ıa /Siddhi

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.27 OF 2024

PARSAPPA KORMAL,
Son of Lingappa Kormal,
R/o Nofra-1, Dabolim
Vasco, Goa and presently lodged in
Central Jail, Colvale, Bardez, Goa. ... APPELLANT

Versus

1. STATE
Through Police Inspector,
Vasco Police Station, Vasco-Da-Gama, Goa.

2. PUBLIC PROSECUTOR,
High Court of Bombay,
Porvorim Goa.

3. XXXXXXX,
Victim in Crime No. 77of 2017
and Special Case No. 102 of 2017
Before Children's Court for the
State of Goa, Through Vasco Police
Station, Vasco-Da-Gama, Goa. ... RESPONDENTS

Ms. Esha Ghodekar, Advocate for the Appellant.

Ms. Swati Kamat Wagh, Additional Public Prosecutor for Respondent Nos. 1 and 2-State.

Mr. John Abreu Lobo, Advocate for Respondent No. 3.

CORAM:- ASHWIN D. BHOBE, J.

RESERVED ON: 30th October, 2026

PRONOUNCED ON: 19th November, 2026

JUDGEMENT :-

1. When this appeal was taken up for *final hearing* on 26.10.2026, noting that the victim was not joined as a party Respondent and bearing in mind that the offence charged includes an offence under the Protection of Children from Sexual Offences, 2012 *("POCSO")*, the victim, who is now not merely a witness but an entitled stakeholder, was directed to be added as Respondent No. 3. Notice on Respondent No. 3 was served through the Investigation Officer, Vasco Police Station, Vasco, Goa. At the request of Respondent No. 3 for legal assistance, Advocate Mr John Abreu Lobo was appointed under the Legal Aid Scheme to represent Respondent No. 3.

2. Heard, Ms Esha Ghodekar, learned Advocate for the Appellant, Ms Swati Kamat Wagh, learned Additional Public Prosecutor for the State and Mr J. A. Lobo, learned Advocate for Respondent No. 3.

3. This appeal assails the Judgment dated 07.12.2018, read with the Order dated 10.01.2019, passed by the President Children's Court for the State of Goa at Panjim ("*Children's Court*") in Special Case No. 102 of 2017, convicting the Appellant for offences punishable under Sections 506(ii) of the IPC, sentencing him to rigorous imprisonment for two years; Sections 377 read with 511 of the IPC, sentencing him to

rigorous imprisonment for five years, with a fine of Rs.25,000/-, in default to undergo simple imprisonment for six months; for the offence Section 2(y)(i) punishable under Section 8(2) of the Goa Children's Act, 2003 ("*Children's Act*"); and for the offence under Section 5(m) punishable under Section 6 of the POCSO, with rigorous imprisonment of 10 years and a fine of Rs.2,00,000/-, in default to undergo simple imprisonment for two years ("*impugned judgment*").

4. In brief, the prosecution case in FIR No. 77 of 2017, dated 18.07.2017, is that on 17.07.2017 at 21:10 hours at Nofra-1 Garden, Vasco, the Appellant ("*accused*") committed criminal intimidation by threatening to kill the Respondent No. 3 ("*victim*") and attempted to commit carnal intercourse against the order of nature by inserting his penis into the mouth, rubbing it on his buttocks and attempting to insert it.

5. The Appellant was arrested on 18.07.2017 and remains in jail.

6. Upon investigation, Chargesheet No. 70 of 2017 was filed before the Children's Court. Cognisance was taken by order dated 14.09.2017 and registered as Special Case No. 102 of 2017.

7. By Order dated 14.11.2017, charge was framed against the Appellant in Special Case No. 102 of 2017 for offences punishable under Sections 506(ii), 377 read with Section 511 of the IPC, Section 5(m) punishable under Section 6 of the POCSO Act and Section 2(y)(i) punishable under Section 8 of the Children's Act.

8. The Appellant pleaded not guilty and sought trial.

9. During the trial, the prosecution examined 10 witnesses. The witnesses examined by the prosecution were as follows:

Witness	Name	Role
PW-1 (CW-8)	Respondent No.3	Victim
PW-2 (CW-1)	XXXXXXXX	Complainant-mother of PW-1
PW-3 (CW-11)	*Name withheld*	Friend of PW-1
PW-4 (CW-13)	*Name withheld*	Friend of PW-1
PW-5 (CW-15)	Dr. Sunil Chimbolkar	Doctor (Examined the PW-1 and the Appellant)
PW-6 (CW-6)	Shaukat Dhavelkar	Pancha witness
PW-7	XXXXXXXX	Sister of PW-1
PW-8 (CW- 10)	Nishanthini Padhi	Employer of PW-9
PW-9	*Name withheld*	Sister of PW-1
PW-10 (CW-18)	Girendra Naik	Investigating Officer

Correction carried out as per order dated 20.11.2026

Sd/-

10. The Appellant's statement under Section 313 of the Cr.P.C. was recorded on 12.11.2018. The Appellant did not lead any evidence in his defence. However, he asserted that he was falsely implicated in the case due to a dispute with PW-2 (mother of PW-1).

11. The Children's Court, vide impugned judgment, convicted the Appellant of the offences charged against him. The Children's Court held that the testimony of PW-1 was corroborated by the CFSL examination

report; that there was no reason to doubt the testimony of PW-1; and that the testimony of PW-4, PW-7, PW-8 and PW-9 confirmed the occurrence of the incident dated 17.07.2017 and the acts of the Appellant.

12. Ms Esha Ghodekar, learned Advocate for the Appellant, submitted that the Appellant is falsely implicated in the crime due to prior enmity between the Appellant and PW-2. She submits that the testimony of PW-1 is not trustworthy, let alone reliable, as PW-1 has made improvements in his statements. To elucidate, she submits that PW-1 has consistently improvised his statement before the Police and thereafter before the Magistrate and as such, his statement must be taken with caution. She submits that PW-1's testimony indicates he was influenced and tutored by PW-2. She submits that the incident alleged against the Appellant, apart from not being established by the witnesses examined, is doubtful on the face of the record.

13. Ms Esha Ghodekar, learned Advocate for the Appellant, submits that the prosecution has alleged that the incident was witnessed by Ms Farida Pira (CW-9). However, Ms Farida Pira has not been examined and no reason has been given for her non-examination, thereby creating serious doubt in the prosecution's case. She submits that the theories that the Appellant sexually abused PW-1 by inserting his penis into PW-1's mouth and that the Appellant's semen was found in the mouth of PW-1 are not proved. She submits that the medical evidence, i.e. the CFSL report at Exhibit-C-50 (colly), does not support the prosecution case. She further submits that no DNA profiling was conducted on the

alleged semen found in the oral cavity of PW-1 and on the urethral swabs alleged to have been taken from the Appellant. She submits that the allegation that the Appellant rubbed his penis on the buttocks of PW-1 and the alleged attempt to insert it into the buttock are not even remotely proved. She submits that the testimony of PW-2, PW-3 and PW-4, along with that of the other prosecution witnesses, is of no help to the prosecution, as they are not eyewitnesses and their statements, which are otherwise doubtful, constitute hearsay evidence.

14. To conclude, Ms Esha Ghodekar, learned Advocate for the Appellant, submits that the prosecution has failed to prove the charges against the Appellant. She submits that the prosecution case does not meet the standard required to convict the Appellant of the offences charged. She further submits that the impugned judgment is illegal and discloses a total lack of application of mind on the part of the Children's Court. She therefore submits that the appeal be allowed and the Appellant be acquitted.

