

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPEAL NO.15 OF 2025**

Mr. Seftin Raza Kosambi
S/o. Mohammed Yusuf Kosambi,
27 years of age,
N/o Balur, Akkialur, Haveri,
Karnataka.
R/o. c/o. Heena Saudagar,
Taulim, Navelim,
Salcete, Goa.
(Presently lodged in Judicial Custody,
Colvale).

...Appellant

Versus

1. State of Goa (through)
The Public Prosecutor
High Court of Bombay at Goa,
Porvorim, Goa.

2. The Police Inspector,
Officer in charge of
Margao Town Police Station,
Margao, Goa.

3. XXX (Victim),
Through Margao Town Police Station,
Margao - Goa.

... Respondents

Mr Rohan Desai, Advocate for the Appellant.

Mr Pravin Faldessai, Additional Public Prosecutor for Respondent
Nos.1 and 2/State.

Ms Swati Kamat Wagh, Advocate for Respondent No.3.

CORAM : ASHISH S. CHAVAN, J.

Reserved on : 1st APRIL 2026
Pronounced on : 6th APRIL 2026

JUDGMENT :

1. By way of the present Appeal, the Appellant has challenged the judgment and order dated 11.04.2025 and 21.04.2025 passed by the learned Special Court, POCSO, Panaji, Goa, in Sessions Case No.26/2022 convicting him for offences punishable under Section 376 of IPC and Section 4 of POCSO Act, 2012. The substantive sentence under Section 376 of IPC is 10 years of rigorous imprisonment with a fine of Rs.50,000/- (Rupees fifty thousand only) in default to undergo three months rigorous imprisonment. The substantive sentence under Section 4 of POCSO Act, 2012 is ten years rigorous imprisonment with a fine of Rs.50,000/- (Rupees fifty thousand only) in default to undergo three months rigorous imprisonment. If the fine amount is realised, the same is directed to be paid to the victim after the appeal period is over. Both sentences are to run concurrently.

2. Although charge was framed against the Appellant under Section 363, 376 of IPC read with Section 4 of the POCSO Act, 2012, the Appellant was acquitted of the offence punishable under Section 363 of IPC vide judgment dated 11.04.2025.

3. It is the case of the prosecution that on 28.09.2017, mother of the victim girl, lodged a written complaint with the Margao Town Police Station. In the said complaint, she stated that she is a housewife residing at

Navelim, Salcete, Goa, along with her husband and two children. Her daughter (victim) studies in standard eleven at Rosary High School, Navelim. She further states that on 26.09.2017, at about 11.00 hours, her daughter left the house to meet her friend. The Complainant returned home at about 17.30 hours, but her daughter had not returned till then. Upon making inquiries, her whereabouts could not be located. She states that after further inquiry, she came to know that the Appellant had taken away her daughter from her lawful guardianship. Acting on the aforesaid complaint, the Margao Town Police Station registered FIR bearing No.265/2017 under Section 363 of IPC and Section 8 of the Goa Children's Act. Subsequently, Section 376 of IPC and Section 4 of the POCSO Act were added to the array of offences.

4. During the course of investigation, on 29.09.2017, the Appellant was apprehended along with the victim girl. The Appellant was arrested on 30.09.2017. Medical examination of both the Appellant and the victim girl was carried out. The scene of offence panchanama was drawn. The Police visited the hotel where the alleged sexual assault on the victim took place and recorded the statement of hotel owner. The copy of the visitors' registration book was also attached. The investigation was concluded and chargesheet was filed before the Children's Court, State of Goa, Panaji on 21.12.2017. The charge was framed on 05.01.2021. The Appellant pleaded not guilty and claimed to be tried. The evidence of as many as seven witnesses was recorded by the prosecution. No defence witness was examined by the Appellant.

5. PW1 the mother of the victim, deposed in terms of the complaint. She submitted the School Leaving Certificate of the victim girl, which was admitted in evidence. She deposed that on the day of the incident, the victim girl had gone to school in the morning session and in the afternoon session, she had attended Judo classes. However, since she did not return home after the judo classes, PW1 called her Instructor, who informed her that the victim had already left for her residence. The whereabouts of the victim were not traceable. Upon making inquiries, they came to know that the Appellant had taken away their daughter, pursuant to which they lodged the complaint. PW1 also deposes that after lodging the complaint, she went to the house of the Appellant. However, the victim was not found there. After the arrest of the Appellant, the victim came back home. She has identified the accused person, i.e. the Appellant in Court.

