four email IDs. In para 22, PW-5 has stated that PW-3 has not stated before him that after about four months, the victim called her mother through an unknown mobile number and told her mother that she was at the Bargania border in Nepal and upon this information, wife of PW-3 went to the Bargania border to get the victim back and brought her to Patna. It is also not pointed out before PW-5 that after arriving Patna, victim was brought to the Civil Court, Patna and the Investigating Officer of the Digha Police Station was informed about the victim. In para 23, PW-5 has stated that PW-3 has not stated before him that the victim was very nervous and thereafter about ten to fifteen days later, the victim gradually told her mother (PW-2) everything about the incident. In para 24, PW-5 has stated that PW-3 has not stated before him that the victim told her mother that the appellant had repeatedly beaten her and sexually assaulted her and the appellant had also confined the victim to a room and administered a medicine to develop the body of victim as adult so that the appellant could marry the victim. In para 25, PW-5 has stated that PW-3 has not stated before him that the victim told PW-3 that appellant had provided her cold drink and chips in Patna, after which she had become unconscious. It is also not



pointed out before PW-5 that when victim regained consciousness, she was in Delhi and in Delhi, a woman also lived in the room where the victim was kept. It is not stated before PW-5 that before arriving the said place, accused had sent money to the woman's bank account, of which victim had proof. In para 26, PW-5 has stated that PW-3 has not stated before him that the appellant took the victim from Delhi to Nepal and appellant kept the victim in a room in an unknown house in Motihari for approximately 14-15 days, where victim was subjected to sexual misconduct and administered intoxicated medicines. In para 27, PW-5 has stated that PW-3 has not stated before him that the appellant spoke daily with his brother, father, mother, brother-in-law and cousin through phone and internet and the appellant did not allow the victim to speak to anyone. In para 28, he has stated that PW-3 has not stated before him that when the victim used to ask for the mobile phone from the appellant, the appellant did not give the mobile phone to her and used to assault the victim. During the course of cross-examination in para 32, PW-5 has stated that victim has not stated before him that appellant used to threaten the victim to kill her father and brother. During the course of cross-examination in para 33, PW-5 has stated that victim has



not stated before him as to what happened with her and victim has also not stated as to how many places the appellant had taken her and victim has also not pointed out regarding the treatment meted out to her by the appellant. Victim has also not pointed out before PW-5 as to how the appellant kept her and she has also not pointed out that she was threatened. In para 34, PW-5 has stated that informant (PW-2) has not stated before him that informant's daughter was being taken away to distant place from her. It is also not pointed out before PW-5 that appellant was in love with the informant's daughter for eighteen months and appellant would never return informant's daughter. In para 35, PW-5 has stated that informant of the case has not stated before him that when informant read the message, she made phone call to appellant's mother to which appellant's mother did not give any direct reply and started making excuses. In para 36, PW-5 has stated that informant of the case has not stated before him that she made phone call to father, brother and brother-in-law of appellant but no one gave satisfactory reply. In para 37, PW-5 has stated that informant of the case has not stated before him that she continuously searched her daughter and she went to the house of appellant but family members of appellant replied that victim was not of



good nature and she went away with the appellant due to love affair. In para 39, PW-5 further stated that informant (PW-2) has not stated before him that informant proceeded for Bairgania border where she found her daughter under a tree who was frightened and was weeping. In para 40, PW-5 further stated that informant has not stated before him that the victim was not feeling well and it took her fifteen days to recover from illness. In para 41, PW-5 has stated that informant of the case has not stated before him that appellant used to assault the victim and used to make indecent behavior with her and appellant did not provide food and put her behind the closed room and asked her to establish physical relationship. It is also not pointed out before PW-5 by the informant (PW-2) that appellant used to talk with his father, brother, brother-in-law but did not allow the victim to talk with anyone. In para 43, PW-5 has stated that neither the mother of victim nor the victim gave any statement before him after fifteen days of the victim's recovery. In para 53, PW-5 has stated that victim did not give any statement before him that she was not fit mentally and physically so that her statement could be recorded.

24. During the course of cross-examination of Investigating Officer (PW-5), it is clarified by him that the



statement of father of victim i.e. from paragraph 19 to 28, is not corroborated on the point of nervousness of the victim, visiting the house of appellant, providing cold drinks and feeding chips, administering intoxicated medicines, taking away the victim from Delhi to Nepal, talking of appellant to his father, mother, brother and brother-in-law through internet and on the point of assaulting the victim. In this way, statement of PW-3 is of no significance in the light of the improved statements as adduced during the trial.

