

FORM –A

**IN THE COURT OF THE AD HOC ADDITIONAL SESSIONS
JUDGE, FAST TRACK SPECIAL COURT (POCSO),
BHUBANESWAR**

Present:

Shri S.K. Sahoo, M.A, LL.M.,
Ad hoc Additional Sessions Judge,
Fast Track Special Court (POCSO),
Bhubaneswar

(JO Code-90032)

[Dated this the 17th day of June, 2026]

TR No. 370 of 2024

(Arising out of Airfield PS Case No.186 dated 30.06.2024)

Complainant	State of Odisha
Represented by	Shri Rajiv Sasmal, Spl. PP Bhubaneswar Shri Balaram Deo, Addl. PP., Bhubaneswar
Accused	Kanha @ Santosh Khuntia, aged about 24 years, S/O.- Late Sunyabashi Khuntia, Vill- Kotha Sahi, Panchagaon, P.S.- Airfield, Dist.- Khordha
Represented by Advocates:	Adv. Gorakh Nath Das and Associates

FORM – B

Date of offence	30.06.2024
Date of FIR	30.06.2024
Date of Charge Sheet	20.08.2024
Date of Framing of Charge	10.09.2024
Date of Commencement of evidence	29.01.2025
Date on which judgment is reserved	14.05.2026
Date of the Judgment	17.06.2026
Date of sentencing order, if any	-

Accused Details							
Rank of the Accused Person	Name of the accused persons	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of section 428 of Cr.P.C.
1	Kanha @ Santosh Khuntia	02.07.2024	In Custody	U/Ss. 376(AB)/ 376(2)(m) /363/342/ 323/294/ 506 IPC r/w Section 6 of POCSO Act.	Convicted	As reflected in para-26 of the judgment	1 Year 11 Months 10 days

J U D G M E N T

Accused Kanha @ Santosh Khuntia stood charged for the offences punishable U/Ss. 376(AB)/376(2)(m)/363/342/323/294/506 of IPC, 1860 r/w Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to be as 'POCSO Act').

2. The case of the prosecution as per the FIR Ext. P-1 is that the daughter of the informant who is the victim in this case aged about 2½ years had accompanied her (informant) father to a nearby shop which was closed. So, both of them returned. The victim was playing outside the house of the informant. The accused took the victim from the father of the informant to his house on

the pretext of fondling her. After sometime, the father of the informant asked her to bring back the victim from the house of the accused for which she went there and found the victim was lying on the cot being fully naked with bleeding and the accused was sleeping on the ground. She suspected about the bad work of the accused with the victim. When the father of the informant confronted the accused, he chased him being armed with weapon. He also pelted stone for which out of fear, the informant and her family members present there entered inside their house. The accused also broke the gate. The informant and others left their house through 'bari' side. The informant and her father submitted a written report at Airfield Police Station, Bhubaneswar on 30.06.2024 at 11:30 PM and in absence of IIC, SI Jagannath registered PS Case No. 186 dtd. 30.06.2024 U/Ss. 376(AB) of IPC, 1860 r/w Section 6 of Protection of Children from Sexual Offences Act, 2012 and took up investigation.

During investigation, the IO has examined the informant and some other witnesses, made requisition to the scientific team for spot visit, visited Capital Hospital where the victim was undergoing treatment, seized the Birth Certificate of the victim along with the Mamata Card and Aadhar Card of the informant, sent the

victim for her medical examination, visited the spot, along with the scientific team in presence of the informant, seized the physical clues collected from the spot by the scientific officer, received the spot visit report from the SO, DFSL, Bhubaneswar, seized the wearing apparels of the victim and her biological samples, apprehended the accused, brought him to PS, examined him and thereafter he was arrested, seized wearing apparels of the accused, sent him for his medical examination, seized his biological samples, forwarded him to Court, received the medical examination report in respect of the accused, seized the OPD ticket and the admission card in respect of the victim and released those documents in zima of the informant, got the statement of the victim recorded U/S. 164 Cr.P.C, seized two numbers of Compact Disk (CD) containing the audio-visual statement of the informant, received the medical examination report of the victim, sent the exhibits to SFSL, Bhubaneswar and received the acknowledgment slip issued by the SFSL authority, Bhubaneswar. Thereafter, as per the order of ACP Zone-II, Bhubaneswar, SI Sri J. Tandi handed over the investigation of the case to IIC on 09.07.2024. During his investigation, he perused the case record, examined the

doctors who have medically examined the accused and the victim and after performing all other formalities of investigation, submitted charge sheet against the accused on 20.08.2024 U/Ss. 376(AB)/376(2)(m)/363/342/323/294/506 of IPC, 1860 r/w Section 6 of Protection of Children from Sexual Offences Act, 2012 to face his trial.

3. The plea of the accused is one of simple denial.

4. The points for determination are as follow:-

Whether on 30.06.2024, at Vill.- Panchagaon, the accused;

- (i) kidnapped the victim and committed rape on her who was below 12 years at that time;
- (ii) kidnapped the victim out of her lawful guardian;
- (iii) wrongfully confined the victim in a close room of his house;
- (iv) voluntarily caused hurt to the victim;
- (v) abused her in obscene language in or near a public place, causing annoyance to others;
- (vi) committed criminal intimidation by threatening the victim with dire consequence of life with intent to cause alarm to her;

(vii) committed aggravated penetrative sexual assault on the victim.