6. PW2/victim deposed that, at the time of the alleged incident, she was 17 years old and studying in Higher Secondary School (Std. XI). She identified her School Leaving Certificate in Court. She further deposed that she was in love relationship with the Appellant and that they had become acquainted through common friends while she was in school. PW2 stated that on 26/09/2017, she personally called the Appellant near Kamat hotel, Margao, informing him that she wanted to leave Goa and go to Kerala due to harassment from her parents. She specifically deposed that she had not called the Appellant to accompany her. The Appellant told her that he would also come along with her. The victim deposes that she tried to convince him not to come but the Appellant forced that he would come. She further

deposed that thereafter, both she and the Appellant travelled together from Margao to Ankola and stayed at Ankola. She stated that she had physical sexual contact with the Appellant at the lodge in Ankola and also at a lodge in Margao. She further stated that the Appellant did not use any protection. The next morning, the Appellant and the victim took a bus to Goa. They reached Margao in the afternoon and stayed at a lodge. The victim further deposes that the Police apprehended the Appellant on 29.09.2017 when both of them were trying to leave Goa. She further deposes during cross-examination that she was acquainted with the Appellant two years prior to the date of recording her statement and that she had never shown any intention to marry the Appellant, as she was a teenager and her ambition was to become a judo coach. In fact, she has deposed that she has represented the State of Goa 12 times in Judo and won several medals. She also deposes that she stayed with the Appellant in the lodge in Ankola, Karwar, only because there was no other way for them to stay together.

7. PW3, Asst. Lecturer Department of Forensic Medicine, GMC, deposed that on 30.09.2017, at the request of the police, he medically examined the Appellant in the present case. Upon examination, he found no external injuries on the body of the Appellant and no signs of any venereal infection. He further deposed that there were no injuries to the genital area. In his opinion, in the absence of injuries over the genitals, no definite opinion as to sexual intercourse can be given. He stated that there was nothing to suggest that the Appellant was incapable of performing sexual intercourse. He further stated that the Appellant was referred to the blood bank for blood

grouping and RH typing and also for DNA analysis, if so desired by the IO. He produced the medical examination report on record and identified his signature thereon.

8. PW4, Gynaecologist from the Department of OBG GMC, deposed that on 29.09.2017, while she was attached to the said department, she medically examined the victim at the request of the Police in the present case. She deposed that upon genital examination, she found evidence of an old, healed hymenal tear of the hymen. In her opinion, there was evidence of vaginal penetration on examination. She further stated that the vaginal swab/report tested positive for semen. She also deposed that no evidence of blood was found in the vagina at the time of examination.

9. PW5, Director, Goa State Forensic Science Laboratory (FSL), Verna, deposed that on 22.11.2017, he received a letter from the Superintendent of Police, South Goa, along with six sealed envelopes forwarded from Margao Town Police Station for examination. He produced on record the examination report dated 31.12.2018 and identified his signature thereon. The examination report reveals that semen was detected on the urethral swabs of the Appellant, vaginal swabs of the victim and on the underwear of the victim.

10. PW6 deposed that on 30.09.2017, he acted as a panch witness for the scene of offence panchanama at the Hotel Mohini, in the presence of the complainant, the victim, and the Investigating Officer. He stated that the victim pointed out the room in the said hotel. He further deposed that the

hotel manager was asked to produce the register, and a photocopy of the relevant register entry was taken into custody, wherein the name of the Appellant was mentioned. PW6 identified the said entry in the Court. He also deposed that he acted as a panch witness to the arrest panchanama of the Appellant. Upon personal search of the Appellant, one photocopy of the receipt of Hotel Mohini was found and attached under the panchanama. He identified the Appellant before the Court.

11. PW7, Investigating Officer, deposed that on 28.09.2017 he received a complaint from PW1 stating that the victim had been missing since 26.09.2017. He further deposed that on 29.09.2017, the victim and the Appellant were traced at Hotel Mohini and were brought to the Police Station. He stated that he recorded the statement of the victim. He further deposed that on 30.09.2017, he conducted the scene of offence panchanama at Hotel Mohini and attached a copy of the relevant hotel register entry. He also conducted the arrest panchanama of the Appellant. He admitted that he had referred both the victim and the Appellant for medical examination and collected their medical reports. He further stated that he recorded the statement of the victim under Section 164 of the Code of Criminal Procedure and, upon completion of the investigation, filed the charge-sheet before the Court. In his cross-examination, although he admitted that there was a delay of three days in filing the complaint, he also deposed that the Complainant was searching for the whereabouts of her daughter (victim) and therefore there was a delay in lodging the complaint.

12. The Appellant, in his statement under Section 313 of CrPC, took up a defence of denial and false implication.

13. The impugned judgment and order dated 11.04.2025, relies on the School Leaving Certificate and the Birth Certificate of the victim to observe that the victim was born on 14.05.2000 and the incident took place on 26.09.2017. The prosecution has thus established that the victim was a “child” within the meaning of Section 2(d) of the POCSO Act. After discussing the evidence that had come on record regarding the offence punishable under Section 363 of IPC, the learned Sessions Judge (Special Court) comes to the conclusion that the prosecution has not proved the offence punishable under Section 363 of IPC. Since the acquittal of the Appellant has reached finality and is not challenged by the State, the discussion of the learned Sessions Judge (Special Court) on the aspect of Section 363 IPC is not germane for the purposes of the present Appeal.

