



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 154 OF 2025

Hakim Mahmood Kazi

Age : 34 years, Occupation Driver,

R/o. Ramnagar Sanja,

Taluka and District Dharashiv.

... Appellant

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station Anandnagar,
Dharashiv,
Taluka and District Dharashiv.

2. X Y Z

... Respondents

.....

Mr. Amar Yeorikar, Advocate for the Appellant.

Mr. P. P. Dawalkar, APP for Respondent No.1-State.

Mr. Swapnil Mule, Advocate for Respondent No.2 (appointed)

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27.04.2026

Pronounced on : 04.05.2026

JUDGMENT :

1. Instant appeal calls in question the correctness of judgment and order passed by learned Special Judge, Osmanabad dated 31.01.2025 in Special Case No. 80 of 2019 returning guilt of the appellant for offence under Sections 363, 366A, 376(1) of IPC as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

PROSECUTION CASE BEFORE THE TRIAL COURT

2. In brief, prosecution story before Special Court was that, victim PW2 used to accompany her mother to render labour work on being engaged by labour contractors. On 07.05.2019, mother of the victim was not keeping good health and therefore, on demand of labour contractor, she sent her daughter victim aged 15 years alone to attend the work. Accused, who also worked in the said team, took her to Jahirabad without consent of her mother and there, he maintained sexual relations with her. On initial complaint of mother about kidnapping, police party searched accused and found the victim in his company and they were brought to police station where victim narrated that accused maintained physical relations with her. Being minor, along with IPC, accused was also indicted for provisions under POCSO Act and on completion of investigation, accused was chargesheeted and finally tried by the Special Court.

To establish its case, prosecution adduced evidence of in all 11 witnesses and placed reliance on FIR, statement under Section 164 Cr.P.C., panchanama, medical papers etc. After statement of accused under Section 313 Cr.P.C., parties were heard, above evidence was appreciated and finally learned Special Court returned guilt of the accused for above charges.

This appeal assails the above judgment on various grounds spelt out in the appel memo.

SUBMISSIONS OF PARTIES

On behalf of Convict/Appellant :

3. Learned counsel Yeorikar, at the outset, questions the prosecution story on the point of minority of the victim. According to him, there is no convincing, conclusive evidence to show that victim was minor and therefore, according to him, rigors of POCSO Act would not be attracted. Elaborating his arguments, he would submit that, here, on the point of age of victim, prosecution is heavily banking on testimony of PW7 the Headmaster but, according to him, such witness has merely placed on record extract of admission register and general register, which is not a conclusion proof on the point of age. On this count, he also took this court through the answers given by PW7 wherein it is admitted by this witness that he is unable to state whether the date supplied by parents is correct or incorrect.

4. On same point, he also invited attention of this Court to the evidence of victim's mother PW5 and would take this Court through the length and breadth of her substantive evidence to point out that, this witness has admitted in cross that her marriage had taken place

40 to 45 years back and further admitted that, two daughters elder to the victim were born in quick succession of six months or a year and therefore, going by such answer, it is his submission that, victim was more than 25 to 26 years of age at the time of recording of evidence, and thus, major at the time of incident.

5. According to him, prosecution has merely relied on school record on the point of age, but he emphatically submitted that, in view of settled legal position that age of the victim should be determined by employing provisions of Section 94 of Juvenile Justice Act, which according to him is *pari materia* with the provisions of POCSO Act, here, there is no certificate of birth issued by school authorities, nor there is certificate issued by bodies like municipal council, municipal corporation or even gram panchayat and no document to that extent has been gathered by the Investigating Officer, and thereby prosecution has failed to discharge its burden on proving age.

In support of his contention that school record cannot be made the basis of determination of age, he seeks reliance on the judgment of the Hon'ble Apex Court in the case of ***P. Yuvaprakash v. State Represented by Inspector of Police*** [2023] 10 SCR 478 ; 2023 INSC

676 as well as in the case of *Jarnail Singh v. State of Haryana* [2013] 8 SCR 1044.