5. Out of 19 C.S witnesses prosecution choose to examine 13 witnesses and proved Exts. 1 to 22 to prove its case. P.W.1 is the father of the informant and P.W.2 is her sister. P.W.3 is the victim. P.W.4 is the informant. P.W.5 is the doctor who has medically examined the accused. P.W.6 is the ASI of police who is a witnesses to seizure. P.W.7 is the Havildar of police who produced the accused before the doctor for his medical examination and also a witness to seizures. P.W.8, P.W.10 and P.W.11 are witnesses to seizures. P.W.9 is the doctor who has medically examined the victim on police requisition. P.W.12 is the initial IO. P.W.13 is the subsequent IO who has submitted charge sheet against the accused after investigation.

6. At the outset, before going through the evidence adduced by the prosecution witnesses and appreciating in its proper perspective, this being a case under the provisions of the POCSO Act, it is the first and foremost duty of the Court to ascertain the age of the victim at the threshold. In order to establish an offence under the POCSO Act, it is crucial for the prosecution to prove the age of the victim beyond reasonable doubt, as

held in a catena of decisions. P.W.1 is the grandfather of the victim and P.W.4 is her mother. Both of them are signatories of the FIR Ext. P-1. On perusal of FIR, it transpires that the age of the victim was 2 ½ years on the date of the alleged occurrence on 30.06.2024. The contents of the FIR are proved by P.W.1 and P.W.4. During investigation, the IO has seized the Birth Certificate of the victim on production by her mother in presence of the witnesses and prepared the seizure list (Ext. P-3). During her Examination-In-Chief at Paragraph-7, P.W.4 has categorically deposed that police seized the Birth Certificate of the victim along with other documents on her production and prepared the seizure list Ext. P-3 and Ext. P-3/2 is her signature thereon. P.Ws 2 and 7 corroborates the evidence of P.W.4 relating to the seizure of the birth certificate of the victim by the IO and preparation of the Seizure List Ext. P-3/1 is signature of P.W.2 and Ext. P-3/3 is the signature of P.W.7 on the seizure list. The IO (P.W.12) also proved the seizure of birth certificate of the victim at the PS on 01.07.2024 at 08 AM, on production by her mother in presence of the witnesses and preparation of the seizure list Ext. P-3 and Ext. P-3/4 is his signature thereon. Admittedly, the birth certificate of the victim was released in zima of the

mother of the victim P.W.4 on execution of zimanama vide Ext. P-4. During her (P.W.4) examination in Court, she produced the Original Birth Certificate of the victim issued by the Registrar, Birth and Death, Jatni CHC which has been marked as Ext. P-5. On 27th July, 2020, in the case of *Sudhira @ Biswa Pratap Dalai Vs. Unknown* the Hon'ble Orissa High Court has been pleased to observe that in many cases the certificate issued by the Registrar of Birth and Death is accepted as authentic one since it is maintained by the public servant. On perusal of Ext. P-5, it is clear that the date of birth of the victim is 13.10.2021. It has been issued by a public servant who has prepared the same in due discharge of his public function. He is competent to issue the said certificate. The doctor who has medically examined the victim has been examined as P.W.9. From her evidence and the medical examination report of the victim it transpires that the age of the victim was greater than one year and lesser than 3 years at the time of her examination which appeared from the X-ray report.

7. As per Section 34(1) of the POCSO Act, where any offence is committed under the POCSO Act by a child, such child shall be dealt with under the provisions of the JJ Act, 2015. It is evident from the

conjoint reading of the POCSO Act, 2012 and Section 94 of the JJ Act, 2015 that whenever the dispute with respect to the age of the victim arises under the POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the JJ Act, 2015. Now, it is useful to extract the relevant portion of Section 94(2) of the JJ Act, 2015, which reads as follows:

- “ (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 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”.

8. The Hon’ble Supreme Court in the case of ***Jarnail Singh Vs State of Haryana*** reported in **(2013) 7 Supreme Court Cases 263** held that the provisions of the Juvenile Justice Act and Rules would equally apply to determine the age of both a victim of crime and a child in conflict with law. The same ratio has been reaffirmed by the judgment dated 18th July, 2023 of the Hon’ble Apex Court in the case of ***P. Yuvaprakash Vs State, represented by Inspector of Police, in Crl. Appeal No.(S) 1898 of 2023.***

So, from the materials on record in this case, it is clear that the victim was a child within the meaning of Section 2(d) of the POCSO Act at the time of the alleged occurrence being aged about 2 years 8 months 17 days.

