



2026:AHC:145734-DB

A.F.R.
RESERVED ON 25.11.2025
DELIVERED ON 17.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 4676 of 2022

Sunil

.....Appellant(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for Appellant(s)	: P.k. Singh
Counsel for Respondent(s)	: Ajeet Kumar Madhesia, G.A., Shabana Nizam

Court No. - 45

HON'BLE SALIL KUMAR RAI, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Salil Kumar Rai, J.)

This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ("Cr.P.C.") is directed against the judgment and order dated 17.06.2022 passed by the Special Judge (POCSO Act)/Additional District and Sessions Judge, Varanasi in Special Sessions Trial No. 214 of 2017. By the impugned judgment, the appellant was convicted under Section 376(2)(i) of the Indian Penal Code, 1860 ("IPC") and Sections 5(m) and 5(n), read with Section 6, of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act"). He was sentenced to imprisonment for life, being imprisonment for the remainder of his natural life, and to pay a fine of Rs. 50,000/-, of which 80% was to be paid to the victim. The trial arose from Case Crime No. 800 of 2017,

initially registered under Section 376 IPC and Sections 3 and 4 of the POCSO Act at Police Station Rohaniya, District Varanasi.

The First Information Report in Case Crime No. 800 of 2017, under Section 376 IPC and Sections 3 and 4 of the POCSO Act, was lodged at 10:45 p.m. on 07.09.2017 by the father of the victim. According to the FIR, at about 12:30 p.m. on the same day, the victim came down crying from the terrace of the appellant's house. Blood was allegedly noticed on her undergarments and legs. The victim is stated to have told her mother that the appellant had taken her upstairs and done objectionable things ('*gandaa kaam*') with her and had fled when she began to cry. The victim was stated to be five years old on the date of the incident. The written report was exhibited as Exhibit Ka-2 before the Trial Court.

The record further indicates that, on the same night, the Investigating Officer caused the victim's statement to be recorded by Woman Sub-Inspector Pushpa Singh. The statement, recorded on a separate sheet, bears the right-thumb impression of the victim and the signatures of her mother and of Pushpa Singh. It was marked as Paper No. 7-Ka before the Trial Court. In that statement, the victim stated that the appellant had taken her to the terrace, made her lie down, positioned himself over her, and done objectionable things (*gandaa-kaam*) with her. The Sub-Inspector recorded that the victim was unable to say anything further.

The victim was examined by the Emergency Medical Officer at 11:55 p.m. on 07.09.2017. The medical report records no external or internal injury on her body. Two vaginal slides, an oral smear, and nail clippings were sent for pathological examination. The clothes handed over to the doctor were also collected by the Investigating Officer. The pathological report, received on 11.09.2017, disclosed no sperm. In the supplementary medico-legal report, the doctor noted that no definite opinion regarding recent sexual act could be given. The medical report

and supplementary medical reports were exhibited as Exhibits Ka-3 and Ka-4 before the Trial Court.

The appellant was arrested at 5:15 a.m. on 08.09.2017. He was medically examined at 12:13 p.m. on the same day by the Medical Officer, Community Health Centre, Misirpur, Varanasi. His medical report records no injury or other complication. The report is available on the Trial Court record as Paper No. 8-Ka/5. Although the prosecution did not formally prove it in trial and it was, therefore, not marked as an exhibit, the defence did not dispute its genuineness.

The victim's statement under Section 164 Cr.P.C. was recorded by the Judicial Magistrate on 10.11.2017, approximately two months after the incident. In that statement, while pointing towards her pelvic area, the victim stated that the appellant had hit her with his fist on the lower part of her body. She further stated that the appellant had opened his zipper and removed her undergarments. She also stated that she had bled, experienced pain, and that her undergarments were stained with blood. The statement was exhibited as Exhibit Ka-1 before the Trial Court.

Upon completion of the investigation, a charge-sheet was submitted under Section 376(2)(i) IPC and Sections 5(i) and 6 of the POCSO Act. Special Sessions Trial No. 214 of 2017 was registered before the Special Judge (POCSO Act)/Additional District and Sessions Judge, Varanasi. The appellant was charged under Section 376(2)(i) IPC and Sections 5(m) and 5(n), read with Section 6, of the POCSO Act. He denied the charges and claimed trial.

To establish its case, the prosecution examined the victim as PW-1; her father and the first informant as PW-2; her mother as PW-3; the doctor who examined the victim as PW-4; the clerk of Nagar Nigam, Varanasi as PW-5; the Investigating Officer who took over the investigation from 09.09.2017 as PW-6; and the Investigating Officer who conducted the investigation on 07.09.2017 and 08.09.2017 as PW-7.

In her examination-in-chief, PW-1 reiterated that the appellant had done objectionable or "dirty" things (*gandaa kaam*) with her. She stated that the appellant made her lie down on a bed, withdrew her undergarments, and positioned himself above her. According to her, the appellant fled when she cried in pain. She stated that she informed her mother and that she later went to the police station with her father and told everything to the "police aunty". PW-1 proved her statement under Section 164 Cr.P.C., although she could not identify the photographs affixed to the memorandum containing that statement. She did not depose before the trial court that she had bled. During cross-examination, when asked what she meant by "*gandaa kaam*", PW-1 remained silent.