14. Insofar as the offence punishable under Section 376 of IPC is concerned, the impugned judgment and order observes that the Appellant had sexual relations with the victim in Goa as well as in Ankola. The entry made by the Appellant in the hotel register in Goa has been proved during the course of evidence. The statement of the victim girl was recorded both under Section 161 of CrPC and Section 164 of CrPC. At the time of her deposition, she was 23 years old. The learned Sessions Judge (Special Court) has exhaustively referred to the deposition of the victim with regard to the relationship between her and the Appellant. The learned Sessions Judge (Special Court) has referred to the fact that the victim had never shown

intention to marry the Appellant. Even regarding the starting of the relationship, the learned Sessions Judge observes that the Appellant was residing at a distance of about 5 kms from her house. They had common friends and through them, the Appellant got her cell number. Initially, the victim did not accept the messages sent by the Appellant but later on since her friends started teasing her in the name of the Appellant and there was attraction, she started accepting his messages. The learned Sessions Judge also refers to the fact that although she had called the Appellant, it was the Appellant who had forced to go along with her when in fact she was dissuading the Appellant from doing so. The impugned judgment thereafter refers to the evidence of PW4, a Gynaecologist from GMC. She has deposed that on 29.09.2017, she had examined the victim at the request of the Police. On genital examination, she found evidence of an old healed hymenal tears. She has opined that there is evidence of vaginal penetration. She has also deposed that the vaginal swab tested positive for semen. Reference was also made to the evidence of PW5, Director, Goa State Forensic Laboratory, Verna, who states that the examination report reveals that semen was detected on the urethral swabs of the Appellant, vaginal swabs of the victim and on the underwear of the victim. Referring to the evidence of PW6, the panch witness for the scene of offence panchanamas, the learned Sessions Judge (Special Court) observes that the name of the Appellant was mentioned in the copy of the hotel register in Goa.

15. The learned Sessions Judge has reasoned that a cumulative appreciation of the evidence is sufficient to come to a conclusion that the

Appellant had sexual intercourse with the victim. The evidence is corroborated by the doctor as well as the forensic expert. The expert evidence insofar as the serological examination report establishes semen was detected on the urethral swabs of the Appellant, vaginal swabs of the victim and on the underwear of the victim. The hotel register entry demonstrates the presence of the Appellant in Mohini Hotel, which is further corroborated by the receipt, which was recovered in the personal search of the Appellant. The learned Sessions Judge (Special Court) has observed that although there is a delay of three days in lodging the complaint, the same is not fatal to the prosecution as it has been satisfactorily explained. In view of this discussion, the learned Sessions Judge (Special Court) has convicted the Appellant for offences punishable under Section 376 of IPC and Section 4 of POCSO Act, 2012.

16. Heard Mr. Rohan Desai, learned Counsel for the Appellant, Mr Pravin Faldessai, learned Additional Public Prosecutor for Respondent Nos.1 and 2 and Ms Swati Kamat Wagh, learned Counsel for Respondent No.3 (victim).

17. On behalf of the Appellant, the fulcrum of the submissions was that the relationship between the Appellant and the victim was entirely consensual. From the evidence, it was sought to be pointed out that the victim initiated the meeting on 26 September, 2017 by calling the Appellant to meet her near a hotel. The victim herself testified that she decided to leave Goa for Kerala on her own accord to avoid “shouting and harassment” from her parents. On behalf of the Appellant, much emphasis was placed on the

fact that the prosecution did not choose to examine any witnesses from the various hotels visited by the Appellant and the victim to verify the prosecution's case. The Investigating Officer failed to inquire at the railway station, nor did he record any statement of the victim's friend or attempt to secure CCTV footage from the lodges. The credibility of panch witness PW6 was also assailed by the Appellant as a "stock witness" frequently used by the Police in multiple cases. The Appellant relied heavily upon the fact that the Trial Court has acquitted the Appellant for offence punishable under Section 363 of IPC and the acquittal has not been challenged by the State. In fact, to that extent, the Appellant has relied on the observations of the Trial Court in the impugned judgment, which held that the evidence suggested that the victim had voluntarily left her house, the victim had herself called the Appellant on 26.09.2017 and that the prosecution had failed to establish that the Appellant kidnapped or took the victim out of lawful guardianship.