9. For the sake of convenience and to avoid repetition, Points No. i, iii and viii are taken up together for discussion.

10. It is alleged in the FIR that on 30.06.2024, while the victim was with her grandfather (P.W.1), the accused took her to his house on the pretext of fondling her and after some time, she was found on a cot in the house of the accused being naked and with bleeding, where as the accused was sleeping below the cot. P.W.1 grandfather of the victim who is one of the informant in his evidence testified that the occurrence took place on 30th in the month of Asadha between 03:30 PM to 04 PM. According to him, he had taken the victim to nearby shop as she was crying but returned back as the shop was closed. It further transpires from his evidence that while the victim was on his lap and he was consoling her, the accused reached there, fondled her cheek and took her to his house with an assurance to provide her Guava. In his examination-in-chief, he further deposed that he entered inside his own house and asked his wife to bring back the

victim but as she was engaged in cooking, she asked the sister of the accused to bring the victim. It is also clear from his evidence that when the sister of the accused opened the door, she found the victim with a pool of blood and the floor was also stained with blood. According to him, he along with his wife and his daughter (mother of the victim) rushed to this spot and found the victim on the lap of the sister of the accused and the accused was sleeping on the floor by wearing a gamuchha and a white banian which was stained with blood.

11. P.W.4 is the co-informant and mother of the victim. In her Examination-In-Chief, she testified that occurrence took place on 30.06.2024 in between 3:30/04 PM while she was staying in the house of her father at Kothasahi, Panchagaon. It transpires from her evidence that her father had taken the victim to the nearby shop which was closed for which they returned and sat on the verandah of the rented house of her father. According to her at that time, the accused reached there and took the victim to his house for playing with other children available in his house and assured to provide her Guava. As the victim was ill and she did not return within a period of 15 to 20 minutes, she went to the house of the

accused and found the door has been closed, for which she asked the cousin sister of the accused to bring the victim. When the cousin sister of the accused pushed the door, P.W.4 found the accused was sleeping on the surface below the wooden bed being stained with blood below his waist and his gamuchha was also stained with blood. She further found the whole body of the victim was also stained with blood and lying on the wooden cot being unconscious without her chadi. At paragraph-5 of her Examination-In-Chief, she further deposed that she called her parents and handed over the victim to her mother and at that time, she found bleeding from the private part of the victim.

12. P.W.2 is the brother of P.W.4. He testified that on the date of occurrence, his father called him through telephone in between 06 to 06:30 PM and asked him to reach at rented house to take the victim to Hospital. According to him, when he returned to the rented house of his father, at Panchagaon Chowk he found all of them including the victim and accompanied them to Capital Hospital, Bhubaneswar. Admittedly, he does not know the accused or anything about the occurrence.

13. P.W.3 is the victim herself. As she appeared to be aged about 3 years, she was subjected to veracity test. She failed to speak anything for which her evidence could not be recorded. Form the evidence of IO; it is also clear that the victim who was aged about 3 years was not in a position to give her statement at the time of investigation. It is also clear from his evidence that the victim was under treatment at Capital Hospital, Bhubaneswar at the time of lodging of FIR for which he went to Capital PS and discussed with the doctor who was imparting treatment to the victim.

14. P.W.8 is the Asst. Professor, O & G Department PGIMER and Capital Hospital, Bhubaneswar who has medically examined the victim. On perusal of her evidence, it transpires that on 01.07.2024, at about 11:10 AM, constables Rumarani Sarangi and one Kailash Chadra Mallick brought and identified the victim for her medical examination and accordingly, she conducted the same after obtaining the consent of her mother P.W.4. She proved the medical examination report of the victim prepared by her vide Ext. P-8/6 and Ext. P-8/7 and Ext. P-8/8 are her signatures with seal on the medical examination report prepared by her. After due medical examination of the

victim, she formed her opinion as follows:

- i) There were injuries on the right cheek of the victim, which was swollen, edematous with multiple teeth marks and minor fresh tears;
- ii) Tear on upper lip without fresh bleeding;
- iii) Tear on inside of mouth towards right side;
- iv) Vaginal tear with bleeding per vagina;
- v) Her pants were blood stained, suggestive of forcible sexual intercourse;
- vi) There were fresh tears and bleeding from cheek and vagina, suggestive of forcible sexual intercourse, probably within last 24 hours of my examination;
- vii) Her vaginal swab did not show presence of spermatozoa due to heavy bleeding;
- viii) Her blood group is 'B' +ve;
- ix) The age of the victim was greater than one year and lesser than three years at the time of my examination, which appeared from the x-ray report;
- x) Her pubic hair had not developed;
- xi) From my examination, it was found that there was violent forcible sexual intercourse with the minor victim.

In column (vii) of the medical examination report prepared by the doctor, she has mentioned that accused (her neighbour) took the baby and had forcible sexual relationship with the baby (victim) and the family members found the baby in a blood soaked dress.

P.W.5 is the doctor who has examined the accused on 02.07.2024, being brought and identified by Havildar Pradeep Kumar Bisoi and Constable Kailash Chandra Mallick of Airfield PS. Pradeep Bisoi has been examined as P.W.7. From his evidence it transpires that on 02.07.2024, being directed by the IO, he took the accused to Capital Hospital, Bhubaneswar for his medical examination. According to him, he produced and identified the accused to the doctor before his medical examination and Ext. P-11 and Ext. P-11/3 are his signatures on the Medical Examination Form of the accused. After the accused was subjected to medical examination, the doctor P.W.5 has prepared the Medical Examination Report vide Ext. P-11/6 and Ext. P-11/7 is his seal and signature at the bottom of the report. After due examination of the accused, he formed his opinion as follows:

- i. From examination of the accused, there was nothing to suggest that the examinee was capable of performing sexual intercourse.
- ii. On genital examination, he found it was consistence with forcible penetrative sexual intercourse.
- iii. The plucked pubic hairs, air dried salivary gauge and urethral swab were collected and handed over to the accompanying police personal for chemical examination.

