



2026:CHC-AS:1625-DB

Form No: J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Anuj Singh

CRA No. 594 OF 2019

Mrinmoy Halder.

v.

The State of West Bengal.

For the Appellants:

Mr. Soumya Nag, Adv.

Mr. Safiqul Islam, Adv.

For the State:

Mr. Pradip Banerjee, Ld. APP

Mr. Sankalpa Bhattacharjee, Adv.

Hearing concluded on:

17th September, 2026

Judgment pronounced on:

24th September, 2026

ANUJ SINGH, J.:-

1. The instant appeal has been preferred against the Judgment and Order of conviction dated April 8, 2019, and the order of sentence dated April 10, 2019, passed by the learned Additional Sessions Judge cum Judge, Special Court (under the Protection of Children from Sexual Offences Act, 2012), 2nd Court, Alipore, South 24 Parganas, in Special Trial No. 5(06) of 2016, corresponding to Special Case No. 100 of 2016, arising



out of Chetla Police Station Case No. 50 of 2016 dated March 14, 2016. By the impugned Judgment, the appellant herein was convicted for the commission of offences punishable under Section 376(2)(i) and Section 506(II) of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. By the order of sentence, the appellant was directed to suffer rigorous imprisonment for fifteen years and to pay a fine of Rs. 20,000/-; in default, to suffer rigorous imprisonment for a further period of one year for the offence punishable under Section 6 of the POCSO Act. The appellant was further sentenced to rigorous imprisonment for five years and to pay a fine of Rs. 10,000/-, in default whereof to suffer rigorous imprisonment for a further period of six months for the offence punishable under Section 506 (II), IPC. No separate sentence was, however, imposed under Section 376(2)(i) IPC in view of Section 42 of the POCSO Act. The sentences were directed to run concurrently, with the benefit of set-off under Section 428 of the Code of Criminal Procedure, 1973. It was, inter alia, directed that 50% of the amount of fine, if realized, should be paid to the victim girl.
3. In the present appeal, the appellant has challenged the legality of the conviction and sentence, inter alia, on the ground that the evidence of the victim suffers from serious contradictions and is not corroborated by the evidence of her grandmother or by the medical and/or forensic evidence led before the Trial Court. The appellant further contended that the foundational facts necessary and preconditioned for invocation of the statutory presumption under Section 29 of the POCSO Act were not proved, and alternatively, that such presumption stood rebutted by the evidence on record.

I. PROSECUTION CASE

4. The case was initiated on March 14, 2016, upon a statement made by the victim girl, then aged about 11 years, which was recorded by LSI



Anita Guha at Chetla Police Station and treated as a written complaint.

The identity of the victim is withheld in this judgment in conformity with Section 33(7) of the POCSO Act.

5. In her complaint to the police, the victim stated that after the death of her father, one of their relatives, namely Mrinmoy Halder, used to visit their residence. She stated that Mrinmoy was in a relationship with her mother and would occasionally also assist the family financially. According to the victim, during the Christmas vacation preceding December 25, 2015, she used to remain alone at home in the afternoon while her mother went out for work and her younger brother attended his school.
6. The victim stated that on one such afternoon, while she was lying in the room, the accused entered, removed his trousers as well as her clothes, and forcibly inserted his genital organ into hers. Mrinmoy gagged her mouth to prevent her from raising an alarm. She stated