

IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

AND

THE HON'BLE JUSTICE REETOBROTO KUMAR MITRA

CRA(DB)/4/2025

CRAN 2/2025

RUPESH BECK

... APPELLANT

VS.

THE STATE and Anr.

... RESPONDENT

For the appellant : Mr. Alokesh Sarkar

For the State : Mr. Sumit Kumar Karmakar

For the Victim Girl : Ms. Gloria Mary

Reserved on : June 19, 2026

Judgment on : August 25, 2026

REETOBROTO KUMAR MITRA, J.

1. This appeal is from the judgment and sentence by the Learned Special Judge under the POCSO Act on April 15, 2024 and the April 16, 2024 respectively.

2. By the impugned judgment, the appellant has been held to be guilty of the charges under Section 5(j)(ii) and 5(l) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter POCSO).

3. The facts are on a short conspectus and are fairly admitted.

4. The victim girl aged about 17 years and 10 months on the date of the incident met with the appellant who was 24 years of age, at a marriage ceremony of a relative of the victim girl sometime in 2022. This meeting turned into a friendship, attraction and a love affair between these two young adults. The victim girl without informing her family members went and stayed with the appellant in a rented house within the jurisdiction of the Kadamtala Police Station for a substantial period of time. In fact, the victim girl had indicated to her family members that she would be staying with her friend and would also be working from the friend's house. The victim and the appellant engaged in a physical relationship in December, 2022 and such physical relationship continued for a period time without any complaint from either party. Sometime thereafter, the victim girl experienced some deteriorating health condition and went for a medical checkup at the Primary Health Centre (PHC), Kadamtala for treatment. After the checkup at the hospital, she was informed that she was pregnant and that such pregnancy was due to continuous penetrative sexual activity. Since the victim girl had engaged in physical relationship with the appellant, it was assumed that the

pregnancy was attributable to the said activity. In fact, in her initial statement to the Police Authorities on 22nd May, 2023 at about 5:00 p.m., she also stated that the appellant continued the sexual assault and/or physical relationship with her, even after coming to know that she was a minor.

5. On the basis of this initial statement (*fardbayan*), a FIR was lodged, on the basis whereof the case was filed by the Kadamtala PS being case No. 0016 of 2023 dated 22nd May, 2023 under the POCSO Act.

6. The SHO, Kadamtala at the material time had initiated the case and assigned it to SI Devesh Raj Singh, the Investigating Officer (IO) who conducted the investigation till the case file was handed over to the second IO on 23rd May, 2023. A second charge sheet was filed on the basis of investigation on June 9, 2023.

7. Charges were framed and on June 16, 2023 the matter was fixed for consideration of the charges against the appellant. Since the appellant's advocate refused to be heard on the point of consideration of charge, the Court proceeded to frame the charge sheet against the accused person and after considering the materials on record, including the case diary, framed the charges under the POCSO Act. The charges were read over and explained to the appellant in open Court, whereupon, the appellant pleaded "not guilty" to the said charges.

8. The appellant maintained a bald, but consistent stand that he was innocent. The prosecution examined as many as 13 witnesses and also placed reliance on certain documentary evidence.

9. After closure of evidence by the prosecution including their witness action, the accused/appellant was examined under Section 313 of the Code of Criminal Procedure, 1973. He denied all evidence against him and reiterated his stand, of innocence.

10. The Learned Special Judge under the POCSO Act had dealt with the oral as well as documentary evidence and the case laws relied upon by the parties in great details and found the appellant guilty of the charges framed against him on April 15, 2024 and consequentially sentenced him to 10 years rigorous imprisonment on April 16, 2024.

11. It is this judgment and sentence of the Learned Special Judge, POCSO Court which has been assailed in the instant appeal.

12. The appellant has raised the following issues to dislodge the impugned judgment dated April 15, 2024:

- a) The victim girl had never lodged any complaint against the appellant and no FIR was initiated by her and admittedly the FIR was initiated by the medical authorities.
- b) According to the victim girl, the statement penned by the Police Authorities was not at her instance but on the

direction of such authorities. On account thereof, the FIR is contradictory.

- c) Therefore, the presumption under Section 29 of the POCSO Act, would not be applicable as the victim girl had turned hostile and she had indeed supported the case of the appellant.
- d) The Learned Special Judge had failed to appreciate that the evidence recorded during trial is contrary to the statement of the victim girl in the *fardbayan* as well as contrary in the statement under Section 164 of the Code of Criminal Procedure, given by the victim girl.
- e) Apparently, the victim girl and the appellant had decided to marry and that she would continue to remain with her parents till the appellant was released from jail whereupon they would get married.
- f) The veracity of the FIR itself is doubtful. The appellant had never acted in a manner which could be described as lustful or carnal as against the victim girl.
- g) At the time of recording the *fardbayan* there was no other female Police Officer present as statutorily mandated. Thus, the *fardbayan* is not just doubtful but is completely vitiated.