15. Ms Swati Kamat Wagh, learned Additional Public Prosecutor for the State, has advanced the following arguments.

(a) The Children's Court, in the impugned judgment, appreciated the evidence in detail and recorded findings of guilt against the Appellant. She submits that after a thorough appreciation of the material and evidence presented at trial, the Children's Court found the charges against the Appellant proved. She relied on paragraphs 33, 34, 35, 36 and 84 of the impugned judgment in support of

her contentions.

(b) She submits that even if the medical/forensic evidence is discarded, the testimonies of the witnesses, namely PW-1, PW-2, PW-3, PW-4, PW-7, PW-8 and PW-9, establish the occurrence of the incident and the Appellant's acts against Respondent No. 3.

(c) She submits that in cases of sexual abuse, especially against minors, the victim's testimony is sufficient to sustain the conviction of the Accused. She submits that PW-1 has withstood cross-examination and as such, the said testimony of PW-1 can be relied upon to sustain the conviction of the Appellant.

(d) She, relying on the CFSL Report at Exhibit-C-50 (colly), submits that the table at serial No. 8 indicates that swabs of PW-1 and the Appellant were taken and sent for medical examination. She submits that the medical examination reveals that the PW-1 swab indicates human semen, whereas the Appellant's swab also confirms human semen, thus, the same corroborates and can be used against the Appellant.

(e) She has tendered a chart of the witnesses examined in Special Case No.102 of 2017. She relies on the following decisions: Manish Vs. State of Maharashtra,[1]; Shreedhar Laxman Rangari Vs. State (Government of NCT, Delhi) of

1 2019 SCC OnLine BOM 1154

the Delhi High Court[2]; and Amit Kumar @ Ninnu vs. State of NCT of Delhi of the Delhi High Court[3] in support of her submission on child testimony and hearsay evidence.

(f) Ms Swati Kamat Wagh, learned Additional Public Prosecutor, submits that the impugned judgment is in accordance with law and therefore requests the dismissal of the appeal.

16. Mr John Abreu Lobo, learned Advocate for Respondent No. 3, supports the impugned judgment. He submits that inconsistencies, if any, in the case can be classified into two categories: *first,* material inconsistency regarding the incident and *second*, material inconsistencies regarding the circumstances in respect of the evidence. He submits that the evidence on record is consistent regarding the act done by the Appellant against PW-1. He submits that PW-1 has referred in detail to the Appellant's act against him. He submits that PW-3 and PW-4 indicate that the Appellant and PW-1 were seen together on 17.07.2017. He submits that even if the medical evidence [Exhibit-C-50 (colly)], whose inconsistencies the Appellant raises doubts about, is left aside, the conviction of the Appellant can be sustained based on the evidence of PW-1.

17. From the aforesaid contested arguments, the following points require consideration.

---

2 Criminal Appeal No. 148 of 2025 decision dated 30.10.2025

3 Criminal Appeal No. 396 of 2020, decision dated 24.02.2026

(a) Whether the evidence on record establishes that the Appellant committed the act of inserting his private part into the mouth of Respondent No.3?

(b) Whether the evidence on record establishes that the Appellant committed the act of rubbing his private part against the buttocks of Respondent No.3 and attempted to insert it?

(c) Whether the impugned judgment suffers from any legal infirmity and warrants interference?

18. Perused the records with the assistance of the learned Advocates.

19. In the present case, PW-1, being a minor, is not in contest and therefore qualifies as a "child" within the meaning of section 2(d) of POCSO. Once minority is established, the prosecution squarely falls within the POCSO framework. Consequently, upon proof of the foundational facts (age, identity of the accused and the factum of sexual act), a reverse burden regime under Section 29 applies. Culpability and the requisite mental element are presumed, subject to rebuttal on a preponderance of probabilities. The presumptions arise only if the foundational facts are first proved. Even if the statutory presumption is activated, the burden on the accused is not to rebut the presumption beyond reasonable doubt, but to create a serious doubt about the veracity of the prosecution, or to bring on record material to render the prosecution's version highly improbable. Bearing this principle in mind, I now cogitate on the issues raised in this appeal.

20. With the minority of PW-1 established and the statutory presumptions under Section 29 of POCSO noted, the next question is whether the prosecution has proved the foundational facts.

A. Incident dated 17.07.2017: -

21. In respect of the incident, the prosecution has examined Respondent No. 3 (PW-1, the victim), PW-3 (friend of PW-1) and PW-4 (friend of PW-1).

22. PW-1 deposes that the incident occurred on the 17th day of some month, around two years prior to the date of recording of the evidence. He states that he, PW-3, PW-4 and CW-12 were playing together in the garden. The Appellant thereafter came to the garden, sent PW-4 to get vegetables from his house and told PW-3 and CW-12 to go away. Thereafter, the Appellant took off his own and PW-1's pants and inserted his private part into PW-1's mouth. Afterwards, he took out his private part from PW-1's mouth and rubbed it on PW-1's buttocks. PW-1 further deposes that in the meantime, PW-4 came to the spot with vegetables, after which the Appellant pulled up his own and PW-1's pants. The Appellant thereafter sent PW-4 to get water and repeated his acts. At that point, PW-1 was crying in pain and the Appellant directed him to keep quiet and threatened him with dire consequences.

23. PW-1 has deposed that the said act was witnessed by CW-9 (Farida Pira). PW-1 has further deposed that CW-9 narrated the incident to PW-2. PW-2. Thereafter, a person named Rahul from Nofra Police arrived at the spot in a Nofra vehicle and took the Appellant to

the Police Station. The statement of PW-1 was recorded by the police on 18.08.2017 and his statement under Section 164 of the Cr.P.C. was recorded before the Magistrate on 24.07.2017.

24. Omissions were marked in the cross-examination of PW-1.

25. PW-3 deposed that on the relevant day, he, PW-4, CW-12 and PW-1 were playing in the garden. However, he does not remember the exact date. PW-3 further deposed that the Appellant asked him to fetch vegetables and water from his house. Upon his return, he saw the mother of his friend (CW-12), screaming and scolding the Appellant. PW-3 states that he thereafter went home and later learnt about the dirty things the Appellant did with PW-1.

26. PW-4 has deposed that on the date of the incident, 17.07.2017, he, PW-3, PW-1 and CW-12 were playing in the garden and that the Appellant asked him to get some vegetables from his house, as such, he and his brother PW-3 went home to get the vegetables. Upon his return to the garden, the Appellant asked him to get water. When he returned with water, he saw many people in the garden and later learnt about the incident.

27. PW-2, mother of PW-1, deposed that on 17.07.2017 at 09:30 p.m., CW-9 (Farida Pira) came to the house along with PW-1 and informed PW-2 about the act committed by the Appellant. Thereafter, CW-9 told PW-2 that she would show the Appellant. The Appellant, along with CW-9, went to Nofra garden. Upon seeing PW-2, the Appellant started running. PW-2 followed the Appellant to his house.

PW-2, along with PW-8 and PW-9, informed Nofra Police about the incident. PW-2 inquired of PW-1 about the incident, who was crying at that time. PW-2 further deposed that PW-1 informed her about the incident.