18. Apart from the submission on facts, on behalf of the Appellant, it was sought to be argued that the age of the victim as on the date of the incident (17 years and 4 months) and the age of the Appellant (19 years) must be taken into consideration, where the victim is on the verge of attaining majority and the inter se gap between the ages of the Appellant and the victim is minimal. It was sought to be argued on behalf of the Appellant that in many such cases, the offender is not a predator but more or less of the same age and hence the law should distinguish between the predatory behaviour and adolescent exploration. Adolescence is a biological period of developing sexuality and rigid application of the rigors of the POCSO Act can negatively

impact the lives of young adolescents by labelling them as sex offenders for life. The Appellant has relied upon several judgments of various High Courts, including this Court, dealing with the POCSO Act, under its bail jurisdiction, inherent jurisdiction and appellate jurisdiction to buttress the aforesaid proposition. The Appellant has relied on the judgments of *Vijayalakshmi and Anr. V/s. State Rep. by the Inspector of Police and Anr.*¹, *Ranjit Rajbanshi V/s. State of West Bengal and Ors.*², *Sachin, s/o. Vitthalrao More V/s. State of Maharashtra*³, *Ashik Ramjaini Ansari V/s. State of Maharashtra and Anr.*⁴ and *State of Karnataka, rep. by the Police Inspector, Yallapur Police Station V/s. Basavraj*⁵. The Appellant has also relied on the judgments in the case of *Pratik Vilas Shelar V/s. State of Maharashtra*⁶ and several other judgments dealing with bail granted to the Accused under the POCSO Act.

19. Per contra, the learned Additional Public Prosecutor on behalf of the State, has supported the impugned judgment, pointing out that there is enough evidence on record in the nature of deposition of PW1, mother of the victim, PW2, the victim herself, coupled with corroborating medical evidence establishing the offences of penetrative sexual assault committed by the Appellant. Dealing with the aspect of acquittal of the Appellant of the offence of Section 363 of the IPC, the learned APP was at pains to point out that there is a difference between “willingness” and “consent”, which is

¹ 2021 SCC OnLine Mad. 317

² (2021) SCC OnLine Cal. 2470

³ (2025) DGLS Bom.1157

⁴ 2023 SCC OnLine Bom. 1390

⁵ ILR 2023 Kar 1943

⁶ 2021 SCC OnLine Bom. 391

sought to be blurred by the Appellant. A minor may accompany the Accused but such conduct cannot be treated as informed, voluntary consent in the eyes of law. The framework of the POCSO act recognises the inherent vulnerability and immaturity of a child, who is defined to be below the age of 18 years. The fact that the victim allowed the Appellant to accompany her voluntarily could have been a ground for acquittal of the offence of kidnapping from lawful guardianship but it certainly cannot be equated with informed and voluntary consent to have sexual intercourse with the Appellant. In any case, it was argued, that consent is deemed immaterial once the age of the victim is established and the statutory presumptions under Sections 29 and 30 of the POCSO Act stand unrebutted, the foundational facts would be established and if any leniency is shown in the face of these incriminating facts against the Appellant, it will only lead to decriminalising an act, which has been criminalised by way of statute.

20. On behalf of the victim, it was argued that the Appellant was rightly convicted. The most crucial aspect in this case is the undisputed age of the victim which was established on the basis of the Birth Certificate as well as the birth date as mentioned in the School Leaving Certificate. The victim squarely falls within the definition of a 'child' under Section 2(d) of POCSO Act. Defence of consent is not available to the Appellant under Section 376 of IPC of Section 4 of the POCSO Act in view of the settled position of law that the consent of the minor is immaterial in the eyes of law. It was also argued that the testimony of PW4 (Doctor conducting medical examination) clearly establishes vaginal penetration. The testimony of the victim as to the

fact of sexual intercourse has been consistent with her previous statements. The victim's presence with the Appellant is not denied and they were apprehended together on 29.09.2017. The hotel register containing the names of the victim and the Appellant were seized, personal search of the Appellant revealed a receipt from Hotel Mohini dated 28.09.2017. Hence, there is independent documentary proof of the presence of the Appellant and the victim. The delay of three days in lodging the FIR has been satisfactorily explained by the mother of the victim, who was searching for her missing minor daughter before approaching the police. In cases of sexual offences, delay must be construed liberally. The non-examination of the hotel owner has been explained by the Investigating Officer (PW7), who clarified that the Manager of the Hotel died before he could be examined in Court. Dealing with the proposition that "borderline cases" where the ages of the victim and the Accused are minimal must not be treated with a punitive approach but must be considered in such a manner that prevents the criminalisation of adolescence, it was argued on behalf of the victim that the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.3/2023 (In Re: Right to Privacy of Adolescents)*⁷ has observed that it is the duty of the High Court to ascertain on the evidence whether offence of penetrative sexual assault under the POCSO Act and the offence of rape under IPC was made out or not. Penetrative sexual intercourse with a woman under 18 years of age, with or without her consent, constitutes an offence of rape. Therefore, whether such offence arises from a romantic relationship is irrelevant. The Courts

⁷ (2024) 15 SCC 788

must follow and implement the law and they cannot commit violence against the law. On behalf of the victim, it was further submitted that the judgments relied upon by the Appellant are distinguishable on facts. In some cases, elopement happened with consent to get married and charge of rape was discharged on account of subsequent events, either marriage or a child born out of sexual intercourse, in which case what weighed with the minds of the Courts was not to disturb the parental control. The following judgments were relied upon by the Counsel for the victim :