6. On similar lines, he also criticized the findings of trial court for holding victim to be minor by taking this Court through the medical evidence i.e. PW8 and invited attention of the Court to the deposition in paragraph 7 that, radiological opinion was regarding victim to be 17 to 18 years of age and therefore, according to him, going by the settled legal position by adding two years margin to such age, victim could be 20 years of age. On this count, he seeks reliance on the judgment of this Court in *Bhima S/o Baliram Dhumak v. State of Maharashtra* [Criminal Appeal No. 1051 of 2023 decided on 28.11.2025] wherein there is reliance on the judgment of *Jaya Mala v. Home Secretary, Government of Jammu & Kashmir and others* (1982) 2 SCC 538 and *Ram Suresh Singh v. Prabhat Singh @ Chhotu Singh and another* 2009 STPL 9831 SC. Taking recourse to above judgments, it is his submission that, if in absence of date of birth certificate, ossification test is to be relied, the benefit of error of two years needs to be extended to the appellant by holding the victim to be 20 years of age.

7. On the point of kidnapping, he submits that once prosecution fails to prove victim to be minor, offence of Section 363 IPC also comes under shadow of doubt.

8. As regards to conviction for offence under Section 366A IPC is concerned, he criticizes the judgment of trial court to be completely misplaced, misconceived and erroneous. According to him, this provision calls prosecution to prove that victim was procured with intention to make her indulge in sexual intercourse with person other than the one procuring her. Here, there is no evidence that appellant procured the victim to make her indulge in above act with any other person and therefore, according to him, trial court completely misconceived the provisions and misapplied the available evidence to record guilt for above charge and as such, he urges for indulgence to this extent also, for setting aside conviction for such offence.

9. On the point of sexual assault, he submits that sole testimony of victim is unworthy of credence as, according to him, the same does not inspire confidence as victim at distinct places is giving osculating versions i.e. in her statements under Sections 161 and 164 of Cr.P.C. and in her testimony before the court. To buttress such submission, he took this Court through the statements of victim recorded under

Section 161 CrPC and before the learned Magistrate under Section 164 CrPC as well as her testimony at Exhibit 28. On this point, it is his further submission that victim has accompanied the convict on her own accord and had stayed with him for sufficiently long without raising any alarm, without resisting and did not rescue herself or escaped even when in her own evidence she has deposed that accused had left her in the room and had initially been to his own place and thereafter at Lucknow. Thus, according to him, with such evidence on record, no forceful act could be attributed to him and rather she failed to depose about any act against her wish. According to him, victim's evidence is also unworthy of credence as she has at distinct placed attempted to improvise her version. In support of such contentions, he placed reliance on the judgments of Hon'ble Apex Court in the case of *Sahil Kumari v. State of Chhattisgarh* [2025] 8 SCR 599 ; 2025 INSC 936 and in the case of *Narender Kumar v. State (NCT) of Delhi* [2012] 6 SCR 148.

10. It is his further submission that medical evidence is mere opinion evidence and there is no corroboration to the same and it is rather contradictory to the evidence of victim and ought not to have been relied by trial court.

11. Lastly, he also criticized the impugned judgment by pointing out that here, learned trial court ignored the principles of alternative punishment as provided under Section 42 of the POCSO Act. According to him, said provision provides that, if offence under IPC is similar to the offence provided under POCSO Act, then the punishment must be given only under one enactment, i.e. either under POCSO Act, or IPC. He further elaborated that in the present case, offence of rape defined under Section 375 is similar to the offence defined under Section 3 of POCSO Act, but trial court ignored the same and has convicted the appellant under both, Section 376(1) of IPC as well as Section 4 of POCSO Act.

On all above counts, he urges to interfere by allowing the appeal.

On behalf of the State as well as the victim :

12. In answer to above, both, learned APP as well as learned counsel for victim would justify the judgment and order of conviction on the ground that, there is sufficient legally acceptable proof on age, and the sole testimony of the victim on the point of rape and sexual assault being inspiring confidence, to have been rightly relied by trial

court for convicting the accused. That, even sentencing policy is adhered to by the trial court and on such counts, appeal is sought to be dismissed for want of merits.

EVIDENCE BEFORE THE SPECIAL COURT

13. This being first appellate court, in view of the settled legal position as spelt out in the case of *Geeta Devi v. State of UP and others*, 2022 SCC OnLine SC 57, it is expected of this court to reanalyze and re-appreciate the entire evidence adduced by prosecution in trial court to test the correctness, maintainability and sustainability of the impugned judgment. Consequently, said exercise is undertaken.

BRIEF ACCOUNT OF THE DEPOSITIONS OF PROSECUTION WITNESSES :

14. **PW1** pancha to spot panchanama identified it to be at Exhibit 25 and its photographs to be snapped in his presence. He also acted as pancha to seizure of clothes of accused Exhibit 26.