28. Omissions were marked in the cross-examination of PW-2.

29. PW-8, the employer of PW-9, deposed that on 17.07.2017, her maid (PW-9), after banging the door of her house, proceeded to the next block. PW-8 deposes that she saw CW-9's bleeding hand. Upon inquiry with CW-9, she told PW-8 that the Appellant had assaulted PW-1. They then went to the spot, called the police, informed them about the incident and rushed to the servants' quarters, where the Appellant was apprehended.

30. PW-9 deposed that upon learning about the incident, she reported the matter to PW-8. Thereafter, they went to the Appellant's residence, where he was apprehended.

B. <u>Medical Evidence:-</u>

31. PW-5, the doctor who conducted the medical examination of the Appellant and PW-1, deposed that 2 urethral swabs and 2 urethral slides of the Appellant were preserved for serological examination. He stated that the examination of the Appellant did not indicate that the Appellant was incapable of sexual intercourse. He further deposed that he had conducted the medical examination of PW-1 and taken 2 anal swabs and 2 oral swabs of PW-1 for serological examination. He deposed that the examination of PW-1 was conducted upon obtaining consent from PW-

7 (sister of PW-1). He deposed that during the genital examination of PW-1, no injuries were observed around the anus and buttocks.

32. PW-6 acted as the pancha witness to the seizure of the clothes of PW-1 and the Appellant.

33. PW-7 deposed that she consented to the medical examination of PW-1 and handed over PW-1's clothes.

34. PW-10 is the Investigation Officer. Omissions were put to PW-10 during his cross-examination.

35. Perusal of the records indicates that the prosecution case is that the incident occurred on 17.07.2017, when the Appellant sexually assaulted PW-1 by inserting his private part into PW-1's mouth, thereafter rubbing it on PW-1's body and attempting to insert it into PW-1's buttocks.

36. The incident on 17.07.2017 is said to have been witnessed by PW-3, PW-4 and CW-9 (Farida Pira). To prove the incident, the prosecution relies on medical evidence, i.e. urethral swabs of the Appellant and oral swabs of PW-1, to contend that the semen found in PW-1's mouth was from the Appellant. To connect the Appellant with the incident of 17.07.2017, the prosecution relies on the testimony of PW-2, PW-8 and PW-9.

37. The testimony of PW-1 refers to the Appellant initially sending PW-4 to get vegetables from his house. The Appellant sent PW-3 and CW-12 away. Thereafter, the Appellant took off his pants and inserted

his private part into PW-1's mouth. PW-1 has further stated that during the sexual abuse, PW-4 came to the scene of the offence, at which time the Appellant immediately pulled up his pants, as well as PW-1's and again instructed PW-4 to go away from the site to get water.

38. PW-1 does not indicate or make any statement about any foreign substance/semen alighting in his mouth during the process of his abuse on 17.07.2017.

39. Notably, PW-3 and PW-4, in their depositions, are silent about having seen any act by the Appellant against PW-1, or about PW-1 being in distress or crying when they saw PW-1 with the Appellant. They stated that they learnt about the alleged incident subsequently.

40. PW-2, PW-8 and PW-9 refer to the incident of 17.07.2017. However, their testimony makes it clear that they are not eyewitnesses and that they claim PW-1 informed them of the incident on 17.07.2017.

41. PW-2 and PW-8 refer to the presence of CW-9, who is claimed to be an eyewitness to the incident of 17.07.2017. CW-9 has not been examined. Further, PW-1, in his deposition, has referred to the presence of CW-12 on 17.07.2017, who has not been examined by the prosecution.

42. There is no corroboration of the incident of 17.07.2019, as claimed by PW-1.

43. The prosecution has put forward a specific case that the sexual assault by the Appellant on PW-1 was in the form of insertion of the

Appellant's private part into the mouth of PW-1 and conceivably, the semen theory. Since inception, the prosecution has set up a case that the semen found in the mouth of PW-1 is of the Appellant and to support this theory, the medical examination, i.e. the oral swabs of PW-1 and urethral swabs of the Appellant, was conducted. The said two swabs were sent for medical examination.

44. The prosecution, as well as the Children's Court, has relied on the medical examination at Exhibit-C-50 (colly). The Children's Court, in paragraph Nos. 33 and 34 of the impugned judgment, has observed as follows:-

> *"33. As clearly stated by PW 1, the accused took off his pant and inserted his private part in to the mouth of PW 1. Thereafter, the accused took out his private part from the mouth of PW 1, turned Pw1 around and rubbed his private part on the buttocks of Pw1, by taking off the short pant of Pw1.*
>
> *34. Such testimony of Pw1 stands duly corroborated by the examination report of CFSL, at Exhibit C-50 Colly, as noted earlier, whereby human semen is seen detected in Exhibit P(oral swabs of Pw1) and in Exhibit N(2) (short pant of Pw1), in addition to Exhibits T and U (urethral swabs and smear slides of the accused). The aforesaid testimony of Pw1 duly explains the presence of human semen, as noted in the said Report."*

45. Exhibit-C-50 (colly) deals with the examination of the following Exhibits:-

A. Exh P- 2 Oral swabs of PW-1.

B. Exh.T - Urethral swab of the Appellant.

C) Exh.U - Urethral smear of the Appellant.

D) Exh.N - 2 short pants of the PW-1

46. The result of examination as recorded in Exhibit-C-50 (Colly) reads thus :

> *"12. RESULTS OF EXAMINATION:*
>
> *The above described exhibit were subjected to chemical tests, microscopic examination and Immunological tests for the detection of blood and semen and grouping of semen. Detection of blood was done by Benzidine test and detection of semen was done by UV examination, acid phosphatase test, microscopic examination and Prostrate specific antigen detection test. Grouping of semen was done by absorption- inhibition method. Based on these tests, It is concluded that:*
>
> *1. Human semen was detected in Exhibits-P, T, U and N(2) but group could not be detected as group test was negative.*
>
> *2. Semen was not detected in Exhibits- Q, R, S, V, M(1), M(2) and N(1).*
>
> *3. Blood was not detected in Exhibits-V, M(1), M(2), N(1) and N(2)."*

47. The medical examination, as revealed by Exhibit-C-50 (Colly), is inconclusive. The testimony of PW-5 (Doctor) is of no assistance to the prosecution's case. Thus, there is no link between the oral swab (Exh. P) and Exh. T and Exh. U. Ms Esha Ghodekar, learned Advocate for the

Appellant, is justified in submitting that there is no DNA profiling of the semen alleged to be found in the mouth of PW-1, as against the Appellant.

48. The issue that now arises, as submitted by Ms Swati Kamat Wagh, learned Additional Public Prosecutor and Mr John Abreu Lobo, learned Advocate for Respondent No. 3, concerns the version of PW-1 (child).

49. A useful reference can be made to the enunciation of law by the Hon'ble Supreme Court in *State of Madhya Pradesh v/s. Balveer Singh*[4], in the context of appreciating the testimony of child witnesses. In paragraphs 30 to 64, the Hon'ble Supreme Court observed as under:

> (*i*) ***Evidence of child witness and test for parsing tutored testimony***
>
> ***30.*** *The High Court, while setting aside the conviction, found the testimony of the child witness, Rani (PW 6), to be unreliable and tutored. Before we proceed to undertake the analysis of PW 6 Rani's oral evidence it is essential to understand how the testimony of a child witness should be looked into and appreciated.*
>
> ***31.*** *The Indian Evidence Act, 1872 (in short "the Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease — whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to*

[4] (2025) 8 SCC 545

understand questions and give rational answers thereto.