*Mirza Aslam Beigh Rashid Beigh and Ors. V/s. State of Maharashtra and Ors.*⁸, *Suo Motu WP (C) 3 of 2023 (In Re: Right to Privacy of Adolescents) (supra)*, *Anversinh alias Kiransinh Fatesinh Zala V/s. State of Gujarat*⁹, *Varun Kumar alias Sonu V/s. The State of Himachal Pradesh and Ors.*¹⁰, *Ganesan V/s. State rep. by its Inspector of Police*¹¹, *State of Punjab V/s. Gurmit Singh and Ors.*¹², *Sushil Kumar Tiwari V/s. Hare Ram Sah and Ors.*¹³, *Phool Singh V/s. State of Madhya Pradesh*¹⁴ and *Sambhubhai Raisangbhai Padhiyar V/s. State of Gujarat*¹⁵.

21. With the able assistance of the Advocates for the Appellant and the learned APP, I have perused the record. The first question that arises for my consideration is whether there is enough evidence against the Appellant to sustain conviction under Section 376 IPC and Section 4 of POCSO Act.

⁸ 2025 SCC OnLine Bom 3443

⁹ (2021) 3 SCC 12

¹⁰ 2025 SCC OnLine SC 2224

¹¹ (2020) 10 SCC 573

¹² (1996) 2 SCC 384

¹³ SLP (Crl.) No.18377 of 2024

¹⁴ (2022) 2 SCC 74

¹⁵ (2025) 2 SCC 399

22. Before marshalling the evidence and analysing the impugned judgment, it would be necessary to reproduce certain key provisions of law in the framework of the Protection of Children from Sexual Offences Act, 2003 (POCSO). Section 2(d) defines a ‘*child*’ as any person below the age of 18 years. Chapter II of the Act enumerates the sexual offences against children and divides them into following five categories;

- A) Penetrative sexual assault,
- B) Aggravated penetrative sexual assault,
- C) Sexual assault,
- D) Aggravated sexual assault, and
- E) Sexual harassment.

Each category of offences has a corresponding punishment. The punishment is graded in its severity depending on the gravity of the offences. Section 4 provides for punishment for penetrative sexual assault, which is defined exhaustively in Section 3. The punishment provided for penetrative sexual assault depends on the age of the child. Whoever commits penetrative sexual assault on a child who is 16 to 18 years is liable to be punished with imprisonment of either description for a term which shall not be less than 10 years but which may extend to imprisonment for life. The punishment for offence on a child below 16 years is a minimum term which shall not be less than 20 years but which may extend to imprisonment for life, with an explanation that the imprisonment for life shall mean imprisonment for the remainder of the natural life of that person. Section 4 also provides for a fine, which shall be just and reasonable and paid to the victim to meet her the

medical expenses and rehabilitation. Sections 29 and 30 are statutory presumptions. Section 29 stipulates that the Court trying the offences under Sections 3,5,7 or 9 of the Act shall presume that the person has committed or abetted or attempted to commit the offence, unless the contrary is proved, whereas Section 30 stipulates that the Court shall presume the existence of a culpable mental state on the part of the Accused if such is the requirement for prosecution of any offence under the Act. Both Sections 29 and 30 are rebuttable presumptions, however, once the factual foundation for raising these statutory presumptions is set out, then the onus of rebutting these presumptions shifts to the Accused. From a conspectus of these key provisions of POCSO Act, it is evident that for an offence punishable under Section 4 of the Act, consent of the victim is immaterial. Similarly, an examination of Section 375 of IPC indicates that the consent of the victim is immaterial when she is under 18 years of age.

23. Analysing the evidence in the facts of the present case, the most important witness is the victim, who is examined as PW2. It is pertinent to note that she has deposed that at the time of the alleged incident, she was 17 years old and studying in Higher Secondary School (Standard XIth). She has tendered in evidence, School Leaving Certificate, which establishes her date of birth to be 14.05.2000. The date of birth stands corroborated by the Birth Certificate. Thus, there can be no dispute that on the date of the incident, which occurred between 26.09.2017 and 29.09.2017, the victim was approximately 17 years and 4 months old. Thus, she falls squarely within the definition of ‘*child*’ under Section 2(d) of the POCSO Act, which is set

out hereinabove. From the evidence of PW2, it is further seen that she has deposed that the Appellant was residing at a distance of 5 kms from her house. They had common friends. The Appellant got her cell phone number through a common friend and he sent her messages, which is how they got acquainted with each other. Initially, the victim did not accept his messages, but later on Appellant's friends started teasing her with the name of the Appellant and then "there was attraction" and after some time she accepted his messages. Considering her deposition that she was 17 years old when she was acquainted with the Appellant and the incident took place when she was approximately 17 years and 4 months, it can be gathered that her acquaintance with the Appellant was approximately 4 months prior to the incident. PW2 stated that on 26.09.2017, she called the Appellant near a hotel in Margao, informing him that she wanted to leave Goa and go to Kerala to avoid the "shouting" of her parents since they came to know that she was involved with the Appellant who was from another religion. In her cross-examination, she deposes that she decided to leave Goa without permission from her parents in order to avoid their shouting. She had not called the Appellant to accompany her but only to inform him that she was going to Kerala. The Appellant, on his own, told her that he would also come along with her. She tried to convince the Appellant not to come but he forced her and insisted that he would come. As per her deposition, initially, they went to the railway station in Margao, but since there was no train to go to Kerala, they came to the bus stand at Margao and boarded a bus to go to Ankola. Since they did not know what to do the Appellant suggested that they stay in a lodge and hence they went to a lodge in Ankola.

