



2026:UHC:2616

Judgment Reserved on: 27.02.2026
Judgment Pronounced on: 10.04.2026

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.391 of 2021

Sagar RayAppellant

Vs.

State of UttarakhandRespondent

Presence: Mr. M.K. Ray, learned counsel for the Appellant.
Mr. Vikas Uniyal, learned Brief Holder for State.

Hon'ble Ashish Naithani, J.

The present Criminal Appeal has been preferred under Section 374(2) of the Code of Criminal Procedure against the judgment and order dated 23.10.2021 passed by the learned Juvenile Justice Court / FTC / Additional Sessions Judge / Special Judge, POCSO, Rudrapur, District Udham Singh Nagar in Special Sessions Trial No. 621 of 2018, whereby the Appellant has been convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo rigorous imprisonment for a period of 10 years along with a fine of Rs. 5,000/-. In default of payment of fine, the Appellant has been directed to undergo additional simple imprisonment for one month.

2. The Appellant has further been convicted for the offences punishable under Sections 363 and 367 of the Indian Penal Code and sentenced to undergo imprisonment for a period of 3 years each along with fine, with default stipulations. All the sentences have been directed to run concurrently.

3. The case, in brief, is that the victim, who was a minor at the relevant point of time, was allegedly enticed and taken away by the Appellant from



the lawful guardianship of her parents. It is alleged that during the period of such taking, the Appellant committed aggravated penetrative sexual assault upon the victim, thereby attracting the rigours of Section 6 of the POCSO Act.

4. Upon registration of the First Information Report, the matter was investigated. The victim was medically examined, her statement under Section 164 Cr.P.C. was recorded, and upon completion of investigation, a charge-sheet was submitted against the Appellant.

5. The case being triable by the Special Court under the POCSO Act, charges were framed against the Appellant under the relevant provisions. The prosecution, in order to substantiate its case, examined witnesses including the victim, her guardians, and the investigating officials, and also relied upon documentary evidence including medical and age-related records.

6. The Appellant denied the allegations and claimed false implication. No cogent defence evidence was led, except suggestions in cross-examination and denial in his statement recorded under Section 313 Cr.P.C.

7. The learned Trial Court, upon appreciation of the evidence on record, found that the prosecution had succeeded in establishing the guilt of the Appellant beyond reasonable doubt and accordingly recorded conviction and imposed sentence as noted above.

8. Learned counsel for the Appellant has assailed the impugned judgment primarily on the ground that the prosecution has failed to establish the foundational requirement of minority of the victim in



accordance with law. It is submitted that the learned Trial Court has placed reliance upon school records to determine the age of the victim, however, the prosecution has not examined the author of such documents nor has it proved the source from which the date of birth was recorded.

9. According to the learned counsel, in the absence of proof of the basis of such entries, the documents relied upon cannot be treated as conclusive proof of age. It is further contended that no medical examination for determination of age was conducted, and therefore, the possibility of the victim being a major, or at least being of an age proximate to majority, has not been ruled out, thereby rendering the applicability of the provisions of the POCSO Act doubtful.

10. Learned counsel for the Appellant has further submitted that the testimony of the victim is not of such quality as would inspire confidence and form the sole basis of conviction. It is contended that there are material inconsistencies in her statements recorded at different stages of the proceedings. According to the learned counsel, the version as set out in the First Information Report does not fully align with the statement recorded under Section 164 Cr.P.C., and certain aspects of the allegation have been improved upon in her deposition before the Court. It is argued that these discrepancies are not trivial but relate to the core of the prosecution case, including the manner in which she was allegedly taken away and the nature of the acts attributed to the Appellant.

11. It is further submitted that the conduct of the Victim, as borne out from the record, does not support the allegation of forcible taking or assault. Learned counsel contends that the victim remained in the company of the Appellant for a considerable duration and did not raise any alarm or make any attempt to escape, despite having opportunities to



do so. It is argued that such conduct creates a serious doubt regarding the prosecution version and gives rise to a reasonable inference that the victim may have accompanied the Appellant voluntarily.

12. Learned counsel has also questioned the evidentiary value of the medical evidence relied upon by the prosecution. It is submitted that the medical examination does not disclose any injuries suggestive of force or resistance, nor does it conclusively establish the occurrence of recent sexual assault.

13. It is also contended that the ingredients of the offence under Section 367 IPC have not been established. Learned counsel submits that there is no material on record to demonstrate that the Appellant had kidnapped or abducted the victim with the intention of subjecting her to grievous hurt, slavery, or unnatural lust, as required under the said provision. It is argued that the learned Trial Court has not recorded any specific finding in this regard and has erroneously applied the provision. It is, therefore, prayed that the impugned judgment and order be set aside and the Appellant be acquitted.

14. Per contra, learned BRIEF HOLDER appearing for the State has supported the impugned judgment and submitted that the prosecution has successfully established the age of the victim through documentary evidence which has been duly exhibited during trial. It is contended that the school records relied upon by the prosecution have not been effectively challenged by the defence and carry a presumption of correctness. Learned BRIEF HOLDER submits that in the absence of any cogent rebuttal, the learned Trial Court has rightly accepted the said evidence to conclude that the victim was a minor at the time of the incident.



15. Learned Brief Holder has further submitted that the testimony of the victim is clear, consistent on material particulars, and inspires confidence. It is argued that the core of the prosecution case remains intact throughout her statements, and any minor variations are natural and do not affect the credibility of her version. It is further submitted that the prosecutrix has withstood cross-examination and nothing substantial has been elicited to discredit her testimony.