PW-2 proved the written report and deposed that he learnt of the incident from his wife and father upon returning home. He initially stated that the victim was sad and crying and had narrated the incident to him. In cross-examination, however, he stated that the victim was asleep when he reached home and did not tell him anything. He further stated that he, his father, and his wife approached the Gram Pradhan, but the Pradhan's husband declined to intervene. PW-2 stated that a hospital and three to four medical practitioners were available in the village. He had worked in the healthcare sector for ten years and ordinarily consulted Dr. Manoj Kumar Singh when members of his family fell ill. He stated that the family first went to the Pradhan and thereafter purchased antibiotics and painkillers for the victim from a nearby medical store in the evening. He denied any dispute between the two families regarding the flow of water over his plot. His evidence also shows that he was employed with Punjab National Bank.

PW-3, the mother of the victim, stated that the victim was aged four years and ten months on the date of the incident. She deposed that, upon hearing the victim cry, she noticed blood on the undergarments of the victim and was told by the victim that the appellant had hit her genital area. In cross-examination, PW-3 stated that she did not consult a doctor for the victim. She denied that PW-2 was present at the police

station on 07.09.2017 and stated that, at the request of persons present at the police station, she signed the documents prepared there.

PW-4, the Emergency Medical Officer who examined the victim, proved the medical and supplementary medical reports. She stated that there were no external or internal injury on the victim's body, that the hymen was intact, and that the examination was otherwise normal. There was no bleeding or other discharge from any part of the victim's body, and no injury was found in or around the genital region. PW-4 further stated that the victim's undergarments were collected and handed over to the police for DNA examination.

PW-5, a clerk of the Municipal Corporation, Varanasi, proved the relevant entries in the Register of Births and Deaths and the birth certificate issued by the Corporation. The certificate records the victim's date of birth as 13.10.2013 and was exhibited as Exhibit Ka-5.

PW-7, who investigated the case on 07.09.2017 and 08.09.2017, stated in his cross-examination that the victim had told him that the appellant had taken her to the terrace and done dirty things with her. The witness also stated that senior police officers, including the Circle Officer and the SPRA, visited the place of occurrence on the following day.

PW-6, who investigated the case from 09.09.2017 onwards, was a formal witness. He stated that no laboratory report was filed and that he did not seek the assistance of any expert while inspecting the place of occurrence. He found nothing significant at the site; no blood, clothes, or instrument was recovered therefrom.

In his statement under Section 313 Cr.P.C., the appellant denied the charges and his presence at the spot. He asserted that he was innocent, that the investigation was not fair, and that the prosecution witnesses had deposed falsely. In defence, he examined three witnesses in support of his plea.

The defence examined as D.W.-1 the husband of the Gram Pradhan, referred to in the evidence of PW-2 and PW-3, and also

examined two village residents as DW-2 and DW-3. According to these witnesses, there existed a dispute between the two families regarding the flow of water over the first informant's plot, which had caused bitterness between the families. They stated that a panchayat had been convened in connection with the dispute. DW-1 stated that, at the panchayat held on 20.08.2017, the first informant threatened to have the appellant's father sent to jail. DW-2 stated that the first informant threatened to have every member of the appellant's family, including the appellant, sent to jail.

The Trial Court held that the testimony of PW-1 was trustworthy and substantially consistent with her statement recorded under Section 164 Cr.P.C. It further held that the allegation of sexual assault remained unchallenged as the defence had not cross-examined PW-1 on that aspect. The Trial Court was of the view that the prosecution case stood proved notwithstanding the medical evidence, observing that ocular evidence ordinarily prevails over medical opinion. It also invoked the statutory presumption under Section 29 of the POCSO Act and held that the appellant had failed to rebut the same. The defence evidence was discarded on the ground that the defence witnesses were not consistent regarding the date and nature of the alleged prior dispute. On those grounds, it recorded the conviction and imposed the sentence.

Learned counsel for the appellant submits that the prosecution has failed to establish the foundational facts necessary to sustain the charge of penetrative sexual assault or to invoke the presumption under Section 29 of the POCSO Act. It is argued that the medical evidence, comprising the medical reports and the testimony of PW-4, fundamentally contradicts the ocular version of PW-1 and PW-3. According to the prosecution, the victim had suffered bleeding following the assault; however, the medical examination, conducted on the very day of the incident, disclosed no external or internal injury, no injury to the genital region, and no bleeding, rendering the prosecution version inherently improbable. It is further submitted that the victim's silence in cross-examination when asked to explain what she meant by "objectionable things" (*gandaa kaam*) creates serious ambiguity regarding the allegation

of penetration. Counsel further contends that the statement of the victim under Section 164 Cr.P.C., recorded after an unexplained delay of about two months, cannot be treated as substantive evidence or relied upon to supply material facts not deposed to by the victim before the Trial Court. It is also argued that the prosecution failed to produce the victim's clothes or the forensic laboratory reports, despite their collection during investigation, thereby withholding material evidence. Attention is also drawn to the conduct of PW-2 and PW-3 in not obtaining immediate medical treatment for the child despite alleging bleeding, which, according to the appellant, is inconsistent with ordinary human conduct. Lastly, it is submitted that the Trial Court erroneously rejected the defence evidence on the basis of insignificant discrepancies while overlooking the substance of the defence case. The appellant, therefore, prays that the judgment and order dated 17.06.2022 be set aside and that he be acquitted of the charges.