From his Cross-Examination, it is clear that he has mentioned the details of injuries available on the genital of the accused under column-xviii (e) of his report Ext. P-11/6.

15. Police seized all the documents relating to the treatment of the victim on production by the informant P.W.4 and prepared the seizure list, Ext. P-6 and Ext. P-6/1 is her signatures. She took zima of those documents from the IO on execution of zimanama (Ext. P-7). The IO (P.W.12) also testified that on 03.07.2024, he seized the OPD ticket in respect of the treatment of the victim at Capital Hospital, Bhubaneswar on production by her mother at the police station and prepared the seizure list vide Ext. P-6 and Ext. P-6/2 is his signature

thereon. He also proved the signature of the seizure witnesses Alok Behera and Pradeep Kumar Bisoi vide Ext. P-6/3 and Ext. P-6/4. The informant (P.W.4) produced the photo copy of the original OPD ticket which she had prepared from the original which has been marked as Ext. P-13 with objection on the ground that the photo copy of the document is inadmissible in evidence. On perusal of her evidence, it transpires that the original OPD ticket has been misplaced somewhere and she failed to find out the same in spite of all her efforts. In absence of the original, secondary evidence can be led. In this case as the informant has prepared the photo copy of the original OPD ticket which has been not traced, the secondary evidence i.e. Ext. P-13 is admissible in evidence. On perusal of Ext. P-13, it transpires that the victim was treated by the doctor as OPD patient on 30.06.2024 at 08:40 PM, vide OPD Registration No. 211012403237947. After going through the said document it also transpires that at the time of treatment of the victim there was bleeding from her genitalia.

16. The IO P.W.12 in his Examination-In-Chief, has deposed that on 30.06.2024, he directed constable D. Sahoo to guard the spot and he also visited the spot at 12:25 AM on the night of 01.07.2024. It is also clear

from his evidence that he sent requisition for deputation of scientific team to the spot and after such deputation on 01.07.2024 at 11:30 AM, he along with the scientific team visited the spot and prepared the spot map in Crime Detail Form vide Ext. P-19. According to him, the scientific team collected physical clues from the spot, sealed the same and also prepared the spot sketch map. At 01:40 PM, he seized one sealed parcel wrapped with paper containing yellow-white printed blood stain kantha marked 'A'; one sealed white colour envelope containing saline extract of blood in gauge cloth collected from kantha, marked as 'A1'; one sealed wrapped with paper containing white-red-blue strips blood stain bed-sheet marked as 'B'; one sealed envelope containing saline extract of blood in gauge collected from white-red-blue stripe blood stain bed-sheet, marked as 'B1'; one sealed parcel wrapped with paper containing blue colour jeans pant stained with blood, marked as 'C' and one sealed envelope containing sample gauge which was stained collected sample, marked as 'D' on production by the scientific officer DFSL, Bhubaneswar namely Sushree Sabinaya and prepared the seizure list Ext. P-12 in presence of the witnesses and Ext. P-12/3 is his signature thereon. P.W.6 Gobindara Chandra Nayak, A.S.I of

police, and P.W.7 the Havildar of police corroborates the evidence of the IO relating to the seizure of the aforesaid articles on production by the scientific officer on 01.07.2024 at 01:40 PM at the spot. The IO has received the spot visit report (Ext. P-20) from the SO DFSL, Bhubaneswar and Ext. P-20/1 is his signature on the said report. In the said spot visit report the scientific officer has clearly mentioned about the incriminating materials collected from the spot.

17. On 01.07.2024, at 01:55 PM, the IO has seized the wearing apparels of the victim on production by her mother at her rented house and prepared the seizure list Ext. P-2 in presence of the witnesses and Ext. P-2/4 is his signature thereon. P.W. 4, the mother of the victim in her evidence at Paragraph-7 has also deposed that police seized the wearing apparels of the victim stained with blood on her production, prepared the seizure list and Ext. P-2/2 is her signature thereon. P.W.2 the maternal uncle of the victim and P.W.7 the Havildar of police corroborates such evidence of the IO relating to the seizure of the wearing apparels of the victim. Ext.P-2 it transpires that one pink colour frock having blood stained (dried) and one red colour inner (chadi) having dried blood stained which were worn by the victim at the

time of occurrence were seized by the IO on production by the mother of the victim in presence of the witness P.W.7. Ext. P-21 is the prayer of the IO to the Court to send the exhibits to SFSL, Bhubaneswar which was allowed. Ext. P-22 is the forwarding letter of the Court and Ext. 22/1 is the signature of the IO thereon. The IO has sent the exhibits to SFSL, Bhubaneswar through Court. P.W.13 is the subsequent IO who took charge of investigation from P.W.12 the initial IO. From the evidence of P.W.13, it transpires that although he contacted the SFSL Authority, Bhubaneswar, he could not receive the Chemical Examination Report as it was not prepared by then.