The victim got a call from her mother informing her that her father tried to commit suicide and hence she told the Appellant that she wants to go back to Goa. Accordingly, they took a bus to Goa and reached Margao. A police inspector tried to contact them, which is why the victim was scared. The victim deposes that the Appellant had physical sexual contact with her at a lodge at Margao and also at the lodge at Ankola. The Appellant had made an entry in the register in the hotel at Margao. It is further pertinent to note that the victim has deposed that as a teenager, her ambition was to become a Judo Coach and she had no intention of getting married to the Appellant. It is also pertinent to note that the Trial Court has made a judicial note of the fact that during the course of her examination, the victim had become emotional.

24. The mother of the victim has deposed in terms of the complaint that she had filed on 28.09.2017, complaining against the Appellant, who had taken away her daughter from her lawful guardianship. The deposition of the mother of the victim is in consonance with that of the victim.

25. The evidence of PW4, the Gynaecologist, who had examined the victim, assumes significance in the wake of her opinion that there was evidence of vaginal penetration, on examination. She further stated that the vaginal swab tested positive for semen. Except for bare denials, there was no challenge to her credibility.

26. The evidence of PW5, i.e. the Forensic Scientist, confirms the detection of semen on the vaginal swab, vaginal smear slides and underwear

of the victim. Although this is countered by the Appellant with the argument that no blood group was detected and no DNA report linked, the presence of semen with the Appellant, however, when juxtaposed on the background of the statement of the victim, documentary proof of their presence together in the hotels and medical evidence regarding vaginal penetration, the presence of semen completes the chain of evidence to establish the factum of sexual intercourse.

27. The defence set up by the Appellant, as seen from the line of cross-examination of the PW1 and PW2 (mother and victim) and the statement under Section 313 of CrPC, is that of total denial and false implication. The argument of “consensual relationship” was not taken by the Appellant at the stage of the trial.

28. The evidence of the victim is of paramount importance in this case. Her age is undisputed, bringing her within the definition of a ‘*child*’ under Section 2(d) of the POCSO Act. The fact of sexual intercourse is also established beyond doubt, not only from the testimony of the victim but also from the corroboration by medical evidence, coupled with corroboration by circumstance and documentary proof of presence. Despite exhaustive cross-examination, the testimony of the victim remains unshaken. The hotel register containing the names of the victim and the Appellant, a hotel receipt found in possession of the Appellant and the fact that they were apprehended together on 29.09.2017, establish the offences of Section 376 r/w Section 4 of the POCSO Act. Insofar as the defence of the Appellant is concerned, the factual foundation for invoking statutory presumptions under Sections 29

and 30 of the POCSO Act has been raised by the prosecution. The same has not been rebutted, even on the touchstone of preponderance of probability, by the Appellant.

29. The acquittal of the Appellant for an offence punishable under Section 363 of IPC cannot be a factor that goes against the prosecution since the ingredients and the parameters of proof required to establish an offence under Section 363 of IPC are different and distinct from the ingredients of the offences punishable under Section 376 of IPC and Section 4 of POCSO Act, especially in the light of the fact that consent is immaterial for offences punishable under the aforesaid provisions of law against a minor.

30. The next question that arises for my consideration is whether the substantive sentence imposed by the Trial Court is proportionate and adequate. As seen from the discussion on the key provisions of the POCSO Act, once an offence under Section 4 of the POCSO Act is established, then it attracts a minimum sentence of ten years, which may extend to life imprisonment. A similar provision exists in Section 376 of IPC. Thus, the substantive sentence of ten years rigorous imprisonment is the minimum that could have been imposed by the Trial Court and hence the impugned order and judgment is in consonance with law insofar as the imposition of sentence is concerned.

31. The final aspect that needs to be considered is the proposition put forth by the Appellant that he was in a consensual romantic relationship with the victim and that the ages of the victim and the Appellant must be taken

into consideration and criminalisation of adolescent relationships cannot be in consonance with the legislative intent of POCSO Act. I have perused the various judgments relied upon by the Appellant in support of the aforesaid proposition.