Learned AGA, replying for the State, submits that the testimony of PW-1 is consistent and inspires confidence. It is argued that medical evidence is not indispensable in a prosecution for sexual assault and cannot override otherwise reliable ocular evidence. The prosecution further submits that a child victim cannot be expected to give a graphic or technically precise account of the incident and that her evidence must be assessed with sensitivity. According to the prosecution, the foundational facts were proved, the presumption under Section 29 was correctly invoked, and the appeal is liable to be dismissed.

We have given our anxious consideration to the rival submissions and carefully perused the original record.

While recording conviction, the Trial Court invoked Section 29 of the POCSO Act and held that the appellant had failed to rebut the statutory presumption. It is, therefore, appropriate to reproduce Sections 29 and 30 of the POCSO Act:

“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.

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.”*

Sections 29 and 30 of the POCSO Act embody statutory reverse-onus provisions, constituting an exception to the ordinary rule of criminal jurisprudence that every accused is presumed innocent until proved guilty beyond reasonable doubt. The validity and operation of such provisions are, however, conditioned upon fairness and reasonableness under Articles 14 and 21 of the Constitution. Consequently, the statutory presumptions do not arise automatically upon the institution of a prosecution but become operative only after the prosecution has first established, by legally admissible evidence, the foundational facts necessary to attract them.

The principles governing reverse-onus provisions have been authoritatively explained by the Supreme Court in ***Noor Aga v. State of Punjab (2008) 16 SCC 417***, while interpreting Sections 35 and 54 of the NDPS Act. The Court held that although reverse burdens are constitutionally permissible, such provisions must be strictly construed and can operate only after the prosecution has proved the foundational facts beyond reasonable doubt. Having regard to the stringent consequences flowing from such provisions, the Court emphasised that the prosecution's evidence must be subjected to heightened judicial scrutiny and reiterated the settled principle that suspicion, however grave, can never substitute legal proof. Once the foundational facts are established, the evidentiary burden shifts to the accused, who is required

to rebut the statutory presumption only on the standard of a preponderance of probabilities.

The same principle was reiterated in **Gorakh Nath Prasad v. State of Bihar (2018) 2 SCC 305**, wherein the Supreme Court held that the mere registration of a case under a statute incorporating a reverse burden does not, by itself, shift the burden of proof to the accused. The prosecution must first establish a *prima facie* case by strict compliance with the statutory requirements, and any reasonable doubt at that stage must necessarily enure to the benefit of the accused.

The same principles were applied by the Calcutta High Court in **Subrata Biswas v. State (2019) SCC OnLine Cal 1815** and **Sahid Hossain Biswas v. State of West Bengal (2017) SCC OnLine Cal 5023** while considering Section 29 of the POCSO Act. The Court held that the prosecution must first lay the foundation of its case through cogent, reliable and legally admissible evidence, free from patent absurdity or inherent improbability, before the statutory presumption can be invoked. The presumption does not require the Court to mechanically accept the prosecution version as gospel truth, nor does it relieve the Court of its obligation to evaluate the credibility, probability and inherent consistency of the prosecution evidence.

The Kerala High Court in **Justin v. Union of India (2020) SCC OnLine Ker 4956**, identified the foundational facts which ordinarily require proof in a prosecution under the POCSO Act, namely, that the victim was a child within the meaning of the Act, that the alleged incident occurred, and that the accused committed the offence. Where the prosecution relies upon physical injury as a material circumstance in support of the charge, the allegation must ordinarily be supported by the medical evidence or the inconsistency satisfactorily explained.

The same approach has been adopted by a Division Bench of this Court in **Monu Thakur v. State of U.P. (2022) SCC OnLine All 1098** wherein it has been held that the statutory presumption does not dispense with the prosecution's obligation to prove, by legally admissible evidence, the foundational facts relating to the commission of the offence by the

accused. Mere registration of a case or submission of a police report does not shift the burden to the accused. Such an interpretation alone preserves the constitutional validity of Section 29 by ensuring that the reverse burden operates consistently with the guarantees of fairness embodied in Articles 14 and 21 of the Constitution.