32. *In Dattu Ramrao Sakhare v. State of Maharashtra [Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341 : 1997 SCC (Cri) 685] this Court held that as long as a child witness is found to be competent to depose i.e. capable of understanding the questions put to it and able to give rational answers, the testimony of such witness can be considered as evidence in terms of Section 118 of the Evidence Act, irrespective of their tender age or absence of any oath. The only additional factor to be considered is that the witness must be found to be reliable, exhibiting the demeanour of any other competent witness, with no likelihood of having been tutored. It further clarified that there is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered, and rather the insistence of any corroboration is only a rule of prudence that would depend upon the peculiar facts and circumstances of each case.*

33. *The relevant observation reads as under: (Dattu Ramrao Sakhare case [Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341 : 1997 SCC (Cri) 685] , SCC p. 343, para 5)*

"5. … A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or

practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record." (emphasis supplied)

34. *Similarly in Pradeep v. State of Haryana [Pradeep v. State of Haryana, (2023) 19 SCC 221] this Court emphasised on the importance of preliminary examination of a child witness. It held that although oath cannot be administered to a child witness under 12 years of age yet, as per Section 118 of the Evidence Act it is the duty of a trial Judge to conduct a preliminary examination before recording the evidence of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. It held that the trial Judge must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. It further held that the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the trial court.*

35. *The relevant observations read as under: (Pradeep case [Pradeep v. State of Haryana, (2023) 19 SCC 221] , SCC pp. 225-26, paras 11-13)*

"11. Under the proviso to sub-section (1) of Section 4, it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW 1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore, the proviso to Section 4 of the

Oaths Act will not apply in this case. However, in view of the requirement of Section 118 of the Evidence Act, the learned trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.

12. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution.

13. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the appellate court can go into the correctness of the

opinion of the trial court."

(emphasis supplied)

36. *In Ratansinh Dalsukhbhai Nayak v. State of Gujarat [Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64 : 2004 SCC (Cri) 7] , this Court explained that although child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded yet it is an accepted norm that if after careful scrutiny their testimony is found to inspire confidence and truthful, then there is no obstacle in accepting the evidence of such child witness. The relevant observation reads as under: (SCC pp. 67-68, para 7)*

"7. … The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

37. *In Panchhi v. State of U.P. [Panchhi v. State of U.P., (1998) 7 SCC 177 : 1998 SCC (Cri) 1561] , this Court held that the evidence*

of a child witness should not be outrightly rejected but the evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and an easy prey to tutoring. The relevant observations read as under: (SCC p. 181, paras 11-12)

"11. Shri R.K. Jain, learned Senior Counsel, contended that it is very risky to place reliance on the evidence of PW 1, he being a child witness. According to the learned counsel, the evidence of a child witness is generally unworthy of credence. But we do not subscribe to the view that the evidence of a child witness would always stand irretrievably stigmatised. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring.

12. Courts have laid down that evidence of a child witness must find adequate corroboration before it is relied on. It is more a rule of practical wisdom than of law…."

38. *This Court in Suryanarayana v. State of Karnataka [Suryanarayana v. State of Karnataka, (2001) 9 SCC 129 : 2002 SCC (Cri) 413] held that the evidence of a child witness who has withstood the test of cross-examination should not be rejected per se if his testimony is found to be free from any infirmity. It reiterated that corroboration to the testimony of a child witness is not a rule but a measure of caution and prudence. The Court further held that while assessing the evidence of a child witness, courts must rule out the possibility of tutoring. However, in the absence of any allegation of tutoring or an attempt to use the child witness for ulterior purposes by the*

prosecution, the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused.

39. *The relevant observation reads as under: (Suryanarayana case [Suryanarayana v. State of Karnataka, (2001) 9 SCC 129 : 2002 SCC (Cri) 413] , SCC p. 133, para 5)*

"5. … The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not."

(emphasis supplied)

40. *In Arbind Singh v. State of Bihar [Arbind Singh v. State of Bihar, 1995 Supp (4) SCC 416 : 1994 SCC (Cri) 1418] this Court found the testimony of the child witness therein to be tutored due to the various inconsistencies and contradiction in her statements as regards the cause of death of the deceased therein, and due to the fact that the child witness was residing with her maternal uncle immediately after the incident occurred. This Court further held that implicit faith and reliance cannot be placed on a testimony that betrays traces of tutoring and the court must look for corroboration before relying on the same. The relevant observation reads as under: (SCC pp. 417-18, para 3)*

*"3. The entire case hinges on the evidence of the child witness PW 2 Poonam Kumari, the daughter of the deceased and appellant Arbind Singh. The incident occurred late in the night and she claims she was awakened by the noise of quarrelling. She further claims to have seen her father tying and nailing her mother before hanging her. At the date of the incident she was aged about 5 years. When her evidence was recorded she was aged about 9 years. The learned trial Judge did not undertake a "voir dire" [**Ed.**: A preliminary examination to determine the competency of a witness] before recording her evidence on oath although he notes that she was capable of understanding and answering the questions. Be that as it may, the fact remains that there was a gap of 4 years between the incident and the date on which her evidence was recorded. Immediately after the incident she was interrogated but as she was weeping her statement was not recorded. Thereafter her statements were recorded on 25-10-1984, 28-10-1984 and 5-11-1984, the last being under Section 164 of the Criminal Procedure Code. In her first statement she did not say that her*

mother was hanged. Subsequently she said she was hanged by electric wire. She later said she was hanged with the help of a jute string. In her statement recorded under Section 164 of the Code of Criminal Procedure on 5-11-1984, she stated that her father had thrown a jute string around the neck of her mother and killed her. It will, therefore, appear from these statements that she has not been consistent in her version. That apart, we have carefully perused the evidence of this witness and we find traces of tutoring on certain aspects of the case. It appears from her evidence that she was very close to her maternal uncle with whom she was living when her mother had gone to Deoghar for training. Immediately after the incident she was taken away by her maternal uncle who happens to be a fairly important figure. In her evidence she stated that there used to be quarrels between her father and mother and the former used to ill-treat the latter without any rhyme or reason. Then she adds that her father wanted to remarry and, therefore, he was ill-treating her mother. Now the case put up was that the husband was ill-treating the wife as he wanted to sell her jewellery to purchase a scooter. Therefore, the statement made by PW 2 that her father was ill-treating her mother because he wanted to remarry could only be the result of tutoring. She also tried to involve all the other family members including her uncle Shambhoo whom she could not even recognise in the dock. This she could have done only at the behest of someone else. She also stated that neither her father nor her grandfather met her mother's expense at Deoghar, a fact of which ordinarily a child under five years of age would not be aware. She even tried to involve her father's sister whose name she had not mentioned earlier. There are also certain other statements made in the course of her deposition which would suggest that possibility of tutoring could not be ruled out. Having taken a careful look at the evidence of this child witness we are of the opinion

that implicit faith and reliance cannot be placed on her testimony since it is not corroborated by any independent and reliable evidence. It is well settled that a child witness is prone to tutoring and hence the court should look for corroboration particularly when the evidence betrays traces of tutoring. We, therefore, think that Appellant 1 was entitled to benefit of doubt."