18. The Ld. Counsel for the accused submitted that prosecution failed to produce the seized articles and the Chemical Examination Report. In absence of the Chemical Examination Report it cannot be said conclusively that the accused is the author of the alleged crime. According to him, the IO has seized the wearing apparels i.e. white colour printed shirt (synthetic) and one black colour white lining half pant (sports material) of the accused on his production and prepared the seizure list vide Ext. P-17. In column (vii) of the seizure list, the IO has specifically mentioned that during investigation,

he seized the wearing apparels of the accused which he had worn at the time of the alleged occurrence. There was no stain of blood or blood like material on the wearing apparels of the accused which makes the prosecution case doubtful. On perusal of the record, it transpires that P.W.1, the grandfather of the victim and P.W.4, the mother of the victim has specifically deposed in their evidence that they found the accused sleeping on the floor wearing a gamuchha. P.W.1 has also deposed that the accused was wearing a white banian. From the evidence of P.W. 1 it is clear that the gamuchha and the white banian worn by the accused was stained with blood. P.W.4 also in her evidence has clearly deposed that the gamuchha worn by the accused was stained with blood. The IO has examined P.W.4, the mother of the victim and recorded her statement U/S. 161 Cr.P.C on 30.06.2024. On perusal of such statement of P.W.4 it transpires that she has stated before the IO that accused was sleeping on the ground by wearing one gamuchha. Admittedly, the IO has not conducted investigation relating to the gamuchha and the banian which was worn by the accused during the occurrence. On perusal of the evidence of the IO (P.W.12), it transpires that on 02.07.2024, at about 06:30 AM, he got information that

accused was moving at Labanigiri hill for which he along with his staff went there, apprehended the accused, brought him to PS, arrested him after his examination and at 09:30 AM, he seized the wearing apparels on his production at the police station and prepared the seizure list (Ext. P-17) in presence of the witnesses. It is alleged that occurrence took place on 30.06.2024. From the evidence of P.Ws. 1 and 4 it is clear that occurrence took place in between 03:30 to 04 PM of 30.06.2024. The accused was apprehended only on 02.07.2024 and his wearing apparels were seized at 09:30 AM on the same day. It is not at all probable that on 02.07.2024, the accused was moving with the dress which he had worn at the time of occurrence on 30.06.2024. The IO has also not made investigation regarding the blood stained jeans pant which was recovered by the scientific team from the spot during their spot visit along with him. The IO has not properly investigated the case. However, the accused cannot take advantage of the lacuna in the investigation. It is the duty of the Court to ascertain the truth by separating the grain from the chaff. The evidence of P.Ws.1 and 4 that the accused took the victim from P.W.1, went inside his house, closed the door and after sometimes when the door was opened, they found the

victim on the cot and the accused was lying on the ground is reliable and trustworthy. During his cross-examination, the IO (P.W.12) admitted that he did not find any independent witness who had seen the removal of the victim by the accused and when the victim was taken back from his house. In absence of any independent witness, the evidence of P.W.1 and P.W.4 who are the close relations of the victim is to be scrutinized with great care and caution. Admittedly, there is no eye witness to the commission of rape on the victim by the accused for which the court is to consider the circumstantial evidence on record. On close scrutiny of the evidence of P.W.1 it is clear that the accused took away the victim from him. The doctor who has examined the victim has clearly deposed that on medical examination of the victim she found that there was violent forcible sexual intercourse with the minor.P.W.5 the doctor who has examined the accused also deposed that on his medical examination of the accused there was nothing to suggest that the examinee was not capable of performing sexual intercourse. It is also clear from his evidence that on examination of the genital of the accused, he found it was consistent with forcible sexual intercourse. During his Cross-Examination, he also

deposed that he has mentioned the details of injuries available on the genital of the accused in column (xviii)(e) of his report.

19. The spot visit report of the scientific team exhibit (P.-20) prepared during their spot visit along with the IO on 01.07.2024 corroborates the allegation of forcible physical relationship the accused with the victim. Prosecution successfully proved that the accused kidnapped the victim who was aged 2 years 8 months 17 days on 30.06.2024 at Panchagaon from her lawful guardianship and committed rape/aggravated penetrative sexual assault on her.

Point No.-ii

Although, prosecution has successfully proved that the accused has committed rape (aggravated penetrative sexual assault) on the victim, failed to prove that while committing rape he caused grievous bodily harm or maims or disfigures or endangers the life of the victim.

Point No.-iv

It is the case of the prosecution that the accused wrongfully confined the victim in a close room. From the evidence on record, it is clear that the accused took the victim inside his house, closed the door and committed rape on her in the said room. It is also clear from the

evidence on record that the sister of the accused brought the victim outside the said room by opening the door. So, it is clear from the evidence on record, that the accused took the victim inside the room and wrongfully confined her till she was rescued by his (accused) sister. So, prosecution successfully proved all the necessary ingredients of an offence U/S. 342 IPC.