32. I have also gone through the orders of the Hon'ble Supreme Court in *Suo Motu WP (C) No.3/2023 (In Re: Right to Right to Privacy of Adolescents)*¹⁶ dealing with the suo motu cognizance of a judgment of the Calcutta High Court arising out of setting aside of the conviction of an accused for offences punishable under Section 6 of the POCSO Act and Section 376(2)(n) of IPC. In the facts of that case, the victim married the accused and a child was born out of the relationship between the accused and the victim. On 20.08.2024, the Hon'ble Supreme Court passed an order setting aside the judgment of the Calcutta High Court and holding the accused guilty of the offences punishable under Section 6 of the POCSO Act and Section 376(2)(n) of IPC. The sentence was reserved. The Government of West Bengal was directed to constitute a Committee of experts to help the victim in making an informed choice as to whether she wants to continue to live in the company of the accused or wants to avail of the benefits offered by the State Government. Upon considering the reports of the Committee and after appreciating the exhaustive arguments of learned Amici Curiae, the Hon'ble Supreme Court, in the light of the factual background of the case, invoked its extraordinary powers under Article 142 of the Constitution of India to pass the following order on 23.05.2025¹⁷:

¹⁶ (2024) 15 SCC 788

¹⁷ 2025 SCC OnLine SC 1200

“31. Hence, we pass the following order:

- a) *We exercise our extraordinary jurisdiction under Article 142 of the Constitution of India and hold that though the accused stands convicted, he will not undergo sentence for the reasons stated earlier;*
- b) *We direct the State to take the following measures:*
 - (i) *To act as a true guardian of the victim and her child;*
 - (ii) *To provide a better shelter to the victim and her family within a period of a few months from today;*
 - (iii) *To bear the entire expenditure of the education of the victim till Xth standard examination and if she desires to take up education for a degree course, till the completion of the degree course. After she passes her Xth standard examination, the State can offer her vocational training, obviously, at the cost of the State;*
 - (iv) *To bear the entire expenditure of the education of the child up to Xth Standard and ensuring that she is educated in a very good school in the vicinity of the place of residence of the victim; and*
 - (v) *To endeavour to take the assistance of NGOs or public-spirited citizens for the purpose of securing the debts incurred by the victim as a one-time measure.*
- c) *We direct the State to file compliance report giving details of the implementation of the directions contained in clause (b) above. The first compliance report shall be filed by 15th July 2025. Thereafter, compliance reports shall be filed after the interval of every six months. The first compliance report will be considered on 25th July 2025. We direct the Registry to list the case on 25th July 2025.*
- d) *Issue notice to Union of India through the Secretary of the Ministry of Women and Child Development. The notice is made returnable on 25th July 2025. A copy of the judgment dated 20th August 2025 and this judgment shall accompany the notice.*
- e) *Immediately on service of notice, the Secretary of the Ministry of Women and Child Development shall appoint a Committee of Experts to deal with the suggestions of the learned Amicii Curiae.*

Senior Officers of the State shall be a part of the Committee. If necessary, the Committee can also consult the learned Senior Counsel appointed as Amicii Curiae. Immediately on service of notice, the Secretary shall constitute a Committee. The members of the Committee constituted by this Court shall be permanent invitees to the said Committee; and

- f) The Committee will submit a detailed report before the returnable date to this Court. To consider the implementation of the suggestions of the learned Amicii Curiae, based on the said report, this Court will pass further directions from time to time.”*

33. It is also pertinent to note that the Hon’ble Supreme Court, while dealing with the reasons for passing the aforesaid order, has observed thus:

24. What troubles us is the issue of sentencing. The reports of the Committee stare at our faces. Though the victim did not treat the incident as a heinous crime, she suffered because of it. This was because at an earlier stage, the victim could not make an informed choice due to the shortcomings of our society, our legal system and her family. In fact, she did not get any opportunity to make informed choice. The society judged her, the legal system failed her, and her own family abandoned her. Now, she is at a stage where she is desperate to save her husband. Now, she is emotionally committed to the accused and has become very possessive of her small family.

25. After having read the reports and having interacted with the Committee as well as the victim, we are of the view that if we send the accused to jail, the worst sufferer will be the victim herself. As compared to the situation in 2018, she is better placed today. Now she is comfortable with her small family. She along with the accused, is concentrating on their daughter and they want to ensure that she gets quality education. At the same time, as recorded in the final report, the victim is attending school and is desperate to complete her school education. Though the State has offered to enrol her in some vocational course, she is keen on completing her education, at least up to graduation.