16. It is also contended that the argument regarding voluntary companionship or consent is wholly misconceived in view of the established minority of the victim. Learned brief holder submits that under the scheme of the POCSO Act, the consent of a minor is of no legal consequence, and therefore, even if it is assumed that the victim accompanied the Appellant willingly, the same would not absolve the Appellant of criminal liability.

17. Learned brief holder has further submitted that medical evidence in cases of sexual assault is corroborative in nature and not determinative. It is argued that absence of injuries or a conclusive medical opinion does not negate the occurrence of sexual assault, particularly where the testimony of the victim is otherwise reliable and trustworthy.

18. It is also submitted that the offence under Section 363 IPC stands clearly established as the victim was taken away from the lawful guardianship of her parents. Insofar as the offence under Section 367 IPC is concerned, learned brief holder submits that the circumstances of the case, including the act of taking the minor away and subjecting her to sexual assault, justify the application of the said provision.

19. Learned brief holder has thus submitted that the learned Trial Court has undertaken a proper appreciation of the evidence on record and has



recorded well-reasoned findings which do not call for interference in appellate jurisdiction. It is, therefore, prayed that the appeal be dismissed.

20. Heard learned counsel for the Parties and perused the records.

21. The first and foremost contention raised on behalf of the Appellant relates to the age of the victim and the applicability of the provisions of the POCSO Act. It has been argued that the prosecution has failed to establish the minority of the victim in accordance with law. Upon consideration of the material available on record, this Court finds that the learned Trial Court has relied upon documentary evidence, including school records, to determine the age of the victim. Such documents, having been exhibited during trial and not effectively discredited in cross-examination, carry due evidentiary value. It is well-settled that in the absence of any cogent rebuttal, school records can be relied upon for determining age. The defence has not led any evidence to controvert the said documents nor has it been able to demonstrate any inherent inconsistency therein. In such circumstances, the finding recorded by the learned Trial Court that the victim was a minor does not suffer from any illegality or perversity.

22. Once the minority of the victim stands established, the argument sought to be advanced on behalf of the Appellant regarding consent or voluntary companionship loses all significance. The scheme of the POCSO Act is clear and unambiguous in this regard, inasmuch as the consent of a minor is immaterial in the eyes of law. Therefore, even if the victim had accompanied the Appellant without resistance, the same would not dilute the criminal liability arising under the provisions of the Act.



23. The next limb of argument relates to the credibility of the testimony of the victim. It has been contended that her statements suffer from inconsistencies and improvements. This Court has carefully examined her testimony as recorded before the learned Trial Court as well as her earlier statements. It is found that the core of the prosecution case, namely that the Appellant had taken the victim away and subjected her to sexual assault, remains consistent throughout. The variations pointed out by the defence are not of such magnitude as would go to the root of the matter. Minor discrepancies are but natural in the testimony of a witness, particularly in cases involving a young victim, and do not render the entire case doubtful. The testimony of the victim, in the present case, inspires confidence and does not suffer from any material infirmity so as to warrant its rejection.

24. The contention regarding the absence of medical corroboration has also been considered. It is trite that medical evidence is corroborative in nature and cannot override the direct testimony of the victim if the same is otherwise reliable. In cases of sexual assault, particularly where the victim is acquainted with the accused or where the incident does not involve overt physical violence, absence of injuries is not uncommon. In the present case, the medical evidence does not contradict the State's version. Therefore, the absence of conclusive medical findings does not serve to the benefit of the Appellant.

25. The argument regarding the conduct of the victim has also been raised, suggesting that her failure to raise alarm or escape indicates voluntariness. This Court is not persuaded by the said submission. The conduct of a victim cannot be measured by rigid standards, and different individuals may react differently to similar situations. The mere fact that the victim did not raise alarm or attempt escape cannot be construed to



mean that the incident did not occur or that she was a consenting party, particularly when her minority stands established.

26. Insofar as the offence under Section 363 IPC is concerned, the evidence on record clearly establishes that the victim, being a minor, was taken away from the lawful guardianship of her parents by the Appellant. The essential ingredients of the offence thus stand satisfied.

27. With regard to the offence under Section 367 IPC, although the argument has been raised that the requisite intention has not been established, this Court finds that the act of taking away a minor and subjecting her to sexual assault would clearly fall within the ambit of the provision. The learned Trial Court has, therefore, not erred in recording conviction under the said section.

28. This Court is conscious of the limited scope of interference in an appeal against conviction. Unless the findings recorded by the learned Trial Court are shown to be perverse, contrary to the evidence on record, or suffering from manifest illegality, the appellate court would be slow to interfere. In the present case, the learned Trial Court has undertaken a proper appreciation of the evidence and has recorded findings which are both reasonable and legally sustainable.

29. Upon an overall consideration of the material on record, this Court is of the view that the state has succeeded in establishing the guilt of the Appellant beyond reasonable doubt.

ORDER

30. The appeal is devoid of merit and is accordingly **dismissed**.



2026:UHC:2616

31. The judgment and order dated 23.10.2021 passed by the learned Juvenile Justice Court / FTC / Additional Sessions Judge / Special Judge, POCSO, Rudrapur, District Udham Singh Nagar in Special Sessions Trial No. 621 of 2018 is hereby affirmed.

32. The Appellant is stated to be in custody.

(Ashish Naithani J.)

10.04.2026

Arti