



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.347 of 2022

Reserved on: 15.06.2026

Date of decision: 16.09.2026

Uploaded on: 16.09.2026

Shyam Veer.

....Appellant.

Versus

State of Himachal Pradesh.

...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the appellant : Mr. Jai Ram Sharma, Advocate.

For the respondent(s) : Mr. Yashwardhan Chauhan, Senior
Additional Advocate General.

Vivek Singh Thakur, Judge

The appellant has preferred the present appeal against the judgment of conviction dated 25.03.2022 and order of sentence dated 28.03.2022 passed by the learned Additional Sessions Judge, Fast Track Special Court (Rape/POCSO), Kinnaur at Rampur Bushahr, H.P., in **CIS Registration No. 15 of 2020**, titled **State of H.P. versus Shyam Veer**, arising out of FIR No. 38 of 2020, dated 27.04.2020, registered at Police Station Jhakri, District Shimla, under Sections 377 and 506 of the Indian Penal Code ('IPC') and

¹ Whether the reporters of the local papers may be allowed to see the Judgment? Yes

Sections 3, 4, and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, '**the POCSO Act**'), whereby the appellant has been convicted under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of 20 years and to pay a fine of ₹5,000/-, and in default of payment of fine, to further undergo simple imprisonment for six months. The appellant has also been convicted under Section 377 of IPC and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of ₹3,000/-, and in default of payment of fine, to further undergo simple imprisonment for three months. Both substantive sentences of imprisonment have been ordered to run concurrently.

2. The prosecution case, in brief, is that on 27.04.2020, during the Nationwide lockdown, at about 12:00 noon, victim (younger son of PW-3 Basil Tirki and PW-4 Amrita Tirki) playing in front of the quarter of the appellant. At that time, PW-2 Smt. Anu, a neighbour of PW-3, noticed the appellant taking the victim child to his room. After about 10 to 15 minutes, the victim child came out of the appellant's room walking with difficulty. Thereafter, he went towards the bushes and was seen cleaning his anus after putting off his pants. By then, the elder brother of the victim had also woken up and noticed the victim. When, PW-3 Basil Tirki returned to his quarter, and upon inquiring from the victim child, the latter disclosed

that the appellant had taken him to his room, made him lie on the bed, opened his pants, and inserted his private part into the victim's anus, causing him severe pain and discomfort.

3. It is further case of the prosecution that the elder brother of the victim disclosed that the appellant had previously attempted to put his private part into his mouth and had threatened to kill him in case the incident was disclosed to anyone.

4. PW-1 Keshav Ram is the landlord, and PW-7 Ravikant is his son, in whose building PW-2 Smt. Anu, the family of victim child PW-5, and the appellant were residing in separate rooms/sets as tenants.

5. On 27.04.2020, at about 12:00/12:30 p.m., PW-6 Smt. Ashru Devi informed PW-7 Ravikant telephonically about the incident. Thereupon, PW-7 Ravikant informed the Police telephonically. The information was recorded at Police Station Jhakri vide GD Entry/Rapat No.015, dated 27.04.2020, at 2:27 p.m. (Exhibit PW-12/A), wherein it was recorded that at about 2:15 p.m., PW-7 Ravikant had informed the Police that a person was committing a wrongful act with a child. The information was transmitted to PW-12 Head Constable Vinod Kumar, who, along with Police officials, proceeded to the spot.

6. At the spot, PW-3 Basil Tirki made a statement under Section 154 of the Code of Criminal Procedure (Cr.P.C.), which was reduced into writing by PW-12 HC Vinod Kumar as Exhibit PW-3/A and sent to the Police Station as rukka for registration of the case. On its basis, formal FIR No. 38 of 2020 (Exhibit PW-13/A) was registered, and the corresponding endorsement (Exhibit PW-13/B) was made on the rukka by PW-13 ASI Bir Singh.

7. During investigation, the victim was medically examined and his Medico-Legal Certificate (MLC) [Exhibit PW-8/B] was obtained. Thereafter, the final medical opinion (Exhibit PW-8/C) was also obtained. A copy of the victim's date of birth certificate (Exhibit PW-11/B) was procured from the concerned school. The appellant was arrested on 27.04.2020 and subjected to medical examination, and his MLC (Exhibit PW-8/E) was obtained. The statement of the victim under Section 164 Cr.P.C. was recorded before learned Additional Chief Judicial Magistrate, Rampur Bushahr, which is Exhibit PW-5/A.