15. **PW2** victim, whose testimony was recorded in camera, gave her date of birth as 21.06.2002, to be rendering sugarcane cutting labour in the team of one Sunil Kharat and that, accused also working with

them and he talking with her on his phone, further deposing that after rendering work at Baramati, they had come to render work at Jahagirdarwadi and she and her mother joined the team of one Vicky who was son of maternal uncle of convict. According to her, on 7th of summer, i.e. in the month in which case was filed, phone call was received by her mother from Vicky suggesting sending victim alone for work. In para 4 of her chief, she stated that, when she had reached the vicinity of Karanjkar Hospital at Osmanabad, accused came on motorcycle and told her that they had to go for work at village Apsinga and took her there in a field where she rendered work. That time accused came back with a bag and his minor son and then took victim to the bus stand and made her accompany him to Humnabad, made her wear *burkha* and they stayed in a company and thereafter he took her to his friend's room and went out for two to three days while she and the minor of accused stayed back in the room. Thereafter he came back and according to her, after removing clothes, **he used to maintain physical relations with her. This happened for 10 to 15 days.** Thereafter he told her that her mother had lodged complaint and they had to go to Osmanabad and accordingly brought her by train and took her to police station and there she reported police and her mother what had happened and her statement was duly typed, over which she signed and she identified it

to be at Exhibit 30. She also handed over clothes to the police and identified photograph of a building as well as photograph of motorcycle and the accused before the court.

Victim is subjected to extensive **cross** and in paragraph 8, she answered that 32 to 35 years have lapsed since marriage of her parents and that birth of her elder sister to have taken place one year after the marriage followed by birth of her another sister after a year. She also answered that her elder sister must be 27 to 28 years of age whereas other sister must be 25 to 26 years of age but she flatly denied she to be 23 to 24 years of age. She admitted that, her parents have provided her date of birth in the school by guesswork and that, there was no birth certificate.

In paragraph 9, she denied giving statement on the say of her mother and police. She admitted that, she used to talk with accused on the mobile of her mother and admitted that **at Jahirabad, there were physical relations two times with accused.**

In paragraph 10, omission is brought about accused threatening to stab her if she raised shouts and she denied not informing police that it happened for 10 to 15 days. She admitted that, while going on motorcycle, she did not raise alarm and also while traveling in the bus

in spite of driver, conductor and other passengers to be present there, she did not raise shouts. To a question she answered that at Jahirabad also she did not raise shouts. She denied the suggestion that, in her sister's marriage, gold was left out to be given and at that time accused had handed over his gold ring. She was unable to give registration number of the motorcycle and admitted that there are other motorcycles like the one appearing in the photograph. Rest is all denial.

16. **PW3** is the pancha to seizure of clothes of victim vide panchanama Exhibit 36 which he identified.

17. **PW4** is pancha to spot panchanama Exhibit 38.

18. **PW5** is mother of the victim, who in her evidence at Exhibit 46 deposed that her daughter was born in "*Shravan*" month of 2002. That, on 07.05.2019, she and her daughter were rendering labour work under mason named Vicky. Because of illness, she could not go on 07th and therefore said mason telephoned and asked her to sent her daughter and accordingly she sent victim daughter for work, but she did not return till 7.00 p.m. and therefore she made inquiry on phone but was told that victim had left the site and therefore she again called the mason who said that he would call accused and

reverted back and told that victim and accused are at Tuljapur and would be reaching within half hour, but as they did not reach, she lodged complaint with Anandnagar Police Station alleging kidnapping. Then she deposed that her daughter returned after 18 days and she was called at Police Station and when she met daughter there, she claims to have heard that while her daughter was going towards the site of Karanjkar Hospital, accused intercepted her way and said that there is no work at such site but there is work at Apsinga and accordingly took her there, brought her back to Osmanabad ST Stand and from there took her to Humnabad in ST bus and then to Jahirabad, stayed there at his friend's room for 17 to 18 days and there he had forcible sexual relations with her daughter, and accordingly she gave statement to police.

Above witness is also subjected to searching **cross** during which she is unable to give her own date of birth, when she got married and when her other children were born. She denied that there is no record of birth of victim in Grampanchayat and she answered that she is ready to place it on record. She further answered that, marriage of her daughter was performed with her own brother and even her daughter's second marriage was performed. She answered that she was married 30 to 35 years back and that, within six months of

marriage she gave birth to a girl child and second daughter was born six months thereafter, after which victim daughter was born. She denied that age of her elder daughter must be 30 to 35 years but stated that it to be 25 to 26 years and that there was a year's gap in the birth of three daughters. She admitted that court road is busy but rest suggestions were denied. To a question whether her daughter raised shouts, she answered that her daughter was taken to Apsinga on the pretext of work and therefore she did not shout. She is questioned about her statement under Section 164 Cr.P.C. in paragraph 6 and finally she denied that her daughter was not kidnapped and that she is falsely deposing.