(emphasis supplied)

41. *Similarly in Digamber Vaishnav v. State of Chhattisgarh [Digamber Vaishnav v. State of Chhattisgarh, (2019) 4 SCC 522 : (2019) 2 SCC (Cri) 300] this Court discarded the testimony of the child witness therein on the ground of being tutored as it found the same to be fraught with inconsistencies and in direct contradiction of the ocular evidence of other prosecution witnesses.*

42. *This Court in State of M.P. v. Ramesh [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] summarised the principles pertaining to the appreciation of evidence of a child witness as under:*

42.1.*First, it held that that a child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. The evidence of a child witness must reveal that he was able to discern between right and wrong, and the court may ascertain his suitability as a witness through either cross-examination or by putting questions to the child in terms of Section 165 of the Evidence Act or by determining the same from the evidence or testimony of the child itself. The relevant observation reads as under: (Ramesh case [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] , SCC pp. 791-92, para 11)*

"11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-

examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide Himmat Sukhadeo Wahurwagh v. State of Maharashtra [Himmat Sukhadeo Wahurwagh v. State of Maharashtra, (2009) 6 SCC 712 : (2009) 3 SCC (Cri) 1] .)"

(emphasis supplied)

42.2.*Secondly, if the evidence of the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The relevant observation reads as under: (Ramesh case [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] , SCC p. 792, para 12)*

"12. In State of U.P. v. Krishna Master [State of U.P. v. Krishna Master, (2010) 12 SCC 324 : (2011) 1 SCC (Cri) 381] this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child

at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature."

(emphasis supplied)

42.3.*Thirdly, even if the courts find that the child witness had been tutored, even then the statement of a child witness can be relied upon if the tutored part can be separated from the untutored part and the remaining untutored part inspires confidence. In such cases, the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. The relevant observation [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] reads as under: (Ramesh case [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] , SCC p. 792, para 13)*

"13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide Gagan Kanojia v. State of Punjab [Gagan Kanojia v. State of Punjab, (2006) 13 SCC 516 : (2008) 1 SCC (Cri) 109] .)"

(emphasis supplied)

42.4.*Lastly, it held that an inference as to whether a child has been tutored or not, can be drawn from the contents of his deposition. If the deposition of a child witness inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be*

evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully and look for corroboration. The relevant observation [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] reads as under: (Ramesh case [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] , SCC p. 792, para 14)

"14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

(emphasis supplied)

43. *From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long as the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness*

the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case.

44. *In Ratansinh Dalsukhbhai Nayak [Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64 : 2004 SCC (Cri) 7] this Court observed that merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. It added that a child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness. The relevant observation reads as under: (SCC p. 68, para 8)*

"8. The learned trial Judge has elaborately analysed the evidence of the eyewitness. There is no reason as to why she would falsely implicate the accused. Nothing has been brought on record to show that she or her father had any animosity so far as the accused is concerned. The prosecution has been able to bring home its accusations beyond the shadow of a doubt. Further, the trial court on careful examination was satisfied about the child's capacity to understand and to give rational answers. That being the position, it cannot be said that the witness (PW 11) had no maturity to understand the import of the questions put or to give rational answers. This witness was cross-examined at

length and in spite thereof she had described in detail the scenario implicating the accused to be the author of the crime. The answers given by the child witness would go to show that it was only repeating what somebody else asked her to say. The mere fact that the child was asked to say about the occurrence and as to what she saw, is no reason to jump to a conclusion that it amounted to tutoring and that she was deposing only as per tutoring what was not otherwise what she actually saw. The learned counsel for the appellant-accused has taken pains to point out certain discrepancies which are of very minor and trifle nature and in no way affect the credibility of the prosecution version."

(emphasis supplied)

45. *Similarly in State of M.P. v. Ramesh [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493] it was held that even if the statement of a child witness is found to be tutored it can be relied upon, if the same is found to be believable or inspire confidence after separating the tutored part from the untutored portion. The relevant observation reads as under: (SCC p. 792, para 13)*

"13. Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness."

46. *In the case at hand, the High Court held that the police statement of the child witness, Rani (PW 6) under Section 161CrPC had been recorded after a delay of more than 18 days, due to which the possibility of tutoring could not be ruled out, more particularly because PW 6 at the time of recording of her statement was residing with PW 3 i.e. the complainant who was at inimical terms with the*

accused.

47. *Indisputably the police statement of PW 6 came to be recorded after 18 days of the incident. Although the police was well aware that she was a vital witness to the entire case and could guide the investigation in the right direction, yet to mechanically discard her testimony solely on the ground of delay alone was not warranted in the peculiar facts and circumstances of the case, particularly when no question in this regard was put to the IO so as to give him an opportunity to explain the reason for such delay.*

48. *In Ranbir v. State of Punjab [Ranbir v. State of Punjab, (1973) 2 SCC 444 : 1973 SCC (Cri) 858] this Court observed that the factum of delayed examination of a witness ought to be specifically put to the IO so as to enable him to explain the reasons therefor. It further held that delay in examining a witness during investigation would be material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. The relevant observation made therein reads as under: (SCC pp. 447-48, para 7)*

"7. … The appellants' counsel also faintly contended that Tota Ram PW 7 was examined by the police after considerable delay, the suggestion being that his evidence must be looked at with suspicion. We are not impressed by this submission. The fact of delayed examination of Tota Ram should, in our opinion, have been put to the investigating officer so as to enable him to explain the undue delay, if any, in examining Tota Ram. The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case. It is, therefore, essential that the investigating officer should be asked specifically about the delay and

the reasons therefor."

(emphasis supplied)

49. *In State of U.P. v. Satish [State of U.P. v. Satish, (2005) 3 SCC 114 : 2005 SCC (Cri) 642] this Court held that before the delay in examination of any particular witness can be taken into consideration to impeach their credibility, the IO must be first asked by the accused to explain the delay by putting a question in this regard. The relevant observation reads as under: (SCC p. 122, para 20)*

"20. It is to be noted that the explanation when offered by the IO on being questioned on the aspect of delayed examination by the accused has to be tested by the court on the touchstone of credibility. If the explanation is plausible then no adverse inference can be drawn. On the other hand, if the explanation is found to be implausible, certainly the court can consider it to be one of the factors to affect credibility of the witnesses who were examined belatedly. It may not have any effect on the credibility of the prosecution's evidence tendered by the other witnesses."

(emphasis supplied)

50. *While it is true that primarily it was for the accused to question the IO to explain the delay in recording the statement of PW 6, but at the same time the trial Judge should not have remained a mute spectator, acting like a robot or a recording machine to just deliver whatever stands feeded by the parties. The role of a Judge in dispensation of justice after ascertaining the true facts no doubt is a very difficult one. In the pious process of unravelling the truth so as to achieve the ultimate goal of dispensing justice between the parties the Judge cannot keep himself unconcerned and oblivious to the various happenings taking place during the progress of trial of any case. The Presiding Judge cannot afford to remain a mute spectator totally oblivious to the various happenings taking place around him, more*

particularly, concerning a particular case being tried by him. The fair trial is possible only when the court takes active interest and elicits all relevant information and material necessary so as to find out the truth for achieving the ultimate goal of dispensing justice with all fairness and impartiality to both the parties. In Munna Pandey v. State of Bihar [Munna Pandey v. State of Bihar, (2024) 18 SCC 728 : 2023 SCC OnLine SC 1103 : 2023 INSC 793] this Court held that a Presiding Judge must cease to be a spectator and a mere recording machine and become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.