- h) The evidence whether oral or documentary is completely insufficient and inadequate to foist the charges on the appellant and hold him guilty.
 - i) The delay of more than one year from the date of the incident to the registration of the FIR has not been explained by the IO.
 - j) Since the prosecution has failed to prove its case beyond all reasonable doubt, the appellant should be acquitted.
13. The prosecution has made the following arguments :
- a) The victim girl's evidence is clear and unequivocal, inasmuch as she had stated that she had been cohabiting with the appellant and the appellant alone.
 - b) She also stated that they had engaged extensively in sexual intercourse and her pregnancy occurred due to the sexual intercourse with the appellant.
 - c) She has merely stated that this was the aftermath of a love affair between the two of them. This qualification of the love affair by the victim girl does not mean that the incident had not taken place or that the incident can be wished away merely because it was meant to be consensual.
 - d) Admittedly, the victim girl born on 21st February, 2005 was a minor at the material time, on account whereof her consent is of no value and in the eye of law, is no consent at all.

- e) She has in no uncertain terms deposed that her pregnancy was caused due to continuous physical relationship made by the appellant over the last few months prior to the pregnancy.
- f) The other prosecution witnesses have also corroborated the entire case of the prosecution case.

14. Though not mandated, the appellant had served the VG. Thus, we permitted the Ld. Advocate for the VG to make submissions. The submissions made by the advocate on behalf of the victim girl is really in support of the arguments made by the prosecution:

- a) The medical reports are clear and overbearing that the appellant had a physical relationship with the victim girl.
- b) It is true that the victim girl and the appellant were engaged in a love affair and had indulged in a physical relationship on several occasions over a period of time, just prior to the pregnancy.
- c) The VG has now married and is in a happy marital life.

15. We have heard the learned Advocates for the parties at length and considered the decisions relied upon by them. We have also perused the documents and the Lower Court Record pertaining to this case.

16. The facts as we have already stated earlier are not much in dispute and are fairly admitted.

17. These admitted facts are briefly enumerated hereinafter :

- (i) The victim girl and the appellant were engaged in a love affair which resulted in physical intimacy and sexual intercourse.
- (ii) This continued for a period of time spanning over a few months.
- (iii) Due to the discomfort felt by the victim girl, she had visited the PHC at Kadamtala and found that she was pregnant.
- (iv) On the complaint made by the Medical Officer, the Police Authorities had taken the statement from the victim girl, in which the VG stated that she was cohabiting with appellant for a few months prior to the pregnancy.

18. These facts are not in dispute. The only issue in this entire enumeration of facts is whether it has been sufficiently proven on preponderance of probability and beyond any reasonable doubt that the appellant had engaged in a physical relationship with victim girl.

19. Of all 13 witnesses who led evidence on behalf of the prosecution, interestingly cross-examination of most of them was declined by the appellant.

20. PW-1, the victim girl and PW-2, the victim girl's mother were not cross-examined by the appellant. Thus, the evidence led by the

victim girl and her mother can be deemed to have been admitted by the appellant.

21. The Counselor at the District Child Protection Unit, Mayabunder (PW5), the District Child Protection Officer, Andaman and Sub Registrar (PW6) and Ward Junior Investigator (PW7) were also not cross-examined by the appellant.

22. PW-8, the doctor who performed the medical examination of the victim girl prepared a 25 page report, which was duly identified and exhibited by her. She categorically mentioned that the victim girl had stated that prior to pregnancy she was in a continuous physical relationship with the appellant. The evidence is fairly straightforward and unequivocal.

23. The documentary evidence is also overbearing and overpowering leading to the inevitable conclusion that the appellant had engaged in a penetrative sexual assault on the VG.

24. Thus, on the basis of the oral evidence led by the prosecution witnesses and the documentary evidence relied upon by the parties, two issues fall for consideration. :

The first of such issue is whether the presumption under Section 29 of the POCSO can be applied ?

The presumption is contrary to the normal law of the land.

Where a person is prosecuted for committing or abating any offence under Sections 3, 5, 7 and 9 of the POCSO Act, the

presumption is that he has committed or abetted such an act as the case may be, unless the contrary is proved.

Thus, what has to be proved is not the offence but quite the opposite, that he was not responsible for such an offence. The general presumption of innocence of accused is not applicable to these cases, infact, it is the contrary, the presumption of guilt.

The issue of mental culpability as enshrined in Section 30 of the POCSO is also of relevance as PW-9, the doctor who had examined the appellant, had in no uncertain terms opined that the appellant was capable of sexual intercourse.

There is nothing on record to disbelieve the statement of the victim girl wherein she has clearly stated that she had been cohabiting with the appellant for several months before her pregnancy. To relieve himself of this charge, the appellant ought to have led evidence to show that the victim girl was not cohabiting with him or that he had not engaged in any sexual assault with the VG. The appellant has led no such evidence and there is no reason to disbelieve the statement made by the victim girl, which finds merit from the medico legal reports relied upon by the prosecution.

The appellant in fact chose not to cross-examine the victim girl or her mother.