8. PW-8 Dr. Ajay Kumar Negi medically examined both the victim and the appellant. He collected blood samples on FTA card, semen samples, pubic hair, undergarments of the appellant (Exhibit P-7), and the pants of the victim (Exhibit P-5), and handed over the

same to the Police in sealed parcels. The case property deposited in the Malkhana with PW-10 HC Suresh Kumar, who made entry in Malkhana Register, abstract whereof is Exhibit PW-10/A, which was subsequently taken to the State Forensic Science Laboratory (SFSL), Junga, by PW-9 HASI Roshan Lal vide Road Certificate (RC) No.6 of 2020 (Exhibit PW-10/B), who, after depositing the same, handed over the receipt to PW-10.

9. Upon completion of investigation, report under Section 173 Cr.P.C. (challan) was presented before the Trial Court. Thereafter, on receipt of examination and DNA profiling reports from the State FSL Junga (Exhibit PW-13/D and Exhibit PW-13/E), supplementary challan was also presented.

10. Finding a *prima facie* case, the Trial Court framed charges against the appellant under Section 377 IPC and Sections 3, 4, and 6 of the POCSO Act.

11. The appellant pleaded not guilty and claimed trial.

12. In order to prove its case, th prosecution examined thirteen witnesses. After recording statement of the appellant under Section 313 Cr.P.C., wherein he denied the prosecution case and claimed to have been falsely implicated, no evidence in defence was lead.

13. Upon completion of the trial and after appreciating the oral as well as documentary evidence on record, Trial Court convicted and sentenced the appellant in the manner noticed hereinabove.

14. The prosecution has examined thirteen witnesses to substantiate the charges framed against the appellant, whereas after recording statement of appellant under Section 313 Cr.P.C., no defence evidence was led by the appellant.

15. PW-3 Basil Tirki and PW-4 Amrita Tirki are parents of child victim. FIR Exhibit (PW-13/A) was registered on the basis of complaint (Exhibit PW-3/A) lodged by PW-3 Basil Tirki. The victim child has been examined as PW-5. PW-2 Smt. Anu is a neighbour residing in the same building. PW-7 Ravikant is the son of landlord PW-1 Keshav Ram (landlord), in whose building PW-2 Smt. Anu, the family of victim PW-5, and appellant were residing as tenants.

16. PW-11 Ram Lal, Head Teacher, proved the birth certificate (Exhibit PW-11/B) of victim PW-5 on record. PW-12 HC Vinod Kumar entered GD Entry/Rapat No. 015 (Exhibit PW-12/A) on receiving telephonic information, recorded the statement (Exhibit PW-3/A) of PW-3 at the spot, and sent the rukka to the Police Station.

17. PW-13 ASI Bir Singh is the Investigating Officer, who registered FIR (Exhibit PW-13/A), made endorsement (Exhibit PW-13/B) on the rukka, prepared spot map Exhibit PW-13/C, and conducted the investigation.

18. PW-8 Dr. Ajay Kumar Negi has conducted examination of victim PW-5 and had issued MLC (Exhibit PW-8/B). He has also given final opinion Exhibit PW-8/C that possibility of sexual assault upon the victim cannot be denied. PW-8 has also examined appellant convict and issued MLC (Exhibit PW-8/E), and he also took blood sample of appellant on FTA card, semen sample, undergarments of accused, and hair samples, and handed over the same to the Police. He has observed that child appeared frightened and his gait was staggering, no injury was detected on any part of body, on anal examination no excoriation or blood was seen, swab of child was taken and sealed and handed over to the Police for chemical examination, and he had also sought opinion of surgeon for detailed examination.

19. PW-9 HASI Roshan Lal has taken the samples for chemical examination to State FSL, Junga, which were handed over to him by PW-10 MHC Suresh Kumar. PW-10 HC Suresh Kumar has also deposed about handing over of two sealed parcels and one

sealed envelope along with sample seal by Constable Kewal Krishan on 27.04.2020, which were entered by him in the Malkhana register. PW-13 ASI Bir Singh had also handed over to him one sealed parcel along with sample seal, which was also entered in the Malkhana register, which were sent by him through HHC Roshan Lal vide RC No.6/2020 for chemical analysis.