51. *Thus, even if the accused had failed in putting a question in regard to delay in examination of PW 6, the Presiding Judge was duty-bound to put this question to the IO in exercise of his powers under Section 165 of the Evidence Act. Since in the present case no question whatsoever was put to the IO to explain the reason for the delay in examination of Rani, PW 6, we should not willingly jump to discard the testimony of PW 6 on the ground of delay alone, and ought to be circumspect while scrutinising the effect of such delay. The court in such a situation would be required to carefully see whether there is anything palpable on the face of it to indicate any malice at the end of the investigating agency in belatedly examining such witness.*

52. *There is nothing on record that would lead to the inference that the delay in recording the statement of PW 6 was done deliberately in order to manipulate or concoct the case against the respondent-accused herein, and rather such delay appears to be inadvertent with no sinister motive or design in mind. We say so because, the statement of PW 6 had been recorded on the same date as the statement of PW 5. If at all the investigating agency intended to allow*

the doctoring of the testimony of PW 6 then it would have only delayed the examination of the child witness, Rani (PW 6) and not of PW 5 as well, thus this delay in examination appears to be attributable to the routine manner in which the IO proceeded with the course of investigation and the overall investigation inertia and not to give effect to any unfair practice.

53. *One another reason for the High Court to discard the testimony of PW 6 on the ground of being tutored was due to the fact that at the time of recording of her statement, PW 6 was residing with PW 3, the complainant herein who is her maternal uncle and was also at inimical terms with the accused. However, the High Court appears to have lost sight of the fact that PW 6 at the relevant point of time was only of seven years of age. She had not only lost her mother but had also been abandoned by her father i.e. the respondent-accused herein who went absconding. In such circumstances, the only option available to PW 6 was to reside with her maternal uncle. Where else does the High Court expect a child of such tender age in such circumstances to reside? How could the High Court even possibly expect such child to go to the police station unaccompanied by any adult family member to give her statement? The testimony of PW 6 could not have been discarded solely on the ground that it was recorded in the presence of PW 3, an interested witness who is at inimical terms with the accused, especially in view of the facts narrated above. The courts are expected to deal with such cases in a more realistic manner and not discard evidence on account of procedural technicalities, perfunctory considerations or insignificant lacunas.*

54. *In the last what weighed with the High Court whilst discarding the testimony of PW 6 was the fact that in the morgue inquiry report there was nothing to indicate that the witness had mentioned anything*

to implicate the respondent-accused herein, as she had simply stated that "her mother had died". The High Court further observed that because the respondent-accused came to be arrested only after the statement of PW 6 had been recorded which according to the High Court meant that the earlier statement of PW 6 made during the morgue enquiry must have been unfavourable to the prosecution which is why it was also never brought on record.

55. *The incident is alleged to have occurred on 15-7-2003. On the very next date i.e. 16-7-2003, the inquest proceedings under Section 174CrPC were carried out based on the information given by PW 3. On that very date, PW 7 recorded the statements of PW 3, PW 4, PW 5 and PW 6, respectively, based on which the morgue report was submitted opining that the deceased had died under suspicious circumstances and suggesting the commission of offence under Sections 302, 201 read with Section 34IPC by the accused persons. Accordingly, on 20-7-2003, the FIR came to be registered against the respondent-accused herein.*

56. *No doubt, in the inquest report it has been mentioned that PW 6 only stated that her "mother had died", however, this does not mean that her subsequent statements implicating the accused were tutored. This is because as per the testimony of PW 7, the death report that was prepared upon conclusion of the inquest proceedings specifically implicated the accused herein for the suspicious death of the deceased. In the FIR that was lodged, not only has the respondent been named as an accused but it also specifically mentions that from the statement of PW 6 in the inquest proceedings, it has been found that the respondent-accused, the husband of the deceased murdered her by slamming Virendra Kumari on the floor of the porch of the house and choked her to death by pressing his foot on her neck.*

57. *At the cost of repetition, the relevant contents of the FIR are again*

reproduced hereunder:

"[…] on the investigation of Marg No. 7/03 Section 174CrPC, it is stated that on the basis of order issued by his good-self, I ASI Mahendra Singh conducted the investigation of Marg No. 7/03 under Section 174CrPC after reaching the spot Village Singharai, during the course of investigation, recorded the statement of complainant Bhoora alias Yashpal Singh Yadav, Kumari Rani, d/o Balvir Singh Yadav, Bharat Singh Yadav r/o Village Singharai and Badal Singh Yadav, Police Station Badarvas. On spot map of the place of incident was prepared and seizure proceedings were conducted, from the investigation up till now and the statement of Kumari Rani Yadav, it has been found that Balvir Singh Yadav husband of the deceased Virendra Kumari murdered her by slamming Virendra Kumari on the floor of the porch of the house and choked her neck by pressing his foot and Kumari Jatan Singh helped her brother Balvir Singh in the murder, later on, during the night itself, Balvir Singh Yadav took the dead body of his wife on his shoulders to his field and discreetly burnt it. […]"

(emphasis supplied)

58. *Thus, although the statement of PW 6 that was recorded during the course of the inquest proceedings was never produced before the court, yet it does not mean that the suppression was due to the same being unfavourable, particularly when the respondent-accused neither sought for its production during the course of trial nor did it question the relevant witnesses as to its contents. As regards the timing of arrest of the respondent-accused, the High Court seems to have completely overlooked the fact that at the time of the incident, the accused was absconding. Both PW 3 and PW 6, respectively, had deposed that after cremating the deceased, the respondent-accused fled away, and even the trial court had taken a note of this. Thus, from the sequence*

of events narrated above, and the contents of the FIR, there is no doubt in our minds that the implication of the respondent-accused was not an afterthought.

59. *In order to obviate any confusion, we take this opportunity to explain what is meant by a "tutored testimony" and the test for determining or ascertaining a tutored testimony. Where there has been tutoring of any witness, the same can possibly produce two broad effects in their testimony: (i) improvisation or (ii) fabrication.*

60. *Improvisation refers to instances where the tutored witness in question adds new details, alters facts, or provides an inconsistent version of events that were not previously stated in their initial statements, such as those given to the police in their statement under Section 161CrPC. In such situations, the improvisation by way of tutoring must be eradicated only in the manner envisaged under Section 162CrPC read with Section 145 of the Evidence Act. The principle of law in this regard is that the witness who has improvised its testimony must be first confronted with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and give the witness an opportunity to either admit or deny the omission or contradiction. Where such witness admits such omission or contradiction, there is no further need to prove the contradiction through the IO and its effect would be looked into while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when the investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction. It will then be said to have been proved in the deposition of the investigating officer who again by referring to the police statement will*

depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. (See: V.K. Mishra v. State of Uttarakhand [V.K. Mishra v. State of Uttarakhand, (2015) 9 SCC 588 : (2015) 4 SCC (Cri) 1] .)