The second issue that falls for consideration at this stage is whether the appellant committed any penetrative sexual assault on the victim girl leading to her pregnancy. The victim girl in her cross-examination by the prosecution had admitted her intimacy with the appellant and also deposed that they were in a relationship of love which also resulted in a physical relationship. This portion of the evidence of the victim girl has not been refuted by the appellant.

25. It is not in doubt that the victim's testimony alone, if found reliable can be the basis of a conviction under POCSO. Once this is established, the legal presumption against the appellant sets in and can only be rebutted by leading appropriate evidence either by way of leading oral or presenting documentary evidence. Clearly the presumption under Section 29 is applicable in this case. Upon the presumption being applicable, the appellant ought to have rebutted the same.

26. The appellant made no attempt to rebut the evidence of the victim girl. Thus, the factum of the love affair, physical intimacy and sexual intercourse between the victim girl and appellant stands uncontroverted.

27. This establishes an offence under Section 5 of POCSO with which the appellant had been charged. Once the offence has been established, the appellant as a person being prosecuted of committing an offence under Section 5, comes within the periphery of

the presumption by the Special Court, which is enabled under Section 29 of the POCSO Act, that the person charged with the offence has committed the offence, unless the contrary is proved. In this case, the contrary that is the appellant was not responsible for the offence has not been proved in any manner whatsoever.

28. The only rider is that there was a consent between the appellant and the victim girl for such physical intimacy and sexual intercourse. However, a heinous and abhorrent crime of sexual assault, the consent of a minor cannot be treated as a mitigating factor. This would completely disrupt and dislodge the very purpose for which the POCSO Act has been promulgated.

29. The offence and the perpetrator of the offence have both been sufficiently established. We do not find any reason to interfere with the judgement and the sentence passed by the learned Special Judge POCSO Court on April 15, 2024 and April 16, 2024 respectively.

30. However, there is an issue which needs to be addressed. This issue stems from the “Romeo – Juliet Clause” as suggested by the Hon’ble Supreme Court of India in the case of *State of Uttar Pradesh – versus – Anurudh & Another 2026 LiveLaw (SC) 29* decided on January 09, 2026. The Romeo – Juliet clause has not yet been incorporated in the POCSO Act. The very purpose of the Romeo – Juliet clause is to ensure that adolescent love and intimacy are not derailed by the rigid parameters set forth within the POCSO Act. In fact, in several cases it has been found both by the Hon’ble Supreme

Court of India and by several other High Courts that parents of adolescent/teenage lovers often invoke provisions of the POCSO Act to deter inter-caste relationships that are growing between their children. This is not one of those cases.

31. However, in this case as in several others, there was indeed a love affair with the aftermath of physical intimacy, to which the victim girl had consented. She has in no uncertain terms declared that she does not have any reservations on the acquittal of the appellant.

32. Unfortunately, the victim girl who was 17 years 10 months of age at the time of the offence, is now a mature lady, married to another person who has accepted her as well as her child. Thus, it would not be appropriate to disrupt their blissful marital life on the basis of the adolescent love affair.

33. The purpose of the Romeo-Juliet clause was to give sanctity to a relationship in which two parties of similar age have entered into. Thus, without branding one of the parties as an offender under the POCSO Act, their relationship could be given legal sanctity to enable and ensure that they have a sound family life. In this case, this is not possible. The Romeo-Juliet clause does not in any manner mitigate the offence nor does it grant sanctity to the perpetrator of the offence. It is meant to merely bridge the gap created by the POCSO Act. In this case, the same is not possible. The VG having entered into a matrimonial relationship with another person cannot be paired with

the appellant herein. The appellant will have to face the consequences of the offence under the POCSO Act.

34. Like in several Supreme Court decisions, discussed hereinbefore, a coordinate bench of this Hon'ble Court has also dealt with a similar issue in CRA 4 of 2024 in Shri Roshan Lakra vs. The State and Another. However, in those cases, including Roshan (supra), the situation was such that the accused and the victim girl were in a position to resume their marital life without any confrontation. In this particular case, the victim girl has already entered into a marital relationship with another person, and to apply the parameters of the "Romeo Juliet" clause to this case would mean that the appellant is discharged of his crime not to start a life anew with the victim girl, but with a possibility of disturbing the peaceful life of the victim girl with her present husband and a child. This would not subserve the cause of justice. Hence, we are not inclined to apply the parameters of the "Romeo Juliet" clause in this case as the facts did not support the same. This case is decided on the merit of the matter and not on the basis of any other parameters.

35. As we do not find any contradiction or perversity in the finding of the learned Special Judge and we uphold the same and dismiss this appeal.

36. Thus CRA (DB)/4/2025 is dismissed.

37. Pending applications, if any, are consequently disposed of.

38. Let the Trial Court Records be transmitted back forthwith.

39. The Department is directed to forward a copy of this judgement to the Trial Court and also to the Superintendent of the correctional home immediately.

40. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all legal formalities.

(Reetobroto Kumar Mitra, J.)

(Rajarshi Bharadwaj, J.)