20. Learned counsel for the appellant has submitted that the appellant has been sentenced to undergo 20 years of rigorous imprisonment under Section 6 of the POCSO Act and 10 years under Section 377 IPC on the erroneous finding that he committed penetrative sexual assault. It has been contended that the conviction is based on conjectures and surmises, rather than reliable evidence and thus, deserves to be set aside.

21. To substantiate his claim, learned counsel for the appellant has contended that there was no injury on the victim, whereas in cross-examination, it was admitted by PW-8 Dr. Ajay Kumar Negi that if a person commits sexual assault upon a child of 7 years, then injuries are bound to occur on the private parts of the child, whereas as per the MLC there was no injury, no tear, no abrasion or no sign of penetration, and therefore, allegation of

penetrative sexual assault, for absence of any medical corroborative evidence, is not sustainable.

22. It has been further submitted on behalf of appellant that there was enmity between witness PW-2 Anu with the appellant on account of exchange of money, and the case has been registered by PW3, who is father of the victim, at the instance of PW-2 Anu, and for such evidence on record regarding enmity, the veracity of the witnesses, especially PW-2 Anu, has to be scrutinized carefully, but the Trial Court has failed to do so, and despite proving enmity on record, the motive for false implication in existence has been ignored by the Trial Court.

23. It has been further submitted by learned counsel for the appellant that prosecution witnesses have given inconsistent and contradictory versions, and thus, conviction as well as sentence awarded on the basis of conviction are not sustainable, and appellant deserves to be acquitted for absence of cogent and reliable evidence on record

24. It is relevant to record here that the incident occurred on 27.04.2020 during the lockdown period enforced on account of the COVID-19 pandemic. The appellant was residing in the same

building in which the victim child, along with his family, and PW-2 Anu were residing in separate sets as tenants.

25. PW-2 Anu, who is a household lady and an immediate neighbour, noticed the appellant taking the victim child into his room and subsequently saw the child coming out of the room. When the child came out, he was not walking normally, and upon initial inquiry, he was frightened and did not disclose anything and PW-2 informed the parents of the child. On being inquired again by his parents, the child disclosed that the appellant had committed a wrongful act with him inside his room.

26. Thereupon, PW-6 Ashru Devi, who is also a neighbour residing in the same building, informed PW-7 Ravikant, son of landlord PW-1 Keshav Ram about the incident. In turn, PW-7 Ravikant informed the Police telephonically. In this regard, Daily Diary Report (Exhibit PW-12/A) was recorded, and the Police rushed to the spot. The statement of PW-3 Basil Tirki was recorded at the spot under Section 154 Cr.P.C. (Exhibit PW-3/A) by HC Vinod Kumar (PW-12) and sent as rukka to the Police Station, on the basis of which FIR (Exhibit PW-13/A) was registered by PW-13 ASI Bir Singh, who endorsed the rukka (Exhibit PW-13/B), visited the spot, and prepared spot map (Exhibit PW-13/C).

27. The medical examination of the victim and the appellant was conducted promptly. The statement of the victim (Exhibit PW-5/A) was recorded under Section 164 Cr.P.C. The date of birth certificate of the victim (Exhibit PW-11/B) was procured, proving that the victim was born on 07.08.2012 and was less than eight years of age at the time of the incident.

28. PW-1 Keshav Ram (landlord) has proved on record that PW-2 to 6 were residing as tenants in his building and appellant was also residing in the same building as a tenant. He is witness to taking possession of bedsheet vide memo (Exhibit PW-1/A). In cross-examination to this witness, positive suggestions have been put which indicates admission of the occurrence and other relevant facts. In response in cross-examination he has stated that it is correct that this incident had happened on 27.04.2020, it is correct that at that time there was a complete lockdown in the area and no one was allowed to come out from their houses.

29. Insofar as the plea of enmity between PW-2 Anu and the appellant is concerned, a suggestion was put to her in cross-examination that her mother had borrowed money from the appellant and when she did not return the money, a quarrel took place. This suggestion was categorically denied by PW-2. This suggestion is

completely falsified by contradictory defence taken by the appellant in his statement recorded under Section 313 Cr.P.C., wherein he claimed that PW-2 Anu herself used to demand money from him, and upon his refusal, she extended threats to implicate him falsely. Except for these conflicting suggestions and statement under Section 313 Cr.P.C., there is nothing on record to indicate any enmity between PW-2 Anu and the appellant. The suggestion put to this witness in cross-examination and the explanation given by appellant in statement recorded under Section 313 Cr.P.C. are entirely divergent and irreconcilable. Therefore, plea of enmity with PW-2 Anu is not sustainable.