61. *However, where the allegation of tutoring pertains to fabrication —meaning that certain portions of both the testimony and the previous statement of a particular witness have been doctored or falsified—in such circumstances twin conditions would have to be proved, namely; (i) the possibility or opportunity of the witness being tutoredAND (ii) the reasonable likelihood of the tutoring.*

62. *The first condition, namely, the "possibility or opportunity of the witness being tutored" can be established by demonstrating or laying down certain foundational facts that suggest the probability that a part of the testimony of the witness might have been tutored. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. A mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.*

63. *The second condition "reasonable likelihood of tutoring" requires that the foundational facts established in the first step be further proven or cogently substantiated before any portion of the witness's testimony can be deemed tutored. This may be done by leading evidence to prove a strong and palpable motive to depose falsely that was imputed to the witness, or by establishing that the delay in recording the statement is not only unexplained but is indicative and suggestive of some unfair practice by the investigating agency for the purpose of falsely supporting the case of the prosecution as held in*

Ranbir [Ranbir v. State of Punjab, (1973) 2 SCC 444 : 1973 SCC (Cri) 858] , or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence-lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negate their presence as unnatural.

64. *Irrespective of whether the testimony of a witness is tutored or not, the same, generally may be classified into three categories:*

(i) wholly reliable;

(ii) wholly unreliable;

(iii) neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness. If it is found to be beyond approach or suspicion of interestedness, incompetence or subordination. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subordination of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints, which tend to

render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. (See: Ramratan v. State of Rajasthan [Ramratan v. State of Rajasthan, 1961 SCC OnLine SC 116 : AIR 1962 SC 424] ; Guli Chand v. State of Rajasthan [Guli Chand v. State of Rajasthan, (1974) 3 SCC 698 : 1974 SCC (Cri) 222] ; Badri v. State of Rajasthan [Badri v. State of Rajasthan, (1976) 1 SCC 442 : 1976 SCC (Cri) 60] .)

50. The Hon'ble Supreme Court in *State of Himachal Pradesh vs. Hukum Chand alias Monu*[5] has referred to the case of *Balveer Singh* (supra) in paragraphs 7 to 9 and observed as follows:-

*"**7.** Before proceeding further, however, it is important to also take note of principles qua appreciation of the testimony of child witnesses. In State of Rajasthan v. Chatra[10] this Court through one of us, (Sanjay Karol J.,) formulated the following principles for the appreciation of the testimony of child witnesses:*

*"**22.** Recently, a coordinate Bench of this Court in State of M.P. v. Balveer Singh [State of M.P. v. Balveer Singh, (2025) 8 SCC 545] speaking through J.B. Pardiwala, J., considered a large number of prior decisions of this Court to lay down guidelines for the appreciation of the evidence of a child witness. We have perused through the same. Reference can also be made to other judgments in State of M.P. v. Ramesh [State of M.P. v. Ramesh, (2011) 4 SCC 786 : (2011) 2 SCC (Cri) 493]; Panchhi v. State of U.P. [Panchhi v. State of U.P., (1998) 7 SCC 177 : 1998 SCC (Cri) 1561]; and State of U.P. v. Ashok Dixit [State of U.P. v. Ashok Dixit, (2000) 3 SCC 70 : 2000 SCC (Cri) 579], etc.*

***23.** The principles that can be adduced from an overview of the aforesaid decisions, are:*

***23.1.** No hard and fast rule can be laid down qua testing the competency of a child witness to testify at trial.*

***23.2.** Whether or not a given child witness will testify is a matter of the trial*

5 2026 SCC OnLine SC 462

Judge being satisfied as to the ability and competence of the said witness. To determine the same the Judge is to look to the manner of the witness, intelligence, or lack thereof, as may be apparent; an understanding of the distinction between truth and falsehood, etc.

23.3. *The non-administration of oath to a child witness will not render their testimony doubtful or unusable.*

23.4. *The trial Judge must be alive to the possibility of the child witness being swayed, influenced and tutored, for in their innocence, such matters are of ease for those who may wish to influence the outcome of the trial, in one direction or another.*

23.5. *Seeking corroboration, therefore, of the testimony of a child witness, is well-placed practical wisdom.*

23.6. *There is no bar to cross-examination of a child witness. If the said witness has withstood the cross-examination, the prosecution would be entirely within their rights to seek conviction even solely relying thereon."*

(emphasis supplied)

An earlier instance in State of Himachal Pradesh v. Manga Singh[11] is also noteworthy. It was held:

*"**10.** The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.*

***11.** It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.*

8. *When it comes to inconsistencies and omissions in testimonies, which is one of the primary grounds on which the reasoning of the High Court rests, it is well recognised that human perception, memory and narration are imperfect. As such, the Court has consistently held that minor inconsistencies or trivial discrepancies in the testimony of witnesses do not by themselves make the evidence unreliable. In State of U.P. v. M.K. Anthony[12], this Court explained that while appreciating evidence, courts must not attach undue importance to minor discrepancies. Variations in trivial matters that do not affect the core of the case should not lead to rejection of credible testimony in its entirety. The evidence must be assessed as a whole to determine whether it carries the ring of truth. Similarly, in Appabhai v. State of Gujarat[13], the Court cautioned against placing undue weight on minor contradictions or omissions. Truthful witnesses may differ in detail due to normal lapses of memory or differences in perception. The essential question is whether the inconsistencies materially compromise the backbone of the prosecution narrative. In State of Rajasthan v. Kalki[14], the Court distinguished between normal discrepancies arising from errors of observation or memory and material discrepancies that go to the core of the case. Only the latter undermine the prosecution in a substantial manner. [See also: Rakesh v. State of Uttar Pradesh[15]]*

In conclusion, it may be said that a truthful witness may make honest mistakes or omit immaterial details, and such normal variation should not result in wholesale rejection of evidence. However, when omissions or contradictions relate to material facts that form the foundation of the prosecution's version, they assume significance and may create reasonable doubt.

9. *Keeping the aforesaid principles in view, we now move to the appreciation of evidence. We have perused all the testimonies. The following is a snapshot of the main witnesses:*

PW-1, who is aged 9-10 years, is the victim/prosecutrix. In her examination-in-chief she has positively identified the accused-respondent as being present in Court, and he being the one who took her to the cow-shed and committed sexual assault on her. She described informing her mother and later father of the incident, and also the subsequent actions of the father leading to the registration of the FIR. Certain facts elicited in the cross-examination are that the parents of the victim and the accused respondent had quarreled several times over the alleged theft of grass. She has categorically denied the suggestion that she was not sexually assaulted and the injury to her private parts was a result of her mother's insertion of her finger, therein, in order to frame the accused. The one significant departure from the testimony of other witnesses, that can be noticed here is that she has specifically deposed qua the factum of the respondent accused's

mother coming to PW-2, the mother of the prosecutrix and requesting her not to disclose this incident to the villagers. However, this position has been specifically denied by DW-2, Phula Devi. Nothing has been discussed about the same in cross-examination.

PW-2, namely Roshani Devi, testified that the prosecutrix informed her about the acts of the respondent accused, which she relayed to DW-2 too, and the latter asked her to refrain from disclosure as it would bring disrepute to both families. She categorically said that she disclosed the incident to her husband, PW-3, namely Jia Lal, upon his return home at 9:30 pm in the evening, and was scolded for not having done so earlier. Jia Lal called up Hemraj PW-15 who apparently called them to the road, whereafter all of them, together, went to the police station to lodge the FIR. In her cross-examination she has denied that the incident is fabricated in order to teach the family of the respondent-accused, a lesson. She further denied injuring PW-1 on purpose to that end.

PW-5 was Suresh Kumar, who was the person from whom the prosecutrix was sent to secure buttermilk. It is while coming back from having bought buttermilk that the alleged incident took place. PW-5 positively states that the prosecutrix did take buttermilk from him.