25. During the course of cross-examination of PW-5, it is also found that statement of mother of victim (PW-2) is quite contradictory on the point of manner of occurrence, nervousness of the victim, visiting the house of appellant, talking of appellant to his father, mother, brother and brother-in-law through internet, assaulting the victim, recovery of victim and on the point of the treatment meted out to the victim. In this way, statement of PW-2 is also of no significance in the light of the improved statements as adduced during the trial.

26. During the course of cross-examination of PW-5, it is also found that statement of victim (PW-1) is quite contradictory on the point of the threatening the victim to kill



her father and brother and on the point of treatment meted out to the victim by the appellant. In this way, statement of PW-1 is also of no significance in the light of the improved statements as adduced during the trial.

27. PW-6 is Dr. Abhilasha Kumari. She stated that on 22.05.2022 she was posted at Sub Divisional Hospital, Danapur as medical officer and on the same day she examined the victim (PW-1) and made following observations:-

External Examination:-

No sign of external injury all over the body and private part.

Abdomen was found soft non-tender within normal limit.

4. *Per Vaginal Examination- No injury over vulva vagina and monspubis, hymen not intact, no any bleeding or semen discharge around vagina, U.P.T. not done. No undergarments with victim, no signs of blood over cloth, High vaginal soft taken, slides taken to P.M.C.H. for determination of spermatozoa. Patient sent to P.M.C.H. Patna for U.S.G. lower abdomen for internal injury.*

5. *Received report from P.M.C.H. Report of P.M.C.H.-High Vaginal swab no. 68 dated 26.05.2020, reference no. 744 al 25.05.2022 and reference no. 105 dated 26.05.2022 and it shows spermatozoa not found.*

6. *Report of P.M.C.H.- Lower U.S.G. Abdomen- U.S. 22 dated*



26.05.2022 showed normal size uterus and measure 7.2x2.8 cm. No evidence of gestational sac, no free fluid in P.O.D. According to U.S.G. No evidence of pregnancy.

7- Report of P.M.C.H. Radiology- X-ray of both elbow A.P. view complete fusion of epiphyses of the medial epichondyle of humerus. Complete fusion of epiphyses of head of radius on both sides. In females epiphyses of the medial epichondyle of humerus and epiphyses of head of radius on both sides fuses at the age of 14 years.

8- X-ray both wrist (A.P. view)- Incomplete fusion of distal ulnar epiphyses on both sides. Incomplete fusion of distal radial epiphyses on both sides. In females the distal ulnar epiphyses fuse at the age of 17 years. Female distal radial epiphyses fuses at the age of 16.5 years.

9- X-ray Pelvis (A.P. view) Non fusion of the epiphyses of the iliac crest on both sides. In females the iliac crest epiphyses appear at the age of 14 years fuses at the age of 17-19 years.

10. X-ray :- There is non fusion of the medial and ephysises of the clavicle on both sides. In females, the ephysises of the medical end of clavicle appears at the age of 14-16 years and fuse at the age of 20 years.

Conclusion:-

Age of victim :- 14-16 years.

As there is no sign of



external or internal injury all over the body or private part. No spermatozoa found in High Vaginal Swab slide. It is difficult to say whether rape has occurred or not.

28. On the basis of medical evidence, it is crystal clear that no sexual offence has been committed by the appellant against the victim.

29. The date of occurrence in the present case is 19.01.2022. It is pertinent to note that Act of 2007 has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, ('The Act of 2015' for short). Section 94 of the Act of 2015 lays down the procedure for determining juvenility. Relevant part of sub-section (2) of Section 94, which provides substantially similar procedure as was prescribed under 2007 Rules, reads as under:-

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age



shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.”

30. In the present case, in para 14 of the examination in chief, PW-2 has specifically pointed out that the age of victim at the time of occurrence is 15 years and 3 months and she has also disclosed that the date of birth of victim i.e. 15.09.2006 has been recorded on the basis of school certificate. PW-3 (father of victim) has also pointed out in para 13 that the date of birth of victim is 15.09.2006 and he has also stated that the age of victim is 15 years and 3 months at the time of occurrence and the same was verified by PW-5 (Investigating Officer).

31. Apparently, nothing was disputed by the defence regarding the Exhibit P-8 and the learned trial court while determining the age of victim, had discussed the statutory provisions and it has been determined as 15 years 4 months and 4 days and the victim was found to be minor.



32. From the perusal of statements of all the prosecution witnesses, it is crystal clear that victim has been taken away by the appellant and victim is minor and there is no reason to disbelieve the said fact but other allegations which were added and the statements that have been improved by all the other prosecution witness cannot be taken into account as the Investigating Officer (PW-5) of the case has clearly stated that during the course of cross-examination neither the victim nor PWs-2 and 3 have made such statements before the Investigating Officer which was first time made before the Court.