Point No.-v

The doctor P.W.9 has medically examined the victim on 01.07.2024 at 11:10 AM and prepared her report vide Ext. P-8/6. From the evidence of the doctor and the report prepared by her, it transpires that there were injuries on the right cheek of the victim which was swollen, edematous with multiple teeth marks and minor face tears, tear on upper lip, tear on inside of mouth towards right side, vaginal tear with bleeding per vagina, fresh tears and bleeding from cheek and vagina, suggesting forcible sexual intercourse within last 24 hours of her examination. It is also clear from her evidence that she found that there was violent forcible sexual intercourse with the minor victim. The age of the victim was 2 years 8 months 17 days at the time of alleged occurrence where as the age of the accused was 24 years. From the manner of commission of the crime

by the accused it is clear that he has committed rape on the victim with the knowledge that he is likely thereby to cause hurt to the victim. So, prosecution proved all the necessary ingredients of an offence U/S. 323 IPC against the accused.

Point No.-vi

From perusal of evidence on record, it transpires that out of the witnesses examined on behalf of the prosecution, none has stated the actual words hurled by the accused at the time of alleged occurrence. There is also no evidence on record that the obscene languages hurled by the accused if any, caused annoyance to others. There is also no clear evidence that the occurrence took place in or near a public place. So, prosecution also failed to prove necessary ingredients of offence U/S. 294 IPC.

Point No.-vii

It is alleged that the accused committed criminal intimidation by threatening the victim with dire consequence with an intention to cause alarm in her mind. Admittedly, the victim was inside a close room while rape was committed on her by the accused. Absolutely, there is no evidence on record that the accused threatened the victim in any manner. There is also no evidence that the threatening to the victim by the

accused if any caused alarm to the victim or to any other person in whom she was interested. So, prosecution failed to prove necessary ingredients of offence U/S. 506 IPC.

20. Another fact which merits mention here is that in a case tried under the POCSO Act, the prosecution is always armed with the presumption in terms of Sections 29 & 30 of the POCSO Act, which are reproduced hereinbelow for better appreciation:

“Section 29: Presumption as to certain offences. –

Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

Section 30: Presumption of culpable mental state.-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation. – *In this Section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.”*

So, as per the above provisions, a reverse burden of proof lies on the accused to prove that he did not commit any act, as alleged, and also that he did not have the necessary *mens rea*. As a matter of fact, the accused failed to discharge such burden cast on him under the aforementioned provisions.

21. In the result, prosecution failed to prove offences U/S. 376(2)(m)/294/506 IPC against the accused. On an overall assessment of the quality of the evidence on record and on an assimilation of facts of the case, this Court is of the considered opinion that the prosecution has successfully proved its case against the accused under Sections U/S. 376 (AB)/363/323/342 IPC r/w Section 6 of POCSO Act.

22. Therefore, I hold the accused not guilty of the offences punishable U/S. 376(2)(m)/294/506 of the IPC for which he is acquitted therefrom U/S. 235(1) Cr.P.C. At the same time, I found him guilty U/Ss. 376 (AB)/363/323/342 IPC r/w Section 6 of POCSO Act.

23. It is not expedient to invoke the beneficial provisions of the Probation of Offenders Act to release the offender i.e. the convict, in view of the nature and gravity of the offences committed by him. Hence, the hearing on the quantum of sentence is taken up.

Ad hoc Additional Sessions Judge,
FTSC, Bhubaneswar

The judgment is typed directly on the computer to my dictation by the Stenographer attached to this Court, corrected by me and pronounced in the open Court this day the 17th June, 2026.

Ad hoc Additional Sessions Judge,
FTSC, Bhubaneswar

HEARING ON THE QUESTION OF SENTENCE:

24. The convict submitted to take up hearing on the question of sentence without deferring the case to a future date. Basing on the submission of the convict, hearing on the quantum of sentence is taken up today.

Heard the convict in person, his counsel, and the learned Special P.P. on the question of sentence. The Learned Counsel appearing for the convict submitted to take a liberal view while sentencing the convict, taking into consideration his age i.e. 24 years and that he is the first offender and sole bread earner of his family. On the other hand, the learned Special P.P. submitted to award maximum punishment to the convict in view of the heinous crime committed by him, its effect on the society at large, the intention of the legislature behind the POCSO Act, and rapid increase of such type of cases.

25. Before inflicting punishment to the convict, this Court is to consider the statutory provision contemplated under Section 42 of the POCSO Act. It provides that if an offence is committed under the POCSO Act along with Section 376 of the IPC, then sentence should be passed either under Section 376 IPC or under the provisions of the POCSO Act, where the punishment is greater in degree. In the present case, the quantum of punishment provided under Sections 376-AB of the IPC and 6 of the POCSO Act is same. This being a special Court set up to deal with POCSO related cases, I am inclined to inflict punishment to the convict only under Section 6 of the POCSO Act, without convicting him under both the offences which would equally serve the purpose.