PW-7, namely Dr. Sushma Dutta, Medical Officer, Civil Hospital, Sundar Nagar, deposed that although the medical examination of the prosecutrix had taken place one day after the alleged incident, i.e., on 28th July 2007, the victim was wearing the same clothes that she allegedly had on, at the time of the incident. The injuries reported were as follows:

"Local examination:

Mens pubis not well developed public hairs absent. There was lacerated wound on right paraurethral region of size 1 × 1/2 c.m. red looking with slight bleeding on touch.

2. There was lacerated wound on left paraurethral region of size 2 × 2 × 1/2 c.m. which also bleed on touch.

Vagina could admit little finger easily. Hymen was torn at position 9' clock. There was no injury seen around anus.

Vaginal swabs and smear were taken. Clothes were preserve, sealed and handed over to the police. Public hair were not available for examination. There was no history of any disease or any drug in take.

Vide chemical analysis report reported by Chemical Examiner vide Ext.

PH, human blood was present on the salwar of the victim, but no semen was present. This report was shown to me by the police on 13.02.2007.

In my opinion, she has been exposed to sexual act and my opinion remained the same after the report of Chemical Examiner. The probable duration of injuries was within 48 hours. I issued the MLC Ext. PJ which bears my signatures and is in my hand. The victim was referred to Z.H. Mandi for age verification vide X-ray from Ext. PK by me, shirt Ext. P1 and salwar Ext. P2 are the same."

Nothing in the cross-examination substantially dislodges the testimony in the examination-in-chief.

PW-10 was Dr. S.K. Fotedar, Medical Officer, CHC, Ratti. He is the one who examined the respondent accused. He deposed that the accused was capable of sexual intercourse. The injury that he suffered was testified to be possible in the course of agricultural work. The description of the injury is as follows:

One superficial abrasion 0.5 cm × 0.75 cm on right ear, medially on pinna opposite right mastoid with blood stains on mastoid area. No fresh bleedings was present. The wound was 24 to 36 hours old.

But at the same time, it was further submitted that an injury is not necessary on the commission of rape.

51. The testimony of PW-1 does not support the prosecution case on the semen theory. Medical evidence in the form of Exhibit-C-50 (colly) and the testimony of PW-5 do not prove that the semen claimed by the prosecution to be present in the mouth of PW-1 is from the Appellant.

52. The submission of Ms Swati Kamat Wagh, learned Additional Public Prosecutor, that the presence of human semen in the mouth of PW-1 is sufficient to establish a connection with the Appellant is unacceptable in the absence of material indicating that the semen is of the Appellant.

53. The prosecution alleged that the Appellant, after inserting his penis

into PW-1's mouth, rubbed it against PW-1's buttocks and thereafter attempted to insert it. There is no material indicating any abrasion or injury in that region. The prosecution further alleged that PW-1 was threatened after the incident. There is no evidence on record to that effect, nor was any such evidence pointed out during the arguments.

54. Further, as submitted by Ms Esha Ghodekar, learned Advocate for the Appellant, PW-1 has made several improvisations in his statement recorded under Section 164 of the Cr. P. C. These include the Appellant stating that PW-4 came to the spot with vegetables, at that point, the Appellant pulled up his own and PW-1's pants; the Appellant instructed PW-4 to get water; the Appellant lifted a stone and tried to assault PW-2; and the claim of PW-2 and CW-9 that they went to the Appellant's house, inquired with the Appellant's wife, peeped into the Appellant's house, pulled the Appellant out of the house, etc. These omissions remain unexplained by PW-1 during his cross-examination. PW-3 and PW-4, who are also said to have been present at the time of the happenings on 17.07.2017, do not support PW-1's version of the incident on 17.07.2017 as alleged. In the aforesaid situation, the possibility of PW-1 being influenced or tutored cannot be ruled out.

55. The testimony of PW-1 and the omissions therein relate to material facts that form the foundation of the prosecution case. Thus, they assume significance and create reasonable doubt. On scrutiny of PW-1's testimony, his account of the incident on 17.07.2017 does not inspire confidence. The evidence of PW-1 does not fall within minor contradictions or small discrepancies. Thus, under the given facts and

circumstances, the testimony of PW-1 required corroboration. As referred to herein above, there is no corroboration of the evidence. The version of PW-1 does not qualify as a "sterling witness".

56. The Appellant, in his defence, relied on previous enmity between him and PW2. In the statement under 313 Cr.P.C., the Appellant has emphatically stated as follows:

> *"Q102) Do you have anything else to state above this case?*
>
> *Ans: Prior to the date of alleged incident I have abused PW2 and therefore in order to take revenge on me she has filed/lodged false complaint against me."*

57. The tenor of PW-2's testimony suggests animosity towards the Appellant. Even otherwise, the testimony of PW-2, PW-7, PW-8 and PW-9, in relation to the incident dated 17.07.2017, is hearsay.

58. Upon overall analysis, I find that the prosecution has failed to establish the foundational facts. The evidence on record reveals material discrepancies even in the alleged act of abuse as stated by PW-1. It would be difficult to place implicit reliance on the testimony of PW-1. That testimony cannot be accepted as conclusive proof of the incident dated 17.07.2017. At best, the prosecution has placed material on record that gives rise to some suspicion. Suspicion is not a substitute to proof.

59. There is a clear distinction between "*might have committed*" and "*must have committed*". The maxim "*dubio pro reo*", which means that when in doubt, the accused is entitled to the benefit of the doubt, squarely applies to this case. In such circumstances, the presumption under Section 29 of the POCSO would stand rebutted.

60. If two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view favourable to the accused should be adopted. Useful references are the pronouncements of the Hon'ble Supreme Court in Bhagwan Singh and others vs. State of M. P.[6], Tulasareddi vs. State of Karnataka[7], Babu Sahebagouda Rudragoudar vs. State of Karnataka[8] and Mallappa vs. State of Karnataka[9].

61. The decisions relied upon by Ms Swati Kamat Wagh, learned Additional Public Prosecutor, turn on their own facts.

62. The Children's Court, in the impugned judgment, in its appreciation of evidence, analysis of the medical evidence and the conclusion recorded, suffers from perversity and illegality. The Children's Court fell in error in convicting the Appellant. The view taken by the Children's Court is untenable in law and warrants interference.

63. For the above reasons, the prosecution failed to prove the Appellant's guilt beyond reasonable doubt. The Appellant therefore deserves the benefit of the doubt and warrants acquittal on all charges levelled against the Appellant.

64. In view of the above, the following order :-

a. Appeal is allowed.

b. The impugned Judgment dated 07.12.2018, read with the

---

6 (2002) 4 SCC 85
7 2026 SCC OnLine SC 89
8 (2024) 8 SCC 149
9 (2024) 3 SCC 544

Order dated 10.01.2019 passed by the President, Children's Court for the State of Goa, at Panjim, in Special Case No. 102 of 2017, is quashed and set aside. The Appellant is acquitted of all the charges levelled against him.

c. The Appellant be set at liberty forthwith, if not required, in any other case.

d. The fine amount, if any, paid by the Appellant be refunded to the Appellant.

e. The fees of the learned appointed Advocate be quantified as per the rules and paid within two weeks from today.

f. A writ be issued expeditiously.

ASHWIN D. BHOBE, J.

Signed by: MEENA VISHAL BHOIR
Designation: Private Secretary
Date: 20/11/2026 11:39:19