19. **PW6** is sister of PW5, who deposed that on 07th, she and victim traveled in a rickshaw up to Om Hotel, victim went to Karanjkar Hospital for work, at 05.00 p.m. this witness returned near Om hotel but victim did not return and after waiting for half an hour she was searched and on call being made to Vicky, it was learned that victim was with accused at Tuljapur.

While under **cross**, she denied that victim was sent by her mother with this witness for work and she admitted about not knowing where victim went for work. She admitted about

acquaintance of accused since sugarcane cutting work. She denied knowing whether accused had lent gold ring in the marriage of daughter of PW5. She denied giving false evidence.

20. **PW7** is the Headmaster of the Zilla Parishad School, who deposed that on receipt of communication from Anandnagar Police Station, he carried general register and handed over admission extract showing date of birth of victim as 21.06.2002. According to him, victim was admitted in the 1st standard on 25.06.2008 and he placed on record extract of the same also.

While under **cross**, he answered that general register does not bear his signature and that prior to 2006, date of birth was noted on information given by parents but thereafter birth proof is taken. He admitted that, he is unable to state whether the date of birth given by parents is right or wrong.

21. **PW8** is the Medical Officer, who at Exhibit 56 claims of receiving history of sexual assault and victim giving name of appellant and location of sexual violence at Jahirabad where she had gone on her own with accused on 07.05.2019 and that, first sexual contact had occurred about three to four days after going to Jahirabad and

again after four to five days there was second sexual assault. That, victim gave details of sexual violence and penetration and about changing clothes and taking bath. Witness deposed that on local examination, she found her hymen ruptured and margin to be irregular and pregnancy tests dated 27.05.2019 and 30.05.2019 turned out to be positive. She identified report Exhibit 12. In further chief, she deposed that, for age determination, victim was sent for dental examination and radiology and according to dentist, age of the patient was 16 to 17 years and radiological opinion was 17 to 18 years including margin of error. She identified documents Exhibits 13, 14 and 15.

While under **cross** she denied that due to heavy work like sugarcane cutting or labour work done by girl, there can be rupture to the hymen, but admitted that it could so happen due to cycling and she also admitted that margin of error is towards both sides. To a question whether she could opine as to sexual intercourse or rape in absence of history given after taking bath and urination, she answered that opinion is given after history and local examination. In paragraph 13 she admitted that she cannot opine whether there was no rape or sexual assault.

22. PW9 is the mason who deposed about having talks with mother of victim and receiving call from mother around 07.00 p.m. to know whereabouts of the victim.

23. PW10 is the Investigating Officer.

APPRECIATION AND ANALYSIS

24. Fundamental objection raised here being on the point of failure of prosecution to prove minority of the victim, said ground is dealt at the threshold.

Admittedly, here, mother is a labour and an illiterate lady, and she merely deposed that birth of the victim had taken place during month of Shravan in 2002. Such season commences in June-July every year and therefore, it can be assumed that victim was born during such time of 2002. Victim in her testimony has given her date of birth as 21.06.2002. There is also evidence of PW7 Headmaster who has placed on record extract of general register and extract of admission register carrying date of birth as well as date of admission of the victim. This witness is categorical about date of admission of

victim in 1st standard to be 25.06.2008. It is common knowledge that children are admitted in the 1st standard on attaining six years of age. Taking the year of birth given by mother and victim, there is no hesitation to hold that victim was born on 21.06.2002.

25. It is strenuously submitted before this Court that admission extract is not a conclusive proof and heavy reliance is placed on the judgment of *P. Yuvaprakash* (supra) as well as *Jarnail Singh* (supra).

In the considered opinion of this Court, even going by the hierarchy of documents required to be dealt for determination of age as spelt out in Section 94 of Juvenile Justice Act, which is *pari materia* to Rule 12 of Juvenile Justice Rules, 2007 of which there is also reference in the case of *Jarnail Singh* i.e. Rule 12(3)(a)(ii) reads as, “*the date of birth certificate from the school (other than the play school) first attended*”. Here also, there is admission extract of the first school attended by victim and therefore there is no reason to keep it out of purview and consideration.