33. In order to attract the offence committed under Section 363 of IPC, following are the essential ingredients that must be satisfied:-

- (i) taking or enticing a minor
- (ii) from the lawful guardianship of victim parents or guardians;
- (iii) without their consent.

34. The statement of victim is that appellant persuaded her to sit on cab without permission of lawful guardian, in that situation, at the very juncture, the appellant committed the offence under Section 363 of IPC as there is nothing on record to show that appellant has taken permission



from lawful guardian and without having permission from guardian, the victim was being deprived from lawful guardian. At that juncture, the appellant has committed the offence under Section 363 of IPC. The very statement of regaining consciousness was not found in the early statement regarding under Section 164 of Cr.P.C. From the version of victim, it is crystal clear that appellant and victim both left house and appellant being major without consent of lawful guardian took away the victim and victim is minor.

35. The statement of victim cannot be disbelieved but in order to constitute the offence under Section 363 of IPC the victim must be minor and she must be taken away without consent of guardian.

36. The learned trial court while deciding the age of victim on the basis of Marks Statement cum Certificate, Secondary School Examination, 2021 issued by Central Board of Secondary Education which is marked as Ext- P/8 where the date of birth is indicated as 15-09-2006, has given the finding on the basis of statutory requirement and the learned trial court has recorded in para 19 of the impugned judgment that the victim was minor on the alleged date of occurrence on the basis of certificate issued by Central Board of Secondary Education



on the alleged date of occurrence which is exhibited as Exhibit P-8. Hence, there is no reason to differ from the finding given by the concerned court.

37. A careful scrutiny of the evidence of PW-1 (victim), PW-2 (informant-mother) and PW-3 (father), when tested against the testimony of PW-5, the Investigating Officer, reveals that several material facts deposed for the first time before the Court were never stated to the Investigating Officer under Section 161 Cr.P.C. These omissions are not minor but strike at the root of credibility, as they relate to the manner of occurrence, alleged intoxication, sexual misconduct, threats, confinement, recovery and subsequent conduct of the accused.

38. The Investigating Officer has categorically stated during cross-examination that none of the following allegations were disclosed to him:

(i) That the victim was forcibly stopped on the way, misled by a false assertion that coaching was closed, or induced by stating that permission had been obtained from her father.

(ii) That the victim was administered cold drinks, chips or any intoxicating substance, resulting in loss of consciousness.



(iii) That the victim was subjected to sexual assault, indecent behaviour, confinement, or forced physical relations, or that medicines were administered to make her "adult".

(iv) That the victim was threatened with harm to her father or brother.

(v) That the victim was taken to multiple places including Delhi, Motihari and Nepal, or confined at any particular place for a prolonged duration.

(vi) That the appellant restricted the victim's communication while himself freely communicating with his family members.

(vii) That the appellant's family members abused PW-3, claimed that the appellant would marry the victim, or obstructed recovery.

(viii) That the victim was recovered in a frightened or ill condition, required prolonged recovery, or was mentally unfit to make a statement immediately.

(ix) That repeated visits were made to the police station or that extensive search efforts were undertaken beyond the initial complaint.

39. PW-5 has consistently deposed that none of



these allegations were stated either by the victim or by PW-2 and PW-3 at the stage of investigation, and that these assertions surfaced for the first time during deposition before the Court.

40. Such omissions amount to material contradictions and improvements, rather than mere elaborations, particularly as they introduce new incriminating circumstances which were wholly absent from the earliest version of the prosecution case. The medical evidence further fails to support allegations of assault or intoxication.

41. Accordingly, while the core fact of the victim being taken away stands established, the subsequent narrative relating to intoxication, sexual misconduct, threats, confinement and recovery is clearly an afterthought, unsupported by contemporaneous statements and contradicted by the Investigating Officer.