26. In consideration of the above submissions and regard being had to the facts and circumstances of the case, the convict is hereby sentenced to undergo **R.I.** (Rigorous Imprisonment) for **30** (Thirty) **years**, and to pay a **fine** of **Rs.20,000/-** (Rupees Twenty Thousand), in default, to undergo **R.I.** for a further period of **06** (Six) **months** for the offence punishable under Section **6** of the **POCSO Act.**

Further, the convict is hereby sentenced to undergo **R.I.** for 07 (Seven) **years** and to pay a **fine** of **Rs.3,000/-** (Rupees Three Thousand), in default, to undergo **R.I.** for a further period of **02** (Two) **months** for the offence punishable under Section **363** of the **IPC**.

Further, the convict is hereby sentenced to undergo **R.I.** for 01 (One) **year** for the offence punishable under Section **323** of the **IPC**.

Further, the convict is hereby sentenced to undergo **R.I.** for 01 (One) **year** for the offence punishable under Section **342** of the **IPC**.

All the substantive sentences are directed to run concurrently.

27. The pre-conviction detention period undergone by the convict as Under Trial Prisoner (U.T.P.) be set off under Section 428 of the Cr.P.C against the substantive sentences.

28. The convict is apprised of the fact that he has a right to go on appeal against this judgment and order and, in this regard, he can also seek the help of the District Legal Services Authority, Khurda at Bhubaneswar. A free copy of the judgment be supplied to the convict forthwith.

29. The zimanamas vide Ext. P-4 and Ext. P-7 be cancelled; the Birth Certificate and Mamata Card under Ext. P-4 be retained by its zimadar and OPD Ticket and Admission Card of the victim under Ext. P-7 be destroyed. The seized wearing apparels & biological samples as well as the CD be destroyed, four months after expiry of the appeal period, if no appeal is preferred; in the event of appeal, the same be dealt with as per the orders of the Hon'ble Appellate Court.

Ad hoc Additional Sessions Judge,
FTSC, Bhubaneswar

The order of conviction and sentence is typed to my dictation by the Stenographer attached to this Court directly on the computer, corrected by me and pronounced in the open Court this day the 17th June, 2026.

Ad hoc Additional Sessions Judge,
FTSC, Bhubaneswar

Quantum of compensation to be granted to the victim under Section 33(8) of the POCSO Act:

30. In the decision reported in (2019) 2 SCC 703 (*Nipun Saxena Vs Union of India*), the Hon'ble Apex Court has elaborately guided the Courts to provide compensation to the victims in various cases.

As it appears, the father of the victim is a daily labourer and the victim was a school going student, at the time of occurrence.

Relying on the decision of the Hon'ble Apex Court in the case of *Nipun Saxena* (supra) and keeping in view all the facts and circumstances of the case, the physical and mental trauma caused to the victim, this Court feels it proper to award a sum of Rs.5,00,000/- (Rupees Five Lakhs) towards compensation as per Section 357-A of the Cr. P.C. and in accordance with the Odisha Victim Compensation Scheme, payable to the victim. If any interim compensation has been paid to the victim, the same shall be adjusted and the rest amount is directed to be paid to her. A copy of the judgment be forwarded to the Secretary, District Legal Services Authority, Khurda at Bhubaneswar for compliance of the order relating to the grant of compensation.

Ad hoc Additional Sessions Judge,
FTSC, Bhubaneswar

Typed to my dictation &
Corrected by me.

Ad hoc Additional Sessions Judge,
FTSC, Bhubaneswar

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A . Prosecution Witnesses		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
P.W.1	Sukanta Jena	Circumstantial Witness
P.W.2	Pankaja Jena	Seizure Witness
P.W.3	Victim	Occurrence Witness
P.W.4	Sunita Das	Informant
P.W.5	Dr. Motirmoy Giri	Medical Officer
P.W.6	Sridhar Nayak	Witnesses to Seizure
P.W.7	Pradip Kumar Bisoi	Seizure Witness
P.W.8	Manoj Kumar Pradhan	Seizure Witness
P.W.9	Dr. Samikshya Nanda	Medical Officer
P.W.10	Prabhat Kumar Dalai	Seizure Witness
P.W.11	Pradipta Ranjan Pattnaik	Witnesses to Seizures
P.W.12	Jagannath Tandi	Initial I.O
P.W.13	Sashikanta Rout	Subsequent I.O
B.Defence Witness, if any:		
RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL		
C.Court Witnesses, if any		
NIL		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. Prosecution Exhibits		
Sl. No.	Exhibit Number	Description
1	Ext. P-1	FIR
2	Ext. P-1/1	Signature of P.W.1 on Ext. P-1
3	Ext. P-1/2	Signature of P.W.4 on Ext. P-1
4	Ext. P-1/3	Endorsement with signature on FIR of P.W.12
5	Ext. P-1/4	Formal FIR
6	Ext. P-1/5	Signature of P.W.12 on Ext. P-1
7	Ext. P-2	Seizure List
8	Ext. P-2/1	Signature of P.W.2 on Ext. P-2
9	Ext. P-2/2	Signature of P.W.4 on Ext. P-2
10	Ext. P-2/3	Signature of P.W.7 on Ext. P-2
11	Ext. P-2/4	Signature of P.W.12 on Ext. P-2
12	Ext. P-3	Seizure List
13	Ext. P-3/1	Signature of P.W.2 on Ext. P-3
14	Ext. P-3/2	Signature of P.W.4 on Ext. P-3
15	Ext. P-3/3	Signature of P.W.7 on Ext. P-3
16	Ext. P-3/4	Signature of P.W.12 on Ext. P-3
17	Ext. P-4	Zimanama
18	Ext. P-4/1	Signature of P.w.4 on Ext. P-4
19	Ext. P-4/2	Signature of P.W.12 on Ext. P-4
20	Ext. P-5	Birth Certificate
21	Ext. P-6	Seizure List
22	Ext. P-6/1	Signature of P.W.4 on Ext. P-6
23	Ext. P-6/2	Signature of P.W.12 on Ext. P-6
24	Ext. P-6/3	Signature of Alok Behera on Ext. P-6
25	Ext. P-6/4	Signature of Pradeep Kumar Bisoi on Ext. P-6
26	Ext. P-7	Zimanama
27	Ext. P-7/1	Signature of P.W.4 on Ext. P-7
28	Ext. P-7/2	Signature of P.W.12 on Ext. P-7
29	Ext. P-8	Signature of P.W.4 as to consent of Medical Examination
30	Ext. P-8/1	Signature of R. Sarangi
31	Ext. P-8/2	Signature of K. C Mallick
32	Ext. P-8/3	Signature of R. Sarangi
33	Ext. P-8/4	Signature of R. Swain
34	Ext. P-8/5	Seal and Signature of P.W.9