As regards the manner in which the statutory burden may be discharged, the Supreme Court in *Abdul Rashid Ibrahim Mansuri v. State of Gujarat (2000) 2 SCC 513*, held that an accused is not required to prove his innocence beyond reasonable doubt. The burden may be discharged by relying upon the prosecution evidence itself, by eliciting favourable admissions during cross-examination, by exposing contradictions, omissions, inherent improbabilities or patent infirmities in the prosecution case, or, where necessary, by leading defence evidence. The standard of proof required of the accused remains only that of a preponderance of probabilities.

The cumulative effect of the aforesaid authorities is that the statutory presumptions contained in Sections 29 and 30 of the POCSO Act do not displace the Court's fundamental duty to scrutinise the prosecution evidence with care. Before the presumption can be invoked, the prosecution must establish the foundational facts by legally admissible and reliable evidence. Only thereafter does the evidentiary burden shift to the accused, who may rebut the presumption on a preponderance of probabilities by leading defence evidence or by demonstrating, from the prosecution evidence itself, material inconsistencies, omissions, inherent improbabilities or other infirmities which render the prosecution case doubtful. The statutory presumption is thus a rule of evidence and not a substitute for proof of the foundational facts upon which its operation depends.

The appellant was charged under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act and under Section 376(2)(i) IPC. The alleged incident occurred on 07.09.2017. It is, therefore, appropriate to reproduce the relevant provisions of the POCSO Act as they stood on that date:

“3. Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault.—Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which ***shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.***

5. Aggravated penetrative sexual assault.— (m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

6. Punishment for aggravated penetrative sexual assault.— Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which ***shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.***

7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term ***which shall not be less than three years but which may extend to five years, and shall also be liable to fine.***

9. Aggravated sexual assault.— (m) whoever commits sexual assault on a child below twelve years; or

(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or

10. Punishment for aggravated sexual assault.—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which ***shall not be less than five years but which may extend to seven years, and shall also be liable to fine.***”

The POCSO Act was subsequently amended by Act No. 25 of 2019, notified in the Gazette of India on 06.08.2019 and brought into force on 16.08.2019. Among other provisions, the amendment altered Sections 4 and 6 of the Act. The amended provisions read as follows:

“4. Punishment for penetrative sexual assault.—[(1)] Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term **which shall not be less than [ten years]** but which may extend to imprisonment for life, and shall also be liable to fine.

*[(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which **shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.***

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

6. Punishment for aggravated penetrative sexual assault.—(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term **which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.**

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]”

The appellant could have been convicted and sentenced under Sections 4 and 6 of the POCSO Act, as they stood on the date of the incident, only if the prosecution proved the ingredients of Section 3 read with Sections 5(m) and 5(n) of the Act. The alleged offence was committed on 07.09.2017, before Act No. 25 of 2019 came into force. In view of Article 20(1) of the Constitution, the appellant could not be sentenced under the enhanced provisions introduced by that amendment. The appellant was also charged under Section 376(2)(i) IPC, which, in 2017, prescribed rigorous imprisonment of not less than ten years and which could extend to imprisonment for life, meaning imprisonment for the remainder of the offender's natural life, for rape of a woman under sixteen years of age. That provision was subsequently omitted by Act No. 22 of 2018, with effect from 21.04.2018. Section 376(3) was thereafter inserted and provided as follows:

*“(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term **which shall not be less than twenty years**, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:*

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.]”

The appellant could have been convicted and sentenced under Section 376(2)(i) IPC, as it stood in 2017, only if the prosecution proved the ingredients of rape under Section 375 IPC. The Trial Court convicted the appellant under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act and under Section 376(2)(i) IPC, after invoking the presumption under Section 29 of the POCSO Act. It nevertheless imposed sentence under Section 376(2)(i) IPC, apparently to award the maximum available sentence rather than under Sections 4 or 6 of the POCSO Act as they stood before the 2019 amendment.

The presumptions under Sections 29 and 30 of the POCSO Act are confined to the offences specified in that Act. They do not apply to an offence punishable under the IPC, nor can they be used to impose a sentence under the IPC that was unavailable under the POCSO Act as it stood on the date of the alleged offence. The appellant could not have been sentenced to imprisonment for the remainder of his natural life under the POCSO Act as it stood in 2017; that sentence was available only under Section 376(2)(i) IPC. It would be impermissible to hold an accused guilty with the aid of a reverse-onus provision in one statute and then impose, under another statute that contains no such presumption, a punishment that the first statute did not then authorise. Such an approach would be arbitrary and inconsistent with the guarantees under Articles 14 and 21 of the Constitution.

The view that Sections 29 and 30 of the POCSO Act apply only to offences specified in that Act, and not to offences under another statute including the IPC, finds support in paragraph 36 of the judgment of a Division Bench of this Court in *Monu Thakur (supra)*.

“36. At this stage, we may clarify that though the presumptive provisions contained in sections 29 and 30 are there in the Act but their operation is limited to the offences specified therein. No doubt, by virtue of sub-section (2) of section 28 of the Act, while trying an offence under the Act, a Special Court has also to try an offence other than the offence referred to in sub-section (1) of section 28 of the Act (i.e. the offences punishable under the Act), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial but, as the presumptive provisions of section 29 are applicable only to the offences specified therein, they would not apply to prove an offence of murder punishable under section 302 IPC. In our view therefore, the trial court completely misunderstood the true import of the presumptive provisions contained in section 29 of the POCSO Act.”