30. It is also apt to record that it is not only PW-2 Anu, but also PW-6 Smt. Ashru Devi, an independent neighbour, who has deposed against the appellant and corroborated the prosecution version. There is no enmity alleged or proved on record between the appellant and PW-6 Ashru Devi. Furthermore, no enmity whatsoever between the appellant and the family of the child victim, including PW-3 Basil Tirki, PW-4 Amrita Tirki, and victim (PW-5), has been alleged or established on record.

31. Statement of all these witnesses reflects that they have deposed in a natural manner. PW-2 and PW-6 are natural witnesses

who are neighbours of the victim's family as well as of the appellant. PW-7 Ravikant (son of landlord) and PW-1 Keshav Ram (landlord of the parties) have also corroborated the prosecution story, and their role in the entire matter is natural, as tenants immediately informed the landlord through his son, who informed the Police, and Police came on the spot, and there was no time in between to deliberate or to commit a conspiracy to implicate the appellant falsely in a case. There is nothing on record to establish how the complainant party or victim's family was benefited by implicating the appellant falsely in commission of alleged offence.

32. As per Chemical Analysis Report (Exhibit PW-13/E) received from the State FSL, human semen was detected on Exhibit 1 (pants of victim) and Exhibit 4 (underwear of Shyam Veer), and blood was not detected on these exhibits. Blood and semen were not detected in Exhibit 2 (anal swab of victim), Exhibit 3A (bedsheet), Exhibit 3B (mattress/dari), and Exhibit 5 (pubic hair sample of Shyam Veer). Human semen was also detected in Exhibit 6 (semen sample of the appellant). It has been further reported by the State FSL vide DNA Profiling Report (Exhibit PW-13/D) that the DNA profile obtained from Exhibit 1 (pants of victim) matched completely with the DNA profile obtained from Exhibit 5 (blood on FTA card of appellant Shyam Veer).

33. In statement of PW-2 Anu, it has come that the child was wiping out something from his back by putting off his pants, and the report indicates that semen was found in the pants of the victim, which corroborates the commission of the offence by the appellant. Oral evidence and circumstantial evidence, as well as medical evidence, duly corroborate the commission of the offence by the appellant.

34. Another plea taken by the learned counsel for the appellant is that the commission of aggravated penetrative sexual assault has not been proved on record.

35. Aggravated penetrative sexual assault has been defined in Section 5 of the POCSO Act. To consider this plea, provisions of Sections 3, 4, 5, and 6 of the POCSO Act are relevant:-

“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.— (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.

5. Aggravated penetrative sexual assault.—

(a) xx xx xx
 xx xx xx

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

 xx xx xx

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.”

36. From the definition of penetrative sexual assault given in Section 3 of the POCSO Act, penetration of the penis to any extent into the anus of a child amounts to penetrative sexual assault. Therefore, the act of the appellant by rubbing or touching his penis at the mouth of anus or slightest attempt to insert, amounts to penetrative sexual assault even in absence of any injury in the anus, because Section 3(1) provides that penetration to any extent, which includes touching the anus with penis for inserting, will be penetrative sexual assault.

37. As per law, punishment for penetrative sexual assault has been provided under Section 4, but in view of the provisions of Section 5(m), when penetrative sexual assault is committed on a child below 12 years of age, it amounts to aggravated penetrative sexual assault.

38. Therefore, the Trial Court has rightly concluded that the appellant has committed an offence of aggravated penetrative sexual assault, for which punishment has been provided under Section 6 of the POCSO Act, wherein the minimum prescribed sentence is 20 years. The Trial Court has awarded the minimum sentence provided for the offence committed by the appellant, and there is no scope for reducing the same, as no special circumstances

have either been argued or brought on record to entitle the appellant to a lesser punishment than the minimum sentence provided under the Act.

39. Finding no merit in the appeal, the same is dismissed. The judgment of conviction dated 25.03.2022 and order of sentence dated 28.03.2022 passed by the learned Trial Court are affirmed.

40. Record be sent back to the Trial Court.

41. Pending miscellaneous application(s), if any, stands disposed of.

(Vivek Singh Thakur)
Judge

(Ranjan Sharma)
Judge

16th September, 2026
(Pardeep)