In the recent judgment of the Hon’ble Apex Court, in the case of *Shivkumar @ Baleshwar Yadav v. State of Chhattisgarh*, 2025 LiveLaw (SC) 1006, in paragraph 16 to 19, has held as under :-

16. PW-9 is the material witness whose deposition is crucial to ascertain the age of the victim. He is the teacher at the Government Primary School, Sarnapara Marhatta P.S. Pratappur, District Surajpur (C.G.). PW-9 deposes that on the demand of the DSP, who came to the school, he gave the admission register of the school. The admission register is 192 pages and admissions were mentioned in Sl. Nos. 1 to 281. The victim's name was mentioned at Sl. No. 209 and the date of birth was shown as 15.09.2004. The admission register and the certificate given regarding the fact of the date of birth were seized under Ext.P-11. In court, the admission register was marked as Article B/C. In cross examination, PW-9 deposed that the father of the victim did not produce any document regarding the date of birth. First in cross, the witness deposed that the father of the victim has not mentioned the date of birth at the time of admission but immediately the witness himself stated that the father mentioned her age as six years on the date of the admission.

17. We have seen Ext.P-11 which attests to the factum of the seizure. We have also seen Article B/C marked by PW-9. The first entry is at Sl. No. 207 and the victim's entry occurs at 209. The admission register has 13 columns containing serial No., student's name, father or guardian's name and address, mother's name, caste or religion, local address, if parents or guardian is residing outside the city, student's date of birth, date of admission, class admitted, date of leaving the school, the class in

which the student was when she left the school, reason for leaving the school and special details. The entry at Serial No. 209 has the victim's name, the name of father and mother. They all tally. The date of birth is mentioned as 15.09.2004 (in both words and figures). The date of admission is 01.07.2011 and the victim was admitted that day in the first class. The victim left the school on 02.04.2016, after passing the fifth standard.

18. *The evidence of the father PW-1, the evidence of the teacher PW-9 and the **school admission register** seized under Ext.P-11 and marked by PW-9, inspires confidence in us to hold that the victim as on the date of the incident, namely, 14.05.2018 was a minor. (emphasis laid) We have no reason to disbelieve the finding of the trial Court and the High Court having independently considered the evidence and perused the trial court records.*

19. *In State of **Chhattisgarh v. Lekhram**, (2006) 5 SCC 736, this Court held as under:*

“12. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty.”

26. Resultantly, on the strength of above judgment of the Hon'ble Apex Court decided in October 2025, there is no reason to not to rely on the admission extract of the 1st standard of victim for ascertaining the age of victim. Going by her date of birth as 21.06.2002, and considering the date of occurrence in the month of May 2019, she was definitely below seventeen years of age and as such, a minor.

27. Learned counsel took this Court through the medical evidence wherein medical expert PW8 deposed about referring victim to dental examination and radiological examination for determination of her age and that, both such experts not being examined. However, in view of above judgment relied by the appellant himself, i.e. in the case of *P. Yuvaprakash* (supra), courts are expected to take into account age determined on medical basis only as a last resort i.e. in absence of matriculation or equivalent certificate available, and only in absence thereof, there has to be consideration of date of birth certificate from the school first attended and further in absence of it, certificate issued by corporation, local body or grampanchayat and thereafter, in absence of it, reliance is to be placed on medical opinion.

Here, as stated above, there is extract of original admission register of the 1st standard where victim was admitted and therefore there is no hesitation to rely on the same. Moreover, PW7 Headmaster has categorically stated that prior to 2016 entries were taken on the basis of information given by parents, and though this witness answered that he is unable to state about correctness of the date of birth reflected in the record, it being public document maintained by Government authority, i.e. Zilla Parishad School, in view of judgments of the Hon'ble Apex Court in *Chhattisgarh v. Lekhram* (supra) as well as *Shivkumar @ Baleshwar Yadav* (supra), there is no reason to discard it. Resultantly the issue of minority is put to rest by holding that prosecution has proved that victim was indeed minor on the date of incident.

28. The above findings of this Court also settles the controversy on the point of conviction recorded for kidnapping. Victim being minor and she being removed and taken to Jahirabad without consent of her mother, the rigors of kidnapping also get gravitated.

29. As regards to commission of offence under Section 376(1) of IPC and Sections 4 and 6 of the POCSO Act is concerned, one has to again lean on the testimony of victim. She in her deposition at Exhibit

28, in paragraph 4 of her chief has categorically stated that accused took her to Humnabad, made her wear *burkha* and then took her to Jahirabad in a company, where they stayed and then took her to a room of his friend, namely, Mohan, and for three days he went out and then returned back. Thereafter, she claims that, he used to remove clothes and maintain physical relations with her. It so happened for 10 to 15 days.