(emphasis supplied)

The Trial Court appears to have been influenced by the gravity of the allegations while recording conviction and imposing sentence. A court, however, must assess the prosecution case dispassionately and with complete objectivity. The seriousness of an accusation cannot be allowed to cloud judicial clarity either in determining guilt or in imposing sentence.

The allegations in the present case are undoubtedly grave: the appellant was charged with rape and aggravated penetrative sexual assault upon a five-year-old child. The age of the victim was not seriously disputed by the defence. In any event, her date of birth was proved through the relevant certificate and the evidence of the concerned officer of the local body. No challenge to the Trial Court's finding on age has been raised in this appeal. Nevertheless, as observed in *Noor Aga (supra)*, the more serious the charge, the greater the care required in assessing whether the prosecution had discharged its burden.

The prosecution case rests principally on the evidence of PW-1, the victim, and PW-3, her mother. The defence submits that the prosecution failed to establish the foundational facts for an offence under Sections 3 and 5 of the POCSO Act and also failed to prove the charge under Section 376(2)(i) IPC beyond reasonable doubt. It is unnecessary to restate the evidence, which has already been set out. The Trial Court treated the testimony of PW-1 as corroborated by her statement under Section 164 Cr.P.C. For reasons stated below, however, it would not be safe to sustain the conviction under Sections 3 and 5 of the POCSO Act

or under Section 376(2)(i) IPC on the evidence of PW-1 and PW-3. It is true that conviction for rape may rest upon the sole testimony of the prosecutrix if it inspires confidence; but there is no rule or presumption that such testimony is invariably free from embellishment or exaggeration.

Penetration is the *sine qua non* of rape under Section 375 IPC and of penetrative sexual assault under Section 3 of the POCSO Act, except in cases falling under Section 3(d), which is not the prosecution case here. In her statement on Paper No. 7-Ka, the victim stated that the appellant made her lie down, positioned himself over her, and did dirty things to her. In her deposition before the Court also, the victim did not state anything about bleeding. In her statement under Section 164 Cr.P.C., she stated that the appellant struck her genital area with his fist and did dirty things to her and she bled. It was only in the statement under Section 164 Cr.P.C. that she said she bled and that her undergarments were stained with blood. There is no specific allegation of penetration by the victim. A reading of the Trial Court's judgment indicates that penetration was inferred from the allegation of bleeding.

A significant feature of the case is that the victim was medically examined at 10:45 p.m. on the date of the alleged occurrence, that is, within about twelve hours. The medical report records no external or internal injury and states that the examination was normal. PW-4 also testified that no abnormality was detected; there was no vaginal bleeding; and no injury was found on or around the private parts. The appellant contends that the medical evidence belies the prosecution case, whereas the State submits and the trial court has held that credible ocular evidence prevails over medical evidence.

It is settled that a credible ocular account cannot ordinarily be displaced merely because medical opinion suggests an alternative possibility. Medical evidence is essentially corroborative and opinionative in character, whereas ocular testimony constitutes substantive evidence. This principle, however, does not diminish the evidentiary value of objective medical findings. The presence or absence

of visible injuries recorded during a medical examination is a matter of direct observation and not merely expert opinion. Consequently, where contemporaneous medical findings are wholly inconsistent with the prosecution's ocular version or render it inherently improbable, the inconsistency becomes a relevant circumstance in the appreciation of evidence and may disclose a fundamental defect in the prosecution case.

At this stage, we refer to decisions of the Supreme Court concerning the significance of medical evidence when it is inconsistent with ocular evidence.

The Supreme Court has consistently held that, as a general rule, credible ocular evidence prevails over medical evidence. In ***Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606*** (para 17), it was held that medical evidence is ordinarily opinionative and that an adverse inference may be drawn only where the medical evidence specifically rules out the injuries alleged by the eyewitnesses. The same principle was reiterated in ***State of U.P. v. Hari Chand (2009) 13 SCC 542*** (para 13), wherein it was observed that oral evidence has primacy unless it is wholly irreconcilable with the medical evidence. In ***Bhajan Singh v. State of Haryana (2011) 7 SCC 421*** (para 38), the Court crystallised the law by holding that although ocular testimony ordinarily carries greater evidentiary value, medical evidence assumes significance where it renders the ocular version improbable, and where it completely excludes the possibility of the ocular account being true, the Court may legitimately disbelieve such testimony.

The same principle was reiterated in ***Kapildeo Mandal v. State of Bihar (2008) 16 SCC 99*** (paras 23 & 27), wherein the eyewitnesses attributed firearm injuries to the accused whereas the medical evidence conclusively established the absence of any firearm injury. Referring to ***Mani Ram v. State of Uttar Pradesh 1994 Supp (2) SCC 289*** (para 9), the Supreme Court held that where direct evidence was wholly inconsistent with medical evidence on a material aspect of the prosecution case, and the inconsistency remains unexplained, such inconsistency constitutes a

fundamental defect which may not merely discredit the ocular testimony but may undermine the prosecution case itself.