42. From the perusal of statement recorded under 164 of Cr.P.C of PW-1 (victim), it is clear that the appellant has taken away victim and victim is minor and the informant has already stated that her daughter was taken away by the appellant, as per the version of prosecution story. On the core aspect of prosecution story, in order to constitute the offence under Section 363 of IPC, it is quite evident that victim



is minor and the statement of victim is quite consistent that appellant is said to have taken away her without permission of her lawful guardians. The statement of victim recorded under Section 164 of Cr.P.C. as well as evidence adduced by victim in court, one thing is quite clear that no consent was taken and victim was being deprived of her legal guardianship and on the basis of said aspect, the statements of victim/PW-1 as well as other prosecution witnesses (PW-2 and PW-3) are quite consistent. But on the point of administering intoxicated medicine to victim and wrong act committed with the victim and that she was assaulted by appellant, on all the said aspects, her statement is totally negated by PW-5 (Investigating Officer). On the point of fainted condition of victim as stated by victim's father, victim was provided cold drinks and intoxicated materials and the said statements were not stated by victim's father before the Investigating Officer (PW-5) and the said statements are denied by Investigating Officer (PW-5). In the cross-examination of PW-5, even victim's mother has not stated in clear terms that the appellant committed sexual assault with the victim and in statement recorded under Section 164 of Cr.P.C., victim herself stated that no wrong act was committed by the appellant against her. In this way, the allegation that



appellant has committed any wrong act against the victim was not proved.

43. The learned trial court has well discussed the reasoning as to why POCSO Act is not attracted against the appellant. From the statement of victim recorded under Section 164 of Cr.P.C., it is crystal clear that appellant has not committed any wrong against the victim but the said statement has been improved during the course of adducing the evidence before the Court. The victim has stated in the statement recorded under Section 164 that the appellant met the victim in the way and offered for tour and victim has made query regarding the permission of her father. From the perusal of the statement of victim recorded under Section 164 of Cr.P.C. as well as her statement while adducing evidence before Court, it is crystal clear that she has been taken away by the appellant without permission of her guardian and the same is supported by initial version of prosecution story and coupled with material available on record, the appellant is said to have taken away the victim without permission and to that extent the concerned court has also recorded the finding and the appellant has been held guilty under Section 363 of IPC and there is no reason to differ from the finding of the concerned court. There



was no material for proving the accusation under Section 12 of the POCSO Act as victim has already denied under Section 164 of Cr.P.C. that any wrong act was committed against the victim (PW-1) by the appellant. It is further stated by the victim that no intoxicated material was administered to her and she had not lost her consciousness at any point of time and the statement of PW-2 and PW-3 have been improved which was earlier not stated by them before the Investigating Officer and it is crystal clear from the statement of Investigating Officer (PW-5) that on the point of other accusations there was no material except taking away of the victim by the appellant.

44. Upon an overall appreciation of the evidence on record, the testimony of PW-1 (victim), PW-2 (informant-mother) and PW-3 (father), to the extent it relates to the core occurrence, inspires confidence and remains unshaken by cross-examination. The following aspects of their evidence are consistent, corroborative and legally reliable:

(i) All three witnesses are ad idem that on 19.01.2022, the victim, a minor girl, left her parental home in the morning for the purpose of attending coaching classes and did not return thereafter.

(ii) The evidence of PW-1 clearly establishes



that she accompanied the appellant and remained away from her parents for a considerable period. PW-2 and PW-3 have consistently asserted that their minor daughter was taken away by the appellant, and this fact forms the gravamen of the FIR and the earliest version of the prosecution case.

(iii) PW-2 and PW-3 have unequivocally deposed that no consent was ever given to the appellant to take their minor daughter away from their lawful guardianship. This assertion has remained intact throughout the trial and has not been contradicted by the Investigating Officer.

(iv) The minority of the victim on the date of occurrence stands conclusively proved through the school certificate (Ext. P-8), corroborated by the oral testimony of PW-2 and PW-3 and verified by PW-5. The age of the victim was not disputed by the defence at any stage.

(v) The factum of recovery and return of the victim to her parents is admitted by PW-1, PW-2 and PW-3 and is duly supported by the investigation. There is no dispute with regard to the identity of the victim or her eventual restoration to parental custody.

(vi) The prompt lodging of the FIR by PW-2 alleging the taking away of a minor girl lends credence to the



prosecution version and rules out any possibility of false implication or subsequent fabrication on the core aspect of the case.

45. To the aforesaid extent, the testimonies of PW-1, PW-2 and PW-3 are natural, probable and mutually corroborative, and are further supported by documentary and investigative evidence. These aspects collectively satisfy the essential ingredients of Section 363 IPC, namely, that a minor was taken away from the lawful guardianship of her parents without their consent.

46. In the light of discussions made above, I find no reason to differ with the findings given by the learned trial court. Accordingly, the impugned judgment of conviction and order of sentence passed by the learned trial court is hereby affirmed.

47. In the result, the present appeal stands dismissed at the stage of admission itself.

48. Pending Interlocutory Application(s), if any, shall stand disposed of.

49. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.



50. The records of this case be also returned to
the concerned trial court forthwith.

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	AFR
CAV DATE	27.11.2025
Uploading Date	20.01.2026
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