In para 9 of her cross, it is brought from her that it is true that she had informed as had happened and further admitted that while giving statement to police, she had informed that at Jahirabad twice there were physical relations with her. Therefore, such manner of cross itself shows that there is no serious challenge to the allegation of maintaining physical relations. Mere variance on the point as to how many times it actually took place, is no good ground to discard her otherwise convincing evidence about accused maintaining physical relations with her.

30. Above all, she being minor, though she did not resist, remained passive and did not raise alarm or even did not make her escape good in his absence, as is tried to be submitted, in the light of her minority being proved, such defence becomes insignificant. ***Proviso*** to the

Explanation to Section **375** settles this issue, as it is clearly worded that, mere failure to resist the act of penetration shall not by the reason only of that fact be regarded as consenting to the sexual activity.

It is also fairly settled position that, minor's consent to sex is immaterial and in the recent judgment of the Hon'ble Apex Court in ***Varun Kumar @ Sonu v. State of Himachal Pradesh and others*** 2025 INSC 1232 [Criminal Appeal No. 1295 of 2018], it has been concluded that even voluntary participation by victim is immaterial when she is below 18 years of age. Further again, here, medical expert PW8 in para 3 of her chief has stated about conducting local examination and noticing rupture to the hymen and its margin to be irregular. Therefore, here, there is corroboration from medical evidence also. Consequently, there is evidence on the point of commission of offence under Section 376(1) of IPC.

31. As regards to offence of Section 366A of IPC is concerned, in view of essential requirements of the said provision, learned counsel for the appellant is correct that, in view of story of prosecution and evidence on record, no charge under Section 366A IPC ought to have been framed or explained and further, conviction ought not to have

been recorded as here, the essential ingredients to attract the above provision are patently missing. Close reading of the above provision shows that said offence gets attracted when it is demonstrated that the victim minor girl was induced to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with **“another person”** shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine. Therefore, going by such requirements, as submitted, conviction for Section 366A IPC is apparently misplaced and interference of this Court to that extent becomes necessary.

32. As regards to criticism on the judgment for employing provisions of Section 376(1) IPC as well as Section 4 of the POCSO Act, and that there to be ignorance on the part of trial court in applying the provisions of Section 42 of POCSO Act is concerned, in the considered opinion of this Court, it is permissible to record guilt for both the offences in a given case, but in view of Section 42 of POCSO Act, only the provision which provides for higher punishment would be applicable and come into play. On this point, useful reference can be made to the judgment of Hon'ble Apex Court in the case of *Gyanendra Singh Alias Raja Singh v. State of Uttar Pradesh*

2025 INSC 335. Here, even otherwise, learned trial court has awarded imprisonment of 10 years for each of the offence which was within permissible limit of sentence prevailing at that time. Even as regards to conviction of 10 years under Section 6 of POCSO Act is concerned, taking into account the date of occurrence to be May 2019, it being prior to amendment made applicable from 16.08.2019, sentence awarded for 10 years is also as prescribed by the provision at that point of time. Therefore, no fault whatsoever can be found even in the sentencing procedure adopted by trial court.

33. To sum up, here, prosecution in trial court undoubtedly had succeeded in substantiating that victim was minor i.e. below 18 years of age, and there is also clinching evidence including that of victim on the point of sexual relations with her by the accused after removing her from the custody of her mother without her consent and as such, offences of Sections 363 and 376(1) of IPC and Sections 4 and 6 of POCSO Act are indeed proved to be committed, except offence under Section 366-A of IPC. Hence, following order :

ORDER

I. The Criminal Appeal is hereby partly allowed.

- II. The conviction of appellant for offence under Section **366-A** of IPC and the sentence awarded for such offence by the learned Special Judge, Osmanabad by the judgment and order dated 31.01.2025 in Special Case No. 80 of 2019, is hereby **quashed and set aside**.
- III. Rest of the judgment and order dated 31.01.2025 in Special Case No. 80 of 2019 passed by the learned Special Judge, Osmanabad, including conviction of the appellant for offence under Sections **363 and 376(1)** of IPC as well as Sections **4 and 6** of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), is hereby **maintained**.
- IV. The Criminal Appeal is accordingly disposed off.
- V. The fees of the learned counsel appointed to represent respondent no.2 be paid by the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

[ABHAY S. WAGHWASE, J.]