The aforesaid principles apply equally to prosecutions for rape and offences under the POCSO Act, subject to an important qualification. The mere absence of injuries on the person of the prosecutrix does not, by itself, falsify the allegation of sexual assault, nor is medical corroboration an indispensable requirement in every case. Whether the absence of injuries is of any significance depends upon the facts and circumstances of the particular case. In *Sadashiv Ramrao Hadbe v. State of Maharashtra (2006) 10 SCC 92* (para 9), reiterated in *Manak Chand v. State of Haryana (2024) 20 SCC 561*, the Supreme Court held that although an accused may be convicted on the sole testimony of the prosecutrix if it inspires confidence, the Court would be justified in declining to act upon such solitary testimony where it is unsupported by medical evidence and the surrounding circumstances render the prosecution version highly improbable.

Similarly in *Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21* (para 22), the Supreme Court explained that a conviction may safely rest on the sole testimony of the prosecutrix only where she is a "sterling witness", namely, a witness of such impeccable quality whose testimony inspires implicit confidence. *The Court held that the hallmark of a sterling witness is the consistency of her version "right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court". Equally important, the Court observed that such testimony should correlate with the other supporting material, including the recoveries made, the manner in which the offence was committed, the scientific evidence and the expert opinion.* The Court likened this test to that applicable in cases based on circumstantial evidence, observing that there should be no missing link in the chain of circumstances before the testimony can be accepted as sufficient, by itself, to sustain a conviction. Thus the consistency of the prosecutrix's testimony, both internally and with the surrounding objective evidence, remains an important test in evaluating whether her evidence is of

sterling quality and capable of sustaining a conviction without further corroboration. The tests formulated in Rai Sandeep are cumulative and not independent. The testimony must be consistent from its inception, withstand cross-examination, and harmonise with the objective evidence, including the medical and scientific evidence. A material break in this chain may deprive the witness of the character of a "sterling witness" and require the Court to seek assurance from other reliable evidence before recording a conviction.

The aforesaid decisions do not lay down conflicting principles. They merely recognize that while the testimony of the prosecutrix may, in an appropriate case, by itself sustain a conviction, the Court cannot ignore contemporaneous medical, scientific or other objective evidence which fundamentally contradicts a material assertion forming the substratum of the prosecution case.

The cumulative effect of the above authorities is that while trustworthy ocular testimony ordinarily prevails over medical opinion, the Court cannot ignore contemporaneous medical findings which conclusively negate a material factual assertion made by the prosecution. In prosecutions for rape or penetrative sexual assault, the absence of injuries is not, by itself, decisive; however, where the prosecution itself relies upon a specific allegation of bodily injury or bleeding and the contemporaneous medical examination completely negatives such assertion without any satisfactory explanation, the inconsistency assumes considerable significance in evaluating whether the prosecution has proved its case beyond reasonable doubt.

We may now advert to the facts of the present case. In light of the aforesaid principles, the pivotal question is whether the prosecution has succeeded in establishing the foundational facts necessary to sustain the charge of penetrative sexual assault against the appellant and thereby attract the statutory presumption under Section 29 of the POCSO Act. In answering that question, the ocular testimony cannot be evaluated in isolation but must be examined in conjunction with the contemporaneous

medical evidence and the other attending circumstances appearing on the record.

1. In her initial statement to the Woman Sub-Inspector, recorded as Paper No. 7-Ka, the victim did not state that the appellant's act caused bleeding, that her undergarments were stained with blood, or that blood was present on her legs. This was her earliest statement to the investigating agency. She stated only that the appellant had taken her to the terrace, made her lie down, positioned himself over her, and done dirty things to her. The record notes that she said nothing further. The absence of any reference to bleeding in this first statement, as well as in her deposition before the Court, raises a serious doubt about the subsequent allegation of bleeding made in the statement under Section 164 Cr.P.C., which was recorded two months later. PW-1 stated that she had told everything to the police aunty at the police station. Given the age of the child, the possibility that she was subsequently influenced by PW-2 and PW-3 before her statement under Section 164 Cr.P.C. cannot be excluded. The later statement may, therefore, contain an improvement. Though Paper No. 7-Ka may attract Section 162 Cr.P.C., it has been considered to assess the veracity of the witness, particularly as it bears the signature of the victim's mother and the right-thumb impression of the victim. This circumstance requires careful scrutiny of the prosecution evidence.

2. A statement under Section 164 Cr.P.C. is not substantive evidence and may be used only to corroborate or contradict the testimony of its maker. The victim did not state in her deposition before the Court that she bled. The statement under Section 164 Cr.P.C. could not, therefore, corroborate a fact not deposed to before the Court. To read the allegation of bleeding from the Section 164 statement as substantive evidence would be impermissible. The Trial Court consequently erred in relying upon that statement while recording conviction under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act and under Section 376(2)(i) IPC.

