

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 681 of 2024****Reserved on: 28.04.2026****Date of Decision: 05.6.2026**

Rajender Kumar**...Appellant****Versus****State of H.P.****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹***

For the Appellant	:	Mr N.S.Chandel, Senior Advocate, Advocate with Ms Kanika, Advocate.
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For the Respondent	:	Mr Lokender Kutlehria, Additional Advocate General.
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Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction dated 07.12.2024 and order of sentence dated 13.12.2024, passed by learned Special Judge, Kullu, District Kullu, H.P., vide which the appellant (accused before learned Trial Court) was convicted of the commission of offences punishable under Sections 342 and 354A(i) of the Indian Penal Code (IPC)

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

and Section 9(f) read with Section 10 of the Protection of Children from Sexual Offences Act (POCSO Act) and was sentenced as under:-

Under Section 342 of the IPC	The accused was sentenced to undergo simple imprisonment for one year, pay a fine of ₹1000/- and in default of payment of the fine, to further undergo simple imprisonment for two months.
Under Section 10 of the POCSO Act	The accused was sentenced to undergo rigorous imprisonment for five years, pay a fine of ₹10,000/- and in default of payment of fine, to undergo simple imprisonment for one year.
It was ordered that both the sentences of imprisonment shall run concurrently.	

(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 342 & 354A of the IPC and Section 10 of the POCSO Act. It was asserted that the informant (name withheld to protect her identity) was studying in class X. The accused was posted as a Security Trainer in the school. The accused called the informant and her friend on

08.06.2017. The informant went to the laboratory, and the accused called her inside the lab. As soon as the informant went inside the lab, the accused bolted the door. The informant's friends remained outside. The informant was going out of the laboratory, and the accused asked her for 'Ek-Ek', and she got confused. The accused asked the informant to take the articles of her friends as well. The accused forcibly kissed her. She came out of the laboratory while crying. The informant disclosed the incident to her friends. She disclosed the incident on 12.06.2017 to her mother. Her mother filed an application (Ex. P-1/PW-10) before the principal (PW-9), who submitted the application to the Sexual Harassment Committee of the school for enquiry. The committee prepared the report and handed it over to the principal, who reported the matter to the police. An entry (Ext.P-1/PW-13) was recorded in the police post, and F.I.R. (Ext.P-1/PW-16) was registered in Police Station Keylong. ASI Sukh Ram (PW-16) visited the spot and took the photographs (Ext.P-2/PW-16 and Ext.P-3/PW-16). Inspector Lalit Mahant (PW-17) investigated the matter. He visited the spot and prepared the site plan (Ext.P-1/PW-17). He filed an application (Ext.P-2/PW-17) for the medical examination of the child victim. Dr Dinesh

referred the victim to the gynaecologist. The victim was produced before Dr Anu Namgyal (PW-7) for her examination, but she refused to undergo her examination. She made an endorsement to this effect on the MLC (Ext.P-1/PW-15). Inspector Lalit Mahant (PW-17) arrested the accused. He filed an application (Ext.P-3/PW-17) for conducting the medical examination of the accused. Dr Dinesh (PW-15) examined the accused and found that he was capable of performing sexual intercourse. He issued the MLC (Ext.P-2/PW-15). Inspector Lalit Mahant filed an application (Ext.PW-3/A) for obtaining the date of birth certificate of the victim from the Panchayat Secretary, Gram Panchayat Jahlma and obtained the birth certificate (Ext.PW-3/B). He filed an application (Ext.PW-4/A) for obtaining a copy of the Attendance Register and obtained the Register (Ext.PW-4/B). He filed an application for recording the statement of the victim. The learned Chief Judicial Magistrate, Manali, District Kullu, H.P., recorded the victim's statement. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the Court.

3. The learned trial Court found sufficient reasons to summon the accused. When the accused appeared, he was charged with the commission of offences punishable under Sections 342 and 354-A of the IPC and Section 10 of the POCSO Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 17 witnesses to prove its case. Shanti Devi (PW-1) is the Chairperson of the Sexual Harassment Committee. Neel Chand (PW-2) took the complaint to the Police Post. Som Dei (PW-3) issued the birth certificate of the victim. Sher Singh (PW-4) issued the extract of the teachers' attendance register. Student (PW-5) stated that the accused used to make sexual remarks and touch the female students inappropriately. Parveen Kumar (PW-6) video-graphed the proceedings. Dr Anu Namgyal (PW-7) is the Gynaecologist to whom the victim was referred for medical examination. Suresh Kumar (PW-8) carried the rukka to the Police Station. Rakesh Chandel (PW-9) is the principal of the school. The victim's mother (PW-10) was told about the incident. The victim (PW-11) and her friend (PW-12) had gone to the laboratory at the instance of the accused. Constable Balbir (PW-13) proved the entry in the daily diary. Vishal Gupta (PW-14) saw the victim crying outside

the laboratory. Dr Dinesh (PW-15) examined the victim and the accused. ASI Sukh Ram (PW-16) took the photographs. Inspector Lalit Mahant (PW-17) investigated the matter.

5. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C), admitted that he was posted as a Security Trainer in the school, in which the victim was studying. He admitted that the victim and her friends were in the security class. He denied the rest of the prosecution's case. He claimed that a false case was made against him because he had made complaints against the girls for misbehaving in the class and had turned them out of the class. He claimed that he was innocent. He did not produce any evidence in his defence.

6. The learned Trial Court held that the age of the victim was proved by the birth certificate issued by the Secretary of the Gram Panchayat. It was also proved that the victim was studying in the school where the accused was posted as a teacher. The statement of the victim was satisfactory. Her statement was corroborated by her previous statements made to the Sexual Harassment Committee and the learned Chief Judicial Magistrate. Her statement was also corroborated by the statements of her friend and her mother. The defence taken by

the accused that he had made complaints against the students for misbehaviour and had turned them out of the class was not probable. Minor contradictions in the statements were not sufficient to discard the prosecution's case. The prosecution had succeeded in establishing its case beyond a reasonable doubt. Hence, he was convicted and sentenced as aforesaid.

7. Being aggrieved by the judgment passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court failed to properly appreciate the material on record. There were major contradictions in the statement of the victim, which made her testimony doubtful. The victim had not narrated the incident to Vishal immediately, and this made her testimony suspect. The victim's friends had not deposed about the bolting of the door by the accused. The date of birth of the victim was not proved, and she was not proved to be a minor. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned trial Court be set aside.

8. I have heard Mr N.S. Chandel, learned Senior Advocate, assisted by Ms Kanika, learned counsel for the

appellant/accused and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent/State.