35	Ext. P-8/6	Medical Examination Report
36	Ext. P-8/7	Seal and Signature of P.W.9
37	Ext. P-8/8	Seal and Signature of P.W.9
38	Ext. P-9	Statement recorded U/S. 164 Cr.P.C
39	Ext. P-9/1	Signature of P.W.4 on Ext. P-9
40	Ext. P-9/2	Signature of P.W.4
41	Ext. P-10	Statement recorded U/S. 164 Cr.P.C of father of the victim
42	Ext. P-10/1	Signature of father of the victim on Ext. P-10
43	Ext. P-10/2	Signature of father of the victim on Ext. P-10
44	Ext. P-11	Signature of Hav. P.K Bisoi
45	Ext. P-11/1	Signature of Constable K.C Mallick
46	Ext. P-11/2	Signature of accused
47	Ext. P-11/3	Signature of K. C Mallick
48	Ext. P-11/4	Signature of K.C Mallick
49	Ext. P-11/5	Signature of accused as to consent for medical examination
50	Ext. P-11/6	Medical Examination Report
51	Ext. P-11/7	Seal and Signature of P.W.5
52	Ext. P-12	Seizure List
53	Ext. P-12/1	Signature of P.w.6
54	Ext. P-12/2	Signature of Hav. P. K Bisoi
55	Ext. P-12/3	Signature of P.W.12 on Ext. P-12
56	Ext. P-13	Photo copy of OPD Ticket
57	Ext. P-14	Seizure List
58	Ext. P-14/1	Signature of P.W.7 on Ext. P-14
59	Ext. P-14/2	Signature of R Sarangi on Ext. P-14
60	Ext. P-14/3	Signature of ASI P.R Pattnaik
61	Ext. P-14/4	Signature of P.W.12 on Ext. P-14
62	Ext. P-15	Seizure List
63	Ext. P-15/1	Signature of P.W.7 on Ext. P-15
64	Ext. P-15/2	Signature of P. R Pattnaik
65	Ext. P-15/3	Signature of M. K Pattnaik on Ext. P-15
66	Ext. P-15/4	Signature of P.W.12 on Ext. P-15
67	Ext. P-16	Seizure List
68	Ext. P-16/1	Signature of P.W.7 on Ext. P-16
69	Ext. P-16/2	Signature of Const. K. C Mallick on Ext. P-16

70	Ext. P-16/3	Signature of P.W.12 on Ext. P-16
71	Ext. P-17	Seizure List
72	Ext. P-17/1	Signature of P.w.8 on Ext. P-17
73	Ext. P-17/2	Signature of C/836 on Ext. P-17
74	Ext. P-17/3	Signature of accused
75	Ext. P-17/4	Signature of P.W.12
76	Ext. P-18	Command Certificate
77	Ext. P-19	Spot Map
78	Ext. P-19/1	Signature of P.W.12 on Ext.P-19
79	Ext. 20	Spot Visit Report
80	Ext. P-20/1	Signature of P.W.12 on Ext. P-20
81	Ext. P-21	Prayer to the Court for sending the exhibits to SFSL, BBSR
82	Ext. P-21/1	Signature of P.W.12 on Ext. P-21
83	Ext. P-22	Forwarding Letter
84	Ext.P-22/1	Signature of P.W.12 on Ext. P-22
B. Defence Exhibits, if any		
Sl.No.	Exhibit Number	Description
NIL		
C. Court Exhibits, if any		
Sl.No.	Exhibit Number	Description
NIL		
D.Material Objects:		
Sl.No.	Material Object Number	Description
NIL		

Ad hoc Additional Sessions Judge,
FTSC, Bhubaneswar