3. The incident is alleged to have occurred on 07.09.2017, whereas the victim's statement under Section 164 Cr.P.C. was recorded on 10.11.2017, almost two months later. The prosecution has not explained this delay. PW-7 stated that senior police officers, including the Circle Officer and the SPRA, visited the place of occurrence on the following day. Despite such attention to the case, no prompt effort was made to have the victim's statement recorded under Section 164 Cr.P.C.

4. The doctor handed over the victim's clothes to the police for forensic examination. The prosecution, however, did not file any laboratory report that could establish whether the clothes bore blood stains.

5. The record shows that the appellant was arrested at about 5:15 a.m. on 08.09.2017 and was thereafter medically examined. The report, available as Paper No. 8-Ka/5, notes no injury on his person. Although the report was filed by the prosecution and forms part of the Trial Court record, it was not formally proved or marked as an exhibit. The defence did not dispute its genuineness and it may, therefore, be read in evidence under Section 294(3) Cr.P.C. Section 294 Cr.P.C. is reproduced below:

“294. No formal proof of certain documents.

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person by whom it purports to be signed;

Provided that the Court may, in its discretion, require such signature to be proved.”

It would also be apt to refer to the judgment of the Supreme Court in ***Akhtar v. State of Uttaranchal, (2009) 13 SCC 722*** wherein the Court observed in paragraph 21 as follows:

“21. It has been argued that non-examination of the medical officers concerned is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports

and the post mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 of the CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-Section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined.”

(emphasis supplied)

The absence of any injury on the appellant further supports the possibility that neither penetration nor the alleged bleeding occurred in the manner claimed by the prosecution.

6. PW-1, PW-2, and PW-3 stated that medical practitioners were available in the village and that the family ordinarily consulted them when required. Yet PW-2 and PW-3 did not promptly consult a medical practitioner for the victim. Instead, after returning from the residence of the Gram Pradhan in the late evening, they purchased antibiotics and other medicines from a medical store. In the circumstances alleged by the prosecution, this conduct is difficult to reconcile with the claim of bleeding, in which case, the child required prompt medical attention. PW-2 and PW-3 do not appear, from their evidence, to be illiterate or wholly unaware of the need to seek medical assistance. For the same reason, the testimony of PW-3 that she noticed blood on the clothes of the victim does not inspire confidence.

The foregoing deficiencies require a closer examination of the medical evidence to assess the reliability of the ocular account. The medical examination recorded no external or internal injury on the victim's body. The prosecution case is one of penetrative sexual assault accompanied by bleeding in a child of about five years of age. As the victim was examined at about 10:45 p.m., within approximately ten hours of the alleged occurrence at 12:30 p.m., the Court would ordinarily expect some corresponding sign of bodily injury or trauma if the allegation of bleeding were correct, unless the absence of such finding were medically explained. No such explanation has been offered. It is

difficult to reconcile the categorical assertion of PW-3 that blood was present on the victim's undergarments and legs with the complete absence of external or internal injury in the contemporaneous medical examination. The victim's earliest statement to the Sub-Inspector did not mention bleeding; it stated only that the appellant made her lie down, lay over her, and did dirty things to her. The conduct of the parents, who did not promptly seek medical attention and instead first approached the Gram Pradhan, is also a circumstance to be assessed in the overall factual context. The Trial Court did not evaluate these aspects in their proper perspective. It mechanically applied the general proposition that credible ocular evidence ordinarily prevails over medical evidence without examining whether that principle was attracted on the particular facts. The question is not whether medical evidence invariably prevails over ocular testimony, but whether the prompt medical findings are so fundamentally inconsistent with the prosecution version that they undermine the reliability of the ocular account. In the present case, the allegation of penetrative sexual assault accompanied by substantial bleeding receives no support from the contemporaneous medical evidence. This unexplained inconsistency goes to the root of the case and creates a serious doubt regarding the allegation of penetrative sexual assault.

In view of these shortcomings and the principles stated in *Rai Sandeep (supra)*, PW-1 cannot be regarded as a sterling witness in relation to the allegation of penetrative sexual assault. The delayed statement under Section 164 Cr.P.C. raises a serious possibility of improvement in the allegation of bleeding. It would, therefore, be unsafe to rely upon the evidence of PW-1 and PW-3 concerning bleeding, particularly when it receives no support from the medical evidence. We also note the defence case that the appellant was falsely implicated because of enmity between the two families. The Trial Court rejected that defence on the superficial ground that the defence witnesses differed regarding the date of the panchayat. That ground was insufficient to discard the defence evidence in its entirety.