9. Mr N.S. Chandel, learned Senior Advocate, for the appellant/accused, submitted that the learned Trial Court erred in convicting and sentencing the accused. The prosecution had failed to prove that the victim was a minor. Her testimony in the Court contradicted her statement made before the Police, Sexual Harassment Committee and learned Chief Judicial Magistrate, which made her an unreliable witness. Other witnesses had only repeated what was told to them by the victim. There are major contradictions in the statements of the witnesses, which were ignored by the learned trial Court. No complaint was made to Vishal, who had seen the victim immediately after the incident. Therefore, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the date of birth certificate issued by the Gram Panchayat carries with it a presumption of correctness, and the learned Trial Court had rightly relied upon it. There was no need to produce any

corroborative evidence to show the age of the victim. The victim and her friend consistently stated that the accused had molested the victim. The defence taken by the accused that a false case was made against him because he used to complain against the girls was not proved by any evidence on record. Learned Trial Court had properly appreciated the evidence, and there is no infirmity in the judgment passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully

12. It was laid down by the Hon'ble Supreme Court in *Jarnail Singh versus State of Haryana (2013) 7 SCC 263* that the provisions of the Juvenile Justice Act (JJ Act) should be followed to determine the age of the victim under the POCSO Act. It was observed:

“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with the law, we are of the view that the aforesaid statutory provision should be the basis for determining the age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of the minority is concerned between a child in conflict with the law and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules to determine the age of the prosecutrix VW, PW 6. The manner of determining age

conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has an overriding effect over an option expressed in a subsequent clause. The highest-rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), the matriculation (or equivalent) certificate of the child concerned is the highest-rated option. In case the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such an entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation, a municipal authority, or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid that Rule 12(3) postulates the determination of the age of the child concerned on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW, PW 6, could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed that she had studied up to Class 3 only, and thereafter, had left her school and had started to do household work. The prosecution, in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW, PW 6, on the next available basis in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW 4) to prove the age of the prosecutrix, VW, PW 6. Satpal (PW 4) was the Head Master of Government High School, Jathlana, where the prosecutrix VW, PW 6, had studied up to Class 3. Satpal (PW 4) had proved the certificate

Ext. PG, as having been made on the basis of the school records, indicates that the prosecutrix, VW, PW 6, was born on 15-5-1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are, therefore, of the view that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW, PW 6. It would also be relevant to mention that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material, including the ossification test, for determining the age of the prosecutrix VW, PW 6. The deposition of Satpal, PW 4, has not been contested. Therefore, the date of birth of the prosecutrix VW, PW 6 (indicated in Ext. PG as 15-7-1977) assumes finality. Accordingly, it is clear that the prosecutrix VW, PW 6, was less than 15 years old on the date of occurrence, i.e. on 25-3-1993. In the said view of the matter, there is no room for any doubt that the prosecutrix, VW, PW 6, was a minor on the date of the occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court that even if the prosecutrix VW, PW 6, had accompanied the appellant-accused Jarnail Singh of her own free will and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.” (Emphasis supplied)

13. A similar view was taken in ***State of U.P. v. Anurudh,***

2026 SCC OnLine SC 40, wherein it was observed:

“14.6. Having discussed this, the two separate fields that these two legislations govern, we now turn back to the question of age determination. If the POCSO Act is examined, it can be found that the Act does not prescribe a manner for the determination of the age of the victim. As we have already noticed, it is an established position in law that the procedure under Section 94 of the JJ Act is to be applied.[See: Section 34 of the Act] When the question of determination of age of a child in conflict with the law emerges for the first time before a Court, the concerned legislation provides the procedure as housed in its Section

9 of the Act lays down the procedure to be followed when a person is brought before a Magistrate who is not empowered under the Act, and there arises a claim or reasonable doubt that such person is a child. In such cases, the Magistrate must conduct an inquiry to determine the person's age in accordance with Section 94 of the Act, which prescribes the method for age determination. If, upon inquiry, the Magistrate finds that the person was a child at the time of commission of the offence, the case must be immediately forwarded to the JJB having jurisdiction, which will thereafter deal with the matter as per the provisions of the JJ Act. Conversely, if the person is found not to be a child, the Magistrate proceeds with the case as per the regular criminal procedure. The object of Section 9 is to ensure that no juvenile offender is tried as an adult merely due to an initial misclassification and to safeguard the rehabilitative and welfare-oriented spirit of the juvenile justice system by ensuring that every child in conflict with law is tried by the appropriate forum, i.e., the JJB”

14. It was held in *Sanjeev Kumar Gupta versus State of U.P.& Ors (2019) 12 SCC 370* that a matriculation certificate, and a date of Birth certificate from the school first attended, if available, and in their absence, the birth certificate given by the Corporation Municipal Authority or Panchayat would be considered. These are in hierarchical order. Thus, where a matriculation certificate or the birth certificate from the school is available, the birth certificate given by the Corporation cannot be relied upon. It was observed:

“Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or

equivalent certificate from the Examination Board concerned in the same category [namely (i) above]. In the absence thereof, category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the 2007 Rules made under the 2000 Act. Under Rule 12(3)(a)(i), the matriculation or equivalent certificate was given precedence, and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended could be obtained. In Section 94(2)(i), both the date of birth certificate from the school, as well as the matriculation or equivalent certificate, are placed in the same category.

15. It was held in *Vinod Katara versus State of U.P., 2022 SCC OnLine SC 1204* that clause (a) of Rule 12(3) of 2007 Rules contains a hierarchical order. It was observed:

48. Clause (a) of Rule 12(3) of the 2007 Rules contains a hierarchical ordering, evident from the use of the language “in the absence whereof”. This indicates that where a matriculation or equivalent certificate is available, the documents adverted to in (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained.

49. In *Shah Nawaz v. State of Uttar Pradesh (2011) 13 SCC 751*, this Court, while examining the scope of Rule 12 of the 2007 Rules, had reiterated that medical opinion from the Medical Board should be sought only when the

matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended, or any birth certificate issued by a corporation or a municipal authority or a panchayat or municipality is not available. This Court had held that the entry related to the date of birth entered in the mark sheet is valid evidence for determining the age of the accused person, and also the school leaving certificate for determining the age of the appellant.

16. A similar view was taken in *P. Yuvaprakash v. State*, 2023 SCC OnLine SC 846, wherein it was observed:

11. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract Section 34 of the POCSO Act, which reads as follows:

“34. Procedure in case of commission of offence by a child and determination of age by the Special Court. –

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person, and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act 2015 becomes relevant and applicable. That provision is extracted below:

“94. Presumption and determination of age. – (1) Where it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of

giving evidence), that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining-

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

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

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

(3) The age recorded by the Committee or the Board to be the age of a person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

13. It is evident from the conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or his being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order that the Juvenile Justice Act requires consideration are that the concerned court has to

determine the age by considering the following documents:

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

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “*an ossification test*” or “*any other latest medical age determination test*” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate, matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate, showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court-summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar), had stated on oath that the records for the year 1997 with respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i), as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold

that M was below 18 years at the time of the commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki v. State of Uttar Pradesh* (2021) 12 SCR 502, this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in *pari materia*) with Section 94 of the JJ Act and held as follows:

“20. Rule 12 of the JJ Rules, 2007, deals with the procedure to be followed in the determination of age. The juvenility of a person in conflict with the law had to be decided prima facie on the basis of physical appearance or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, the benefit could be given to the child or juvenile by considering the age on the lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act, this court held in *Sanjeev Kumar Gupta v. The State of Uttar Pradesh* (2019) 9 SCR 735 that:

“Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof, category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is

provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i), the matriculation or equivalent certificate was given precedence, and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended could be obtained. In Section 94(2)(i), both the date of birth certificate from the school, as well as the matriculation or equivalent certificate, are placed in the same category.