26. *In law, we have no option but to sentence the accused and send him to jail for undergoing the minimum punishment prescribed by the Statute. However, in this case, the society, the family of the victim and the legal system have done enough injustice to the victim. She has been subjected to enough trauma and agony. We do not want to add to the injustice done to the victim by sending her husband to jail. We as Judges, cannot shut our eyes to these harsh realities. Now, at this stage, in order to do real justice to the victim, the only option left before us is to ensure that the accused is not separated from the victim. The State and the society must ensure that the family is rehabilitated till the family settles down in all respects.*

27. *Ultimately, this Court is bestowed with extraordinary jurisdiction under Article 142 for the sole object of ensuring that the highest Court of the land is in a position to do substantial justice in its truest sense. In the context of this situation, sadly, true justice lies in not sentencing the accused to undergo imprisonment. This case is not going to be a precedent and should not be a precedent. This case is an illustration of the complete failure of our society and our legal system. All that the system can do for the victim now, is to help her fulfil her desire of completing her education, settling down in life, providing a better education to her daughter and ensuring overall better living conditions for her family.”*

34. The judgments relied upon by the Appellant can be distinguished on facts. In the judgment of *Ashik Ramjaini Ansari V/s. State of Maharashtra* (supra), the victim had stated that she had performed Nikaah with the accused under the Islamic Shariya Law out of her own free will since she was in love with the accused for many years. The victim has also admitted that her father pressurised her to obtain a divorce from the accused since the family of the accused belonged to a lower economic strata. The victim also stated that she was abducted by her father and kept in their house under

CCTV surveillance. The victim had conceived from the accused (whom she married) and she had written letters to the Police that she was staying with the accused voluntarily.

35. In the case of *Vijayalakshmi and Anr. V/s. State repr. by the Inspector of Police and anr.* (supra), the inherent jurisdiction of the High Court under Section 482 of CrPC was utilised to quash the proceedings against the accused under POCSO Act. The ground was a compromise between the parties. The victim girl had no objection to the proceedings being quashed against the accused. Both the accused and the victim had eloped, married and consummated the marriage. The victim and her parents, in the Trial Court, had not supported the case of the prosecution. It was in the light of these facts that the Court quashed the proceedings against the accused.

36. In the case of *Ranjit Rajbanshi V/s. State of West Bengal & Ors.* (supra), the judgment of conviction and sentence arising out of Section 376 IPC and Section 4 of POCSO Act was set aside on the basis of contradictions and missing links in the chain of events sought to be made out by the prosecution. On facts, the prosecution had failed to raise a statutory presumption under Section 29 of POCSO Act.

37. In the case of *Sachin, s/o Vithalrao More V/s. State of Maharashtra* (supra), this Court had noted that out of the relationship between the accused and the victim, a child was born, whereas in the case of *State of Karnataka, rep. by the Police Inspector, Yallapur Police Station V/s. Basavraj* (supra), the

Karnatka High Court dismissed the State Appeal against acquittal for offences punishable under Section 366, 376(2) IPC and 5(1) and 6 of POCSO Act, predominantly on the ground that all witnesses had turned hostile. Even before the High Court, the victim, who by then was a major, stated that she had married the accused and is now living with him as his wife. Two children were born out of the wedlock and the accused was taking care of her properly.

38. Revisiting the facts of the present case, three facts stand out immediately, which distinguish the facts of the present case from the facts of the judgments relied upon by the Appellant cited herein above. Firstly, there seems to be no logical progression of the relationship between the Appellant and the victim to the level of marriage or even an intention to marry. There is no elopement of the victim girl with the Appellant. The relationship had not continued after the offence was registered. At the time of her evidence, the age of the victim was 23 years. She has steadfastly denied that her previous statements were false. She has withstood cross-examination by the Appellant on the point of false implication and her credibility is not shattered. Also in response to the Court questions as to why she did not pursue further education and stopped studying after the second year B.Com, the victim responded that there was a lot of teasing from the people surrounding her residence. The victim has stated that she had an ambition to be a Judo Coach and had no intention to get married to the Appellant.

39. Secondly, examining the chronology of events, it is evident that the victim had called the appellant only to tell him that she was going to Kerala.

It was the Appellant who insisted on accompanying her. Thirdly, it is recorded by the learned Sessions Judge, in her order dated 23.08.2024, granting compensation to the victim that in her written response to the application for compensation by the State, the victim had stated that due to the sexual assault by the Appellant, she had to undergo physical and mental illness. She could not continue her school, sports and lost educational opportunity due to mental trauma and social stigma. This aspect of the fallout of the offence on the life of the victim also cannot be lost sight of.

40. The Hon'ble Supreme Court commenting on the impact of factual differences leading to different conclusions, in the matter of *Megh Singh V/s. State of Punjab*¹⁸ observed thus:

“18. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect. It is more pronounced in criminal cases where the backbone of adjudication is fact-based.”

41. In the light of the aforesaid facts and discussion, the impugned judgment and order dated 11.04.2025 and 21.04.2025 passed by the learned Special Court, POCSO, Panaji, Goa, in Sessions Case No.26/2022 convicting the Appellant for offences punishable under Section 376 of IPC and Section 4 of POCSO Act, 2012, does not warrant any interference.

¹⁸ 2003 8 SCC 666

42. Consequently, the Appeal is dismissed. Pending applications, if any, do not survive and also stand disposed of.

ASHISH S. CHAVAN, J.