The Trial Court held that the appellant had failed to rebut the presumption under Section 29 because the defence did not cross-examine the victim on the allegation of rape. We are unable to accept that reasoning. The prosecution's case of rape and penetrative sexual assault rests upon the allegation of bleeding, coupled with the victim's statement that the appellant did dirty things to her. In cross-examination, the defence questioned the victim about her understanding of "dirty work"; she remained silent. That silence creates ambiguity as to whether the act, if any, fell within Section 3 or Section 7 of the POCSO Act, that is, whether it was penetrative sexual assault or sexual assault without penetration. We have already found that the claim of bleeding is not proved by the record and is contradicted by the medical evidence. In those circumstances, the defence's failure to put a specific question about penetration cannot, by itself, operate against it in relation to the charge under Sections 5(m) and 5(n), read with Section 6, of the POCSO Act or Section 376(2)(i) IPC. The lack of articulation on the part of the victim may itself have limited the scope of a more specific cross-examination. In any event, cross-examination is a means of testing a witness; it does not prevent the defence from demonstrating that the prosecution evidence is inherently improbable or does not establish the charge.

Penetration is an essential ingredient for conviction under Section 376(2)(i) IPC and under Section 3 of the POCSO Act, except under Section 3(d), which is not invoked here. There is no specific evidence of penetration. The Trial Court appears to have inferred penetration from the allegation of bleeding. We have held that the allegation of bleeding cannot be accepted in view of the medical evidence and the other deficiencies already noted. Accordingly, after looking into prosecution evidence in its entirety this Court is not satisfied that penetration, which constitutes the essential ingredient of Section 3 of the POCSO Act and Section 375 IPC, has been proved beyond reasonable doubt. The prosecution, therefore, failed to establish the essential ingredients necessary for conviction under Sections 4 or 6 of the POCSO Act. The foundational facts for invoking Section 29 were not proved, and the Trial

Court erred in law and on facts in invoking that presumption. Even assuming that the presumption arose, the appellant rebutted it, on a preponderance of probabilities, in relation to the offences under Sections 3 and 5(m) and 5(n) of the POCSO Act. The conviction under Section 376(2)(i) IPC and Sections 5(m) and 5(n), read with Section 6, of the POCSO Act cannot be sustained. As already held, the presumptions under the POCSO Act could not have been invoked to convict and sentence the appellant under Section 376(2)(i) IPC.

Accordingly, the judgment of the Trial Court, insofar as it convicts the appellant under Section 376(2)(i) IPC and Sections 5(m) and 5(n), read with Section 6, of the POCSO Act, and sentences him under Section 376(2)(i) IPC, is liable to be set aside and is set-aside.

However, the conclusion that the prosecution has failed to prove the allegation of penetrative sexual assault does not require the Court to reject the testimony of PW-1 in its entirety. It is a settled principle of criminal jurisprudence that the evidence of a witness is not to be discarded as a whole merely because one part of the testimony is found to be unreliable. The Court is under a duty to separate the grain from the chaff and to rely upon those portions of the evidence which are found to be truthful, consistent and supported by the surrounding circumstances. The rule *falsus in uno, falsus in omnibus* has never been accepted as a sound rule of evidence in India. Applying that principle, while this Court is not prepared to accept the prosecution version insofar as it alleges penetration and bleeding, the remaining part of the victim's testimony may still be relied upon if it independently establishes the ingredients of a lesser offence.

The present case falls within that principle. While the allegation of penetration and bleeding cannot safely be accepted, the consistent allegation that the appellant took the child to the terrace, made her lie down, lay over her and assaulted her genital region remains substantially unimpeached. The evidence of the victim is, however, consistent from her initial statement to the Woman Sub-Inspector in respect of the allegation that the appellant took her to the terrace, made her lie down,

positioned himself over her, and struck her genital area with his fist. The proved acts of taking a five-year-old child to the terrace, making her lie down, positioning himself over her and striking or touching her genital area admit of no reasonable inference other than that they were committed with sexual intent. The appellant has not been able to create any material doubt regarding this part of the evidence. The prosecution has proved the ingredients of Section 7 of the POCSO Act. As the victim was below twelve years of age and the appellant was a relative or person covered by Sections 9(m) and 9(n), the appellant is liable to be convicted for aggravated sexual assault punishable under Section 10 of the POCSO Act. The prescribed punishment is imprisonment for a term of not less than five years, which may extend to seven years, and fine.

The record shows that the appellant has already undergone imprisonment for five years and eight months. The Trial Court imposed a fine of Rs. 50,000/-, of which 80% was directed to be paid to the victim. We hold the appellant guilty under Section 7, read with Sections 9(m) and 9(n), and punishable under Section 10 of the POCSO Act. He is sentenced to imprisonment for the period already undergone and to pay a fine of Rs. 50,000/-. If the fine has not already been paid, it shall be deposited within three months from today. In default, the Trial Court shall take coercive steps in accordance with law for its recovery.

For the reasons stated above, the appeal is *partly allowed*.

The appellant is on bail. He is not required to surrender. His bond is cancelled and sureties stand discharged.

The Trial Court record shall be remitted forthwith. The judgment of this Court shall be certified to the Trial Court for information and compliance.

(Vinai Kumar Dwivedi,J.) (Salil Kumar Rai,J.)

July 17, 2026
Satyam/Vipasha