17. In *Abuzar Hossain @ Gulam Hossain v. State of West Bengal (2012) 9 SCR 224*, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

17. A similar view was taken in *Rajni v. State of U.P., 2025 SCC OnLine SC 1183*, wherein it was observed: -

21. Let us first deal with the issue of juvenility. The question for consideration is whether the learned Additional District and Sessions Judge and the High Court were justified in holding respondent No. 2 to be a juvenile and whether any interference is called for in such a decision?

22. Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000, empowered the state government to make rules by notification in the official gazette to carry out the purposes of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('the JJ Act, 2000'). As per the proviso to sub-section (1) of Section 68, the central government was also empowered to frame model rules which would apply to the states also till such time rules were made in that behalf by the concerned state government; and while making any such rules so far as

practicable to conform to the model rules framed by the central government.

23. With a view to provide for better implementation and administration of the provisions of the JJ Act, 2000 in its true spirit and substance, the central government in exercise of the powers conferred by the proviso to sub-section (1) of Section 68 of the JJ Act, 2000 made the Juvenile Justice (Care and Protection of Children) Rules, 2007 (briefly, 'the JJ Rules, 2007') laying down the fundamental principles to be applied in the administration of juvenile justice. Rule 12 dealt with the procedure to be followed in the determination of age. As per sub-rule (1), in every case concerning a child or juvenile in conflict with law, the court or JJB or the child welfare committee was required to determine the age of such juvenile or child or a juvenile in conflict with law within a period of 30 days from the date of making of the application for that purpose. As per sub-rule (2), the court or the JJB or the child welfare committee was required to decide the juvenility or otherwise of the juvenile or the child or the juvenile in conflict with law *prima facie* on the basis of physical appearance or documents if available and send him to the observation home or to jail, as the case may be.

23.1. Sub-rule (3) of Rule 12 is relevant. Therefore, the same is extracted hereunder:

(3) In every case concerning a child or juvenile in conflict with the law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

- (a) (i) the matriculation or equivalent certificates, if available; and in the absence thereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence thereof;
- (iii) the birth certificate given by a corporation or a municipal authority, or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case an exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on the lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

23.2. Thus, sub-rule (3) of Rule 12 provided that the age determination enquiry should be conducted firstly on the basis of matriculation or equivalent certificate. If such a certificate was not available, then the date of birth certificate from the school first attended (other than a play school). In the absence of such a certificate, the birth certificate given by a corporation, a municipal authority or a panchayat should be the basis. Clause (b) of sub-rule (3) made it clear that only in the absence of such certificates as enumerated above, medical opinion would be sought from a duly constituted medical board, which would declare the age of a juvenile or a child. In case an exact assessment of age could not be done, the court or JJB or the child welfare committee, for the reasons to be recorded, if considered necessary, had the discretion to give benefit to the child or the juvenile by considering his/her age on the lower side within the margin of one year. While passing orders in such a case, evidence as may

be available or the medical opinion as provided should be taken into consideration before recording a finding in respect of age.

24. To consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care etc. by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation etc., the Juvenile Justice (Care and Protection of Children) Act, 2015 (already referred to as the JJ Act, 2015) came to be enacted. Section 111 is the repeal and savings clause. As per sub-section (1), the JJ Act, 2000, was repealed.

25. Section 94 deals with the presumption and determination of age. Section 94 reads thus:

94. Presumption and determination of age.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining—

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

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

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

(3) The age recorded by the Committee or the Board to be the age of a person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

25.1. Thus, the process of age determination is provided in sub-section (2) of Section 94, which is identical to the procedure prescribed under sub-rule (3) of Rule 12 of the JJ Rules, 2007. Sub-section (2) of Section 94 says that to undertake the process of age determination, the child welfare committee or the JJB shall seek evidence in the following manner:

(i) the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned Board, if available;

(ii) in the absence thereof, the birth certificate given by a corporation, a municipal authority or a panchayat;

(iii) in the absence of (i) and (ii), the age shall be determined by an ossification test or by any other latest medical age determination test conducted on the orders of the child welfare committee or the JJB.

26. Having noticed the relevant legal framework, let us examine as to how the case of respondent No. 2 *vis-à-vis* juvenility was dealt with by the JJB and thereafter by the learned Additional District and Sessions Judge. As already noted above, JJB had held respondent No. 2 to be not a juvenile, which decision was reversed by the learned

Additional District and Sessions Judge and affirmed by the High Court.

27. At this stage, we need to mention that the date of the incident is 17.02.2021. On behalf of respondent No. 2, a certificate from the DPS Higher Secondary School, Parvesh Vihar, Meerut, was filed. The date of admission was mentioned as 04.04.2016. The date of birth of respondent No. 2 was mentioned as 08.09.2003. Respondent No. 2 had passed the high school examination in the year 2018 from the said DPS Higher Secondary School, Parvesh Vihar, Meerut. Thereafter, he studied at CRK Inter College, Meerut. Therefore, on the date of the incident, respondent No. 2 was below 18 years of age. In the register of DPS Higher Secondary School and the marksheet of the high school examination, the date of birth of respondent No. 2 was mentioned as 08.09.2003. JJB, in an earlier proceeding relating to respondent No. 2, i.e. Miscellaneous Case No. 9/2000 in respect of Crime Case No. 11/2000 under Section 307 IPC, Police Station Medical College, Meerut, had accepted the date of birth of respondent No. 2 as 08.09.2003. It is seen that in the present proceeding, JJB examined the mother of respondent No. 2, who had applied to declare her son, respondent No. 2, as a juvenile. JJB observed that she did not remember in which school respondent No. 2 had studied from Class 1 to Class 7 before taking admission in DPS Higher Secondary School in Class 8. In her statement, Principal of DPS Higher Secondary School, Smt. Manju Mala Sharma stated that she had been working in the same school since the year 1996 and asserted that respondent No. 2 had obtained his education from her school from Class 4 to High School, but the original records of Class 4 to Class 8 were not available as those were destroyed due to fire.

27.1. JJB also rejected the birth certificate of Meerut Municipal Corporation, which showed the date of birth of respondent No. 2 as 08.09.2003 on the ground that it was issued on 08.06.2020.

27.2. As regards the earlier decision of JJB, it was observed that the present informant was not a party therein. Therefore, she had no opportunity to tender evidence or to rebut the claim of juvenility of respondent No. 2. Thus, the previous decision of JJB was not applicable.

27.3. It was in that context that JJB passed an order for medical examination of respondent No. 2. In compliance with such an order, the Medical Board submitted a report on 27.07.2021 assessing the age of respondent No. 2 as about 21 years.

27.4. JJB accepted the medical report dated 27.07.2021, wherein the age of respondent No. 2 was assessed as about 21 years. On that basis, respondent No. 2 was found to be more than 18 years of age on the date of the incident. Thus, respondent No. 2 was held to be an adult as on 17.02.2021, i.e. the date of the incident.

28. Admittedly, the line of reasoning adopted by the JJB is totally fallacious. When the concerned birth certificate from the school was available as well as the birth certificate issued by the Meerut Municipal Corporation, JJB could not have opted for ossification test. The statute is very clear that only in the absence of the certificates under clause (i) and clause (ii) of subsection (2) of Section 94 can the JJB order for an ossification test or any other medical test to determine the age of the juvenile. The certificate of the Meerut Municipal Corporation was issued on 08.06.2020, before the date of the incident. In any event, it was not open to the JJB to go behind the available school certificate or the birth certificate of the Corporation and record evidence to examine the correctness or otherwise of such certificate. This is not the mandate of Section 94(2) of the JJ Act, 2015. Therefore, the learned Additional District and Sessions Judge was justified in reversing such a decision of the JJB. Learned Additional District and Sessions Judge gave preference to the date of birth of respondent No. 2 mentioned in the high school certificate, wherein his date of birth was mentioned as 08.09.2003. Thus, respondent No. 2 was 17 years, 3 months, 10 days on

the date of the incident. Accordingly, he was declared a juvenile delinquent.

18. In the present case, the prosecution has relied upon the school leaving certificate (Ext.PW-9/E) produced by Rakesh Chandel (PW-9) and birth certificate (Ext.PW-3/B) issued by Som Dei (PW-3), Panchyat Secretary. The prosecution also relied upon the copy of the admission and withdrawal register, in which the victim's date of birth has been recorded. It was laid down by the Hon'ble Supreme Court in *P. Yuvaprakash (supra)*, that a transfer certificate and an extract of register are not what Section 94(2)(i) of the Juvenile Justice Act (J.J Act) mandates. It was observed at page 692: -

“21. Reverting to the facts of this case, the headmaster of M's school, CW 1, was summoned by the court and produced a Transfer Certificate (Ext. C-1). This witness produced a Transfer Certificate Register containing M's name. He deposed that she had studied in the school for one year, i.e. 2009-2010 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW 2 TMT Poongothoi, Headmaster of Chinnasoalipalayam Panchayat School, answered the summons served by the court and deposed that 'M' had joined her school with effect from 3-4-2002 and that her date of birth was recorded as 11-7-1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of the horoscope. She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It

is stated earlier on the same issue, i.e. the date of birth, Thiru Prakasam, DW 3, stated that the birth register pertaining to the year 1997 was not available in the record room of his office.

22. It is clear from the above narrative that none of the documents produced during the trial answered the description of “*the date of birth certificate from the school*” or “*the matriculation or equivalent certificate*” from the examination board concerned, or a certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW 9, Dr Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the x-ray reports and deposed that in terms of the examination of ‘M’, a certificate was issued stating “*that the age of the said girl would be more than 18 years and less than 20 years*”. In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that “*when the precise date of birth is available from outside the school records, the approximate age estimated by the medical expert cannot be the determining factor*”. This finding is, in this Court's considered view, incorrect and erroneous.

23. As held earlier, the documents produced, i.e. a transfer certificate and extracts of the admission register, are not what Section 94(2)(i) mandates; nor are they in accord with Section 94(2)(ii) because DW 1 clearly deposed that there were no records relating to the birth of the victim, ‘M’. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act, was the medical *ossification test*, based on several x-rays of the victim, and on the basis of which PW 9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18 and 20 years; in cross-examination, she said that the age might be 19 years. Given all these circumstances, this Court is of the opinion that the result

of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW 9.”

19. Therefore, no reliance can be placed upon the school leaving certificate or the extract of the admission and withdrawal register to determine the date of birth of the victim.

20. Learned Trial Court relied upon the date of birth certificate issued by the Secretary, Gram Panchayat, which is impermissible when the School Certificate was available. The learned Trial Court failed to notice the hierarchical order of the certificates contained in Section 94 of the J.J. Act. Hence, the conclusion drawn by the learned Trial Court that the victim was proved to be a minor cannot be sustained.

21. Victim (PW-11) stated that the security class had four students, including her. She was told on 8.06.2017 that the accused was calling her to take some articles for practical from the laboratory. She and her friend visited the security lab. Her friend came and asked her to play Kho-Kho. She placed the items on the bench and went with her friend to play Kho-Kho. The accused asked her about the key to the security lab, and she replied that the keys were on the bench. The accused asked her to take the practical items. She and her friends visited the

laboratory. She went inside the room, and her friends were outside the room. The accused closed the door and asked her for Ek-EK. She did not understand and sat down in the room. The accused asked her to take the practical item of her friend and handed over the articles to her. He caught her by the arm and kissed her. She returned while weeping. Her friends asked her about the reason for her weeping, and she disclosed the incident to them. Vishal sir asked her why she was weeping, but she did not tell him anything because of fear and shame. She narrated the incident to her mother, who made a complaint to the Principal. She was taken to the hospital for her medical examination, but she declined to undergo the examination.

22. Her statement was duly corroborated by her friend (PW-12), who stated that the victim told her on 08.06.2017 that the accused had asked them to visit the laboratory to take the practical items. She, the victim and another friend went to the laboratory. The victim went inside, and she and her friend remained outside. The victim returned after some time, and she was weeping. She said that the accused had closed the door and kissed her. All of them started weeping. Vishal enquired about the reason for weeping, but they did not disclose anything to him.

The English teacher enquired on 13th June, and she narrated the incident to her.

23. It was submitted that there are various contradictions in the statements of these witnesses. The victim has deposed about going to the laboratory first and thereafter being asked about playing Kho-Kho, which fact has not been deposed by her friend. This submission overlooks the fact that the victim had nowhere stated that PW-12 was also with her when she was called to play Kho-Kho. Therefore, the omission to state this fact by Pw 12 does not mean that no such incident had taken place. Further, it is trite to say that the absence of evidence is not evidence of absence, and the victim's testimony cannot be discarded because her friend has not said anything about playing Kho-Kho.

24. The statements of the victim recorded by the Sexual Harassment Committee (Ext.PW-9/B), the learned Magistrate (Ext.P-2/PW-11) and the complaint (Ext.P-1/PW-11) were read to the Court to highlight the omissions/improvements. It was submitted that these omissions/improvements will make the victim's version doubtful. This submission will not help the accused. The victim's attention was not drawn towards the

previous statements, and no chance of explanation was provided to her. It was laid down by the Hon'ble Supreme Court in *Binay Kumar Singh Versus State of Bihar, 1997 (1) SCC 283*, that if a witness is to be contradicted with his previous statement, his attention must be drawn towards it. It was observed: -

“11. The credit of a witness can be impeached by proof of any statement which is inconsistent with any part of his evidence in Court. This principle is delineated in S. 155 (3) of the Evidence Act, and it must be borne in mind when reading S. 145, which consists of two limbs. It is provided in the first limb of S.145 that a witness may be cross-examined as to the previous statement made by him without such writing being shown to him but the second limb provides that "if it is intended to contradict him by the writing his attention must before the writing can be provided, be called to those parts of it which are to be used for the purpose of contradicting him." There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross-examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross-examination, even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand, his testimony in Court on that score would not be vitiated until the cross-examiner proceeds to comply with the procedure prescribed in the second limb of S. 145.

12. In *Bhagwan Singh's case (AIR 1952 SC 214)*, Vivian Bose, J., pointed out in paragraph 25 that during the cross-examination of the witnesses concerned, the formalities prescribed by S. 145 are complied with. The cross-examination, in that case, indicated that every

circumstance intended to be used as a contradiction was put to him point by point and passage by passage. Learned Judges were called upon to deal with an argument that witnesses' attention should have been specifically drawn to that passage in addition thereto. Their Lordships were, however, satisfied in that case that the procedure adopted was in substantial compliance with S. 145, and hence held that all that is required is that the witness must be treated fairly and must be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner. On the facts of that case, there is no dispute with the proposition laid therein.

13. So long as the attention of PW 32 (Sukhdev Bhagat) was not drawn to the statement attributed to him as recorded by DW-10 (Nawal Kishore Prasad), we are not persuaded to reject the evidence of PW-32 that he gave Ex. 14 statement at the venue of occurrence and that he had not given any other statement earlier thereto.”

25. A similar view was taken in *Alauddin v. State of Assam*, 2024 SCC OnLine SC 760, wherein it was observed:

“7. When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a

contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

8. As stated in the proviso to sub-Section (1) of section 162, the witness has to be contradicted in the manner provided under Section 145 of the Evidence Act. Section 145 reads thus:

“145. Cross-examination as to previous statements in writing.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved can the contradictions be said to be proved. The usual practice is to mark the portion

or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act, in confronting the witness by showing him the relevant part of his prior statement, is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

9. If a former statement of the witness is inconsistent with any part of his evidence given before the Court, it can be used to impeach the credit of the witness in accordance with clause (3) of Section 155 of the Evidence Act, which reads thus:

“155. Impeaching the credibility of the witness. —
The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him—

(1)

(2)

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.”

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trivial omission or contradiction brought to the record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission, depending upon the facts of each case? Whether an omission is a contradiction also depends on the facts of each case.

10. We are tempted to quote what is held in a landmark decision of this Court in the case of *Tahsildar Singh v. State of U.P.*, 1959 Supp (2) SCR 875. Paragraph 13 of the said decision reads thus:

“13. The learned counsel's first argument is based upon the words “in the manner provided by Section 145 of the Indian Evidence Act, 1872” found in Section 162 of the Code of Criminal Procedure. Section 145 of the Evidence Act, it is said, empowers the accused to put all relevant questions to a witness before his attention is called to those parts of the writing with a view to contradicting him. In support of this contention, reliance is placed upon the judgment of this Court in *Shyam Singh v. State of Punjab* [(1952) 1 SCC 514:1952 SCR 812]. Bose, J. describes the procedure to be followed to contradict a witness under Section 145 of the Evidence Act, thus at p. 819:

Resort to Section 145 would only be necessary if the witness denies that he made the former statement. In that event, it would be necessary to prove that he did, and *if the former statement was reduced to writing*, then Section 145 requires that his attention must be drawn to these parts, which are to be used for

contradiction. But that position does not arise when the witness admits the former statement. In such a case, all that is necessary is to look to the former statement of which no further proof is necessary because of the admission that it was made.”

It is unnecessary to refer to other cases wherein a similar procedure is suggested for putting questions under Section 145 of the Indian Evidence Act, for the said decision of this Court, and similar decisions were not considered the procedure in a case where the statement in writing was intended to be used for contradiction under Section 162 of the Code of Criminal Procedure. *Section 145 of the Evidence Act is in two parts: the first part enables the accused to cross-examine a witness as to a previous statement made by him in writing or reduced to writing without such writing being shown to him; the second part deals with a situation where the cross-examination assumes the shape of contradiction: in other words, both parts deal with cross-examination; the first part with cross-examination other than by way of contradiction, and the second with cross-examination by way of contradiction only. The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such a statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement were allowed to be used for the purpose of cross-examining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly*

indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police, he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police, which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit it, the practice generally followed is to admit it, subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked, "Did you say before the police officer that you saw a gas light?" and he answers, "Yes", then the statement which does not contain such recital is put to him as a contradiction. This procedure involves two fallacies: one is that it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants, there is no self-contradiction of the primary statement made in the witness box, for the witness has not yet made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually said before him. In such a case, the question could not be put at all: only questions to contradict can be put, and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is,

therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure.” (emphasis added)

This decision is a *locus classicus*, which will continue to guide our Trial Courts. In the facts of the case, the learned Trial Judge has not marked those parts of the witnesses' prior statements based on which they were sought to be contradicted in the cross-examination.”

26. It was held in *Anees v. State (NCT of Delhi)*, 2024 SCC OnLine SC 757 that the Courts cannot *suo motu* take cognisance of the contradiction and the same has to be brought on record as per the law. It was observed:

“64. The court cannot *suo motu* make use of statements to the police that have not been proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words ‘*if duly proved*’ are used in Section 162Cr. P.C. clearly shows that the record of the statement of witnesses cannot be admitted in evidence straightaway, nor can it be looked into, but they must be duly proved for contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the Investigating Officer. The statement before the Investigating Officer can be used for contradiction, but only after strict compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.

65. Section 145 of the Evidence Act reads as follows:

“145. *Cross-examination as to previous statements in writing.*— A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be

proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

66. Under Section 145 of the Evidence Act, when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of the witness is drawn to that part, and this must be reflected in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved, and there is no need for further proof of contradiction, and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement, and it 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 contradiction; it will then be 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 the part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act, that is, by drawing attention to the parts intended for contradiction.”
[See: *V.K. Mishra v. State of Uttarakhand*: (2015) 9 SCC 588]

27. Therefore, it is impermissible to take the previous statements as substantive pieces of evidence and compare them to find out the contradictions/omissions in them.

28. Vishal Gupta (PW-14) stated that he found the victim weeping with her friends. He enquired as to why the victim was weeping. The other girls disclosed that she was sick. He sent all of them to the ground. It was submitted that the statement of this witness falsifies the prosecution's case. He had seen the victim immediately after the incident. The victim had not disclosed the incident to him, which makes her version doubtful that she was sexually harassed by the accused. This submission cannot be accepted. The victim explained that she could not narrate the incident to Vishal because of fear and shame. This is a plausible explanation. The victim was shocked and was crying. It would have been difficult for her to narrate what had happened to her to a male teacher, who was in a position of authority over her. Such a reaction is normal. Further, the victim had not said anything about her illness and only her friends had told that the victim was ill. Therefore, the victim's version cannot be discarded because her friend had told Vishal that she was ill.

29. Vishal Gupta (PW-14) stated in his cross-examination that the victim was behaving normally between 08.06.2017 and 16.06.2017. It was submitted that the victim's normal behaviour makes her version of outraging her modesty doubtful. This submission cannot be accepted. Every person reacts to everyone differently, and it is difficult to expect a set behaviour from a witness. It was laid down by the Hon'ble Supreme Court in *Motiram Padu Joshi v. State of Maharashtra*, (2018) 9 SCC 429: (2018) 3 SCC (Cri) 738: 2018 SCC OnLine SC 676 that the Court cannot discard the testimony of a witness because he failed to act in a particular manner. It was observed:

“15. Evidence of PWs 3 and 4 is assailed on the ground that PWs 3 and 4 have not gone to the rescue of the deceased, and it is quite unbelievable that, on seeing the accused who were armed with weapons, both of them went inside the house. It is further submitted that the trial court rightly held that their evidence is not trustworthy, and the High Court was not right in intervening in such a finding and basing the conviction on the evidence of PWs 3 and 4. In their evidence, PWs 3 and 4 have stated that on seeing a number of accused armed with deadly weapons, they got frightened and went inside the house, stood near the window and saw the occurrence. *Their evidence cannot be doubted on the grounds that they did not intervene in the attack nor make attempts to save the deceased. On witnessing a crime, each person reacts in his own way, and their evidence cannot be doubted on the grounds that the witness has not acted in a particular manner. The evidence of PWs 3 and 4 cannot be doubted merely because they have not acted in a particular manner.*

16. We may usefully refer to *Rana Partap v. State of Haryana* [*Rana Partap v. State of Haryana*, (1983) 3 SCC 327: 1983 SCC (Cri) 601] as under: (SCC p. 330, para 6)

“6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysterical and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

30. Therefore, the testimony of the victim cannot be rejected because she did not appear to be distressed.

31. It was submitted that the victim had refused to undergo her medical examination, and this falsifies the prosecution's case. This submission cannot be accepted. As per the victim, the accused had caught her and kissed her. He had not caused any injury. It is difficult to see that a Kiss would have produced an injury capable of being observed by the Medical Officer. Therefore, the examination of the victim was not

material in the present case, and no adverse inference can be drawn against the prosecution.

32. Rakesh Chandel (PW-9) stated that the security lab is situated on the fourth storey of the building, and there is a plywood partition in the Security Lab. There is a tourism laboratory on the other side of the plywood. The first entry is common, and thereafter, both laboratories have separate entries. It was submitted that the testimony of this witness shows that there was only a plywood partition between the two labs, and any person on the other side of the plywood could have heard what was transpiring in the Security lab. This submission will not help the accused. The victim had specifically stated in her cross-examination that when she went to collect the items from the Security Lab, the tourism teacher was not present. This statement shows that the tourism teacher was not present, and the submission that he would have heard what was transpiring in the Security lab cannot be accepted. The victim also denied in her cross-examination that Rajinder was working on the computer with Rajesh. A denied suggestion does not amount to any proof, and the accused cannot derive any advantage from the denied suggestion.

33. It was submitted that the victim's friends had not raised any noise when the accused had bolted the door, which falsifies her version that the accused had bolted the door. This submission will not help the accused. Site plan (Ext.P-1/PW-17) shows that the Security lab is located at a distance from the hall, where the girls were present. As per the statement of the principal, a person has to go from the common entrance to the Security lab. Therefore, the person standing outside the common entrance would not have come to know about bolting the door, and in such a situation, the prosecution's case cannot be doubted because the victim's friends had not raised any hue and cry.

34. It was suggested to the victim and her friend that they had conspired together to lodge a false complaint against the accused because he had made a complaint against the victim to the principal. Both of them denied this suggestion. No question was asked from the principal about any complaint having been made by the accused against the victim. Therefore, the defence taken by the accused was not established, and the learned Trial Court was justified in rejecting this defence.

35. The prosecution also examined a student (PW-5), who made a general statement that the accused used to touch the

students inappropriately. This evidence is inadmissible in view of Section 14 of the Indian Evidence Act as evidence of a similar nature as mentioned in illustrations of (n), (o) and (p) of the Act. In *Emperor v. Panchu Das and Goberdhone Singh*, 1920 SCC OnLine Cal 24: (1919-20) 24 CWN 501: AIR 1920 Cal 500: 1920 Cri LJ 849, the prosecution adduced evidence to show that the accused had robbed the women on earlier occasions. This evidence was held to be inadmissible. It was observed at page 517:

“It is plain that this section [14 of the Indian Evidence Act] is of no assistance. The existence of a state of mind such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards a person or the existence of a state of body or bodily feeling, was not and could not be in issue in the circumstances of the case. The defence was a complete denial, and no question of the character contemplated by sec. 14 did or could possibly arise. The first explanation to the section creates a further difficulty, because the relevant fact proved to show the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question. The evidence introduced was plainly not of this description. The illustrations (i), (j), (o), and (p) clearly show that the evidence could not be admitted. Reference may particularly be made to the last two illustrations. A is tried for the murder of B by intentionally shooting him dead. The fact that A, on other occasions, shot at B is relevant, as showing his intention to shoot B; but the fact that A was in the habit of shooting at people with the intent to murder them is irrelevant. A is tried for a crime; the fact that he said something indicating an intention to commit that particular crime is relevant, but the fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

These illustrate the elementary principle that evidence of general deposition, habit and tendencies is not relevant.

From the statement of the case by Mr Justice Chaudhuri, it appears that secs. 14 and 15 were the only sections which had been referred to, and I have consequently considered, up till now, the question of their true construction. Upon a plain reading of these sections, I feel no doubt that they do not make the evidence admissible. This conclusion is supported by the decisions in *Empress v. Moodeliar* [I.L.R. 6 Cal. 655 (1881)], *Baharuddin Mandal v. Emperor* [18 C.L.J. 578 (1913)] and *Emperor v. Abdul Wahid Khan* [I.L.R. 34 All. 93 (1911)]. In the first of these cases, Sir Richard Garth, C.J., pointed out that sec. 14¹ applies to that class of cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it, and added that the Court must be very careful not to extend the operation of the section to other cases where the question of guilt or innocence depends upon actual facts and not upon the state of a man's mind or feeling. Mr Justice Mitter, if I have read his judgment correctly, did not really dissent from this view. The same line of reasoning was adopted in the second I case, where it was ruled that proof cannot I be offered of an independent offence to show I that by reason of such independent offence, I the accused is more likely to have committed the one for which he is on trial; in other words, evidence of such collateral offence cannot be received as substantive evidence of the offence on trial, though under sec. 14 evidence may be given of intention and like matters where the factum of such intention or like matters is relevant. The distinction between cases where intention is, and cases where intention is not relevant, is illustrated by the decisions in *Emperor v. Debendra, Prosad* [I.L.R. 36 Cal. 573: s.c. 13 C.W.N. 973 (1909)] and *Emperor v. Abdul Wahid* [I.L.R. 34 All. 93 (1911).] which lie on opposite sides of the dividing line. Reference may also be made to the decision of West, J., in *R. v. Parbhudas* [11 Bom. H.C.R. 90 (1874).] where he emphasised the inadmissibility of evidence of one crime (not reduced to legal certainty by a conviction) to prove the existence of another unconnected, even though

cognate crime. On behalf of the Crown, reliance was, however, placed upon the decisions in *Mahin v. Attorney-General* [[1894] A.C. 57], and *R. v. Ball* [[1911] A.C. 47 (52)]. reversing *R. v. Ball* [5 Cr. App. Rep. 238 (1910). *R.v.Smith* [[1911] Cr. App. Rep. 229.], *R. v. Bond* [[1906] 2 K.B. 389.] and *R. v. Thompson* [[1917] 2 K.B. 630: affirmed on H.L. [1918] A.C. 221.] which has been affirmed by the House of Lords in *Thompson v. The King* [[1917] 2 K.B. 630: affirmed on H.L. [1918] A.C. 221.]. No useful purpose would be served by a detailed analysis of these decisions; most of them, along with other cases, were reviewed by this Court in *Amritlal Hazra v. Emperor* [I.L.R. 42 Cal. 957: s.c. 19 C.W.N. 676 (1915).] where the principles deducible therefrom as to the law administered in England were formulated in the following terms:—

“Facts similar to but not part of the same transaction as the main fact are not, in general, admissible to prove either the occurrence of the main fact or the identity of its author. But evidence of similar facts, although in general inadmissible to prove the main facts or the connection of the parties therewith, is receivable, after evidence *aliunde* on these points has been given, to show the state of mind of the parties with regard to such fact; in other words, evidence of similar facts may be received to prove a party's knowledge of the nature of the main fact or transaction, or his intent with respect thereto. In general, whenever it is necessary to rebut, even by anticipation, the defence of accident, mistake, or other innocent condition of mind, evidence that the Defendant has been concerned in a systematic course of conduct of the same specific kind as that in question may be given. To admit evidence under this head, however, the other acts tendered must be of the same specific kind as that in question and not of a different character, and the acts tendered must also have been proximate in point of time to that in question.”

I have re-examined these cases, and I see no reason to doubt the accuracy of the above statement, which fully accords with the decisions of the Court of Criminal Appeal in the cases of *R. v. Rodley* [[1913] 3 K.B. 468; 9 Cr. App. Rep. 69; 23 Cox. 574 (1913).] and *R. v. Ellis* [[1910] 2 K.B. 746; 5 Cr. App. Rep. 41.] as also other recent cases, such as *Thompson v. The King* [[1917] 2 K.B. 630: affirmed on H.L. [1918] A.C. 221.], *R. v. Fisher* [[1910] 2. K.R. 149.], *R. v. Mason* [111 L.T. 336.], *R. v. Baird* [84 L.J.K.B. 1785 (1915).] and *Perkins v. Jeffery* [[1915] 2 K.B. 702.]. It is plain that the principles so enunciated are of no assistance to the prosecution. On the other hand, there is an important passage in the judgment of Kennedy, J., in the case of *R. v. Bond* [[1906] 2 K.B. 389 (405).] to which the attention of the Standing Counsel was drawn by the learned Chief Justice in the course of the argument, as destructive of his contention:—

“The admissibility, not merely the weight, of the evidence depends upon the evidence of such conduct as would authorise a reasonable inference of a systematic pursuit of the same criminal object.”

36. Similarly, it was held in *Emperor vs. Gangaram Hari Pandit* (05.07.1920 - BOMHC): MANU/MH/0102/1920 that the evidence of previous murders committed by the accused was inadmissible. It was observed:

“3. In the present case, there is no question as to whether the death of Dadu was accidental or intentional. It is the case on both sides that Dadu was murdered, and whoever assaulted Dadu intended to murder him. Whether the six persons mentioned by Gangaram actually committed the murder or whether some of the present accused committed it is the real question. But it cannot be said that there is any point as to the death of Dadu being accidental. It may be a part of the prosecution case that, in attacking the party, assuming for the sake of argument that the enemies of the present accused were the assailants, the object was to go at Gangaram and not at Dadu. The fact

remains that those who went to Dadu did murder him, i. e., they intended to do what their act would show they intended to do. Whether those persons were actuated by a desire to go to Gaugaram more than at Dadu or whether they went to Dadu by mistaking him for Gangaram, they undoubtedly murdered him, and there can be no doubt that they intended to do so. There is no question of the death being accidental. I may refer to the observations in *Rex v. Boyte [1914] 3 K.B. 339*, which suggest the test to be adopted in determining whether evidence of similar acts is admissible under Section 15 or not in a particular case. Though there may be cases in which it may not be easy to determine whether the evidence is admissible under Section 15 or not, I do not think that in the present case there is any difficulty whatever. Though Section 9 of the Indian Evidence Act has not been relied upon on behalf of the Crown, I have considered it with reference to the question as to whether this evidence can be let in to explain the conduct of the persons who are said to have been falsely charged. I have already referred to this consideration so far as it can be said to fall within the scope of Section 8; and I am satisfied that to explain the conduct of those six persons in absconding when they received the news that their names were given as the assailants of Dadu, the belief on the part of some of them that on previous occasions false charges of that character had succeeded or had been brought would be relevant. There is evidence in this case to show that there was a belief in the village that the accused in Gangu's case were wrongly convicted, and that may be relevant to explain the conduct of the six persons in this case, but that belief might exist whether the accused in that case were rightly convicted or not. In my opinion, that would not entitle the prosecution in this case relating to the murder of Dadu to prove that on two previous occasions some of the accused were concerned in similar murders and in charging others falsely. Taking a broad and general view of this type of evidence, I feel that, in effect, it amounts to evidence of habit for committing a murder under circumstances as are now alleged to exist. That kind of evidence is not relevant.

It seems to me that the second part of the illustration (o) to Section 14 clearly indicates that unless the evidence was particularly directed to show that on a previous occasion any one of the present accused made an attempt to murder any one of the six persons now said to have been falsely implicated, it would not be relevant. It is quite clear that the persons concerned in those two cases, the accused persons, were different. I also feel that there is some force in the argument urged on behalf of the defence as to such evidence being in substance evidence of bad character. Its net result is to create the impression on the mind of the Court that these persons are men of bad character and are in the habit of committing murders, and that, therefore, they must have committed murder on this occasion. That is a line of proof which, in my opinion, is excluded by the Indian Evidence Act and should not be allowed. We have, therefore, excluded from consideration only that evidence which has been adduced by the prosecution to show specifically that the charges in both those earlier murder cases were positively false and that the persons convicted in Gangu's case were innocent.”

37. The judicial committee of the Privy Council also held in *Noor Mohamed v. King*, 1948 SCC OnLine PC 76: (1949) 62 LW 530: AIR 1949 PC 161 that the evidence of similar crimes is inadmissible in evidence. It was observed at page 532:

“The first comment to be made on the evidence under review is that it plainly tended to show that the appellant had been guilty of a criminal act which was not the act with which he was charged. In *Makin v. Attorney-General for New South Wales* [(1894) A.C. 57 at p. 65.] Lord Herschell, then Lord Chancellor, delivering the judgment of the Board, laid down two principles which must be observed in a case of this character. Of these, the first was that:

“It is undoubtedly not competent for the prosecution to adduce evidence tending to show that

the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried.”

In 1934, this principle was said by Lord Sankey, then Lord Chancellor, with the concurrence of all the noble and learned Lords who sat with him, to be “one of the most deeply rooted and jealously guarded principles of our criminal law” and to be “fundamental in the law of evidence as conceived in this country.” [*Maxwell v. The Director of Public Prosecutions* [(1935) A.C. 309 at pages 317, 320.].

The second principle stated in *Makin's case* [(1894) A.C. 57 at p. 65]:

“The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused.”

The statement of this latter principle has given rise to some discussion. A plea of not guilty puts everything in issue which is a necessary ingredient of the offence charged, and if the Crown were permitted, ostensibly in order to strengthen the evidence of a fact which was not denied and perhaps could not be the subject of rational dispute, to adduce evidence of a previous crime, it is manifest that the protection afforded by the “jealously guarded” principle first enunciated would be gravely impaired.

This aspect of the matter was considered by the House of Lords in *Thompson v. The King* [(1918) A.C. 221]. Their Lordships need not allude to the facts of that case. It is enough to say that the evidence there admitted was held to be relevant as one of the indicia by which the accused

man's identity with the person who had committed the crime could be established. (See per Lord Parker of Waddington, at p. 231). In the words of Lord Atkinson, it rebutted the defence of an alibi which otherwise would have been open (pp. 230-1). Nothing of the kind can be suggested in the present case. The value of the case for the present purpose is that Lord Sumner dealt particularly with the difficulty to which their Lordships have referred, and stated his conclusion as follows:

“Before an issue can be said to be raised, which would permit the introduction of such evidence so obviously prejudicial to the accused, it must have been raised in substance if not in so many words, and the issue so raised must be one to which the prejudicial evidence is relevant. The mere theory that a plea of not guilty puts everything material in issue is not enough for this purpose. The prosecution cannot credit the accused with fancy defences in order to rebut them at the outset with some damning piece of prejudice”

There can be little doubt that the manner of Ayesha's death, even without the evidence as to the death of Gooriah, would arouse suspicion against the appellant in the mind of a reasonable man. The facts proved as to the death of Gooriah would certainly tend to deepen that suspicion, and might well tilt the balance against the accused in the estimation of a jury. It by no means follows that this evidence ought to be admitted. If an examination of it shows that it is impressive just because it appears to demonstrate, in the words of Lord Herschell in *Makin's case* [(1894) A.C. 57.] “that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried”, and if it is otherwise of no real substance, then it was certainly wrongly admitted. After fully considering all the facts which, if accepted, it revealed, their Lordships are not satisfied that its admission can be justified on any of the grounds which have been suggested or on any other ground. Assuming that it is consistent with the evidence relating to the death of Ayesha that she took her own life,

or that she took poison accidentally (one of which assumptions must be made for the purposes of the Crown's argument at the trial), there is nothing in the circumstances of Gooriah's death to negate these possible views. Even if the appellant deliberately caused Gooriah to take poison (an assumption not lightly to be made, since he was never charged with having murdered her), it does not follow that Ayesha may not have committed suicide. As to the argument from similarity of circumstances, it seems on analysis to amount to no more than this, that if the appellant murdered one woman because he was jealous of her, it is probable that he murdered another for the same reason. If the appellant were proved to have administered poison to Ayesha in circumstances consistent with an accident, then proof that he had previously administered poison to Gooriah in similar circumstances might well have been admissible. There was, however, no direct evidence in either case that the appellant had administered the poison. It is true that in the case of Gooriah, there was evidence from which it might be inferred that he persuaded her to take the poison by a trick, but this evidence cannot properly be used to found an inference that a similar trick was used to deceive Ayesha, and so to fill a gap in the available evidence. The evidence which was properly adduced as to Ayesha shows her to have been acquainted, as were, it may be supposed, most of the inhabitants of the village in which the appellant lived, with the fact that suspicion rested on him in respect of Gooriah's death, and the theory that Ayesha was deceived into taking poison by a similar ruse to that which is supposed to have succeeded with Gooriah seems to their Lordships to rest on an improbable surmise. The effect of the admission of the impugned evidence may well have been that the jury came to the conclusion that the appellant was guilty of the murder of Gooriah, with which he had never been charged, and having thus adjudged him a murderer, were satisfied with something short of conclusive proof that he had murdered Ayesha. In these circumstances, the verdict cannot stand, notwithstanding the care with which the learned Judge summed up the

case, and the fairness with which the trial was conducted in all other respects.

With all due deference to the Court of Criminal Appeal, their Lordships feel bound to say that they are not convinced that the method of approach which it thus approved has any advantage over that which it rejects as incorrect. The expression “logically probative” may be understood to include much evidence which English law deems to be irrelevant. Logicians are not bound by the rules of evidence which guide English Courts, and theories of probability sometimes cause a clash of philosophic opinion. It would no doubt be wrong to interpret the observations of the Court of Criminal Appeal as meaning that evidence can sometimes be admitted merely for the reason that it shows a propensity in the accused to commit crimes of the nature of that with which he is charged. It cannot be supposed that the Court intended to lay down a proposition which would conflict with principles which have been laid down, or approved, by the House of Lords. It may be assumed that it is still true to say, as Lord Sumner said thirty years ago:

“No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of man who would commit a crime, or that he is generally disposed to crime and even to a particular crime:” *Thompson v. The King* [(1918) A.C. 221 at p. 232.] .”

If all that the Court meant to say was that evidence of the kind specified in the first of the principles stated in *Makin's case* [(1894) A.C. 57.] may be admitted if it is relevant for other reasons, then the dictum has no novelty. It does seem, however, that the passage quoted was intended at least to bear the meaning that evidence ought to be admitted which is in any way relevant to a matter which can be said to be in issue, however technically, between the Crown and the accused, because a little later in the judgment the following passage occurs:

“It is of the utmost importance for a fair trial that the evidence should be *prima facie* limited to matters relating to the transaction which forms the subject of the

indictment and that any departure from these matters should be strictly confined.”

38. Therefore, no advantage can be derived from the statement of this witness.

39. Therefore, the learned Trial Court had rightly accepted the statement of the victim to hold that the accused had bolted the door, caught her and forcibly kissed her. These acts constitute the offences punishable under Sections 342 and 354 of the IPC. Since the victim has not been proved to be a minor, the offence punishable under Section 10 of the POCSO Act is not made out.

40. The learned Trial Court held that since the accused had been convicted under section 354-A (i) of the IPC and the act of the accused also constituted an offence punishable under Section 10 of the POCSO Act, therefore, he had to be sentenced to a graver punishment, which was provided under Section 10 of the POCSO Act; therefore, the learned Trial Court sentenced the accused under Section 10 of the POCSO Act. Since the conviction under Section 10 of the POCSO Act is not sustainable, the accused is to be punished for the commission of an offence punishable under Section 354-A(i) of the IPC

41. In view the above, the present appeal is partly allowed and the judgment and order of sentence pronounced by learned Trial Court against the accused of convicting him of the commission of an offence punishable under Section 10 of POCSO Act and sentencing him to undergo rigorous imprisonment for five years, pay a fine of ₹10,000/- and in default of payment of fine to further undergo simple imprisonment for one year are ordered to be set aside. The conviction of the accused under Section 354-A(i) IPC shall stand.

42. Appellant be produced before this Court for hearing him on the quantum of sentence. The production warrant be issued to the Jail Superintendent, Model Central Jail, Nahan District Sirmour, H.P., returnable for_____.

(Rakesh Kainthla)
Judge

05th June, 2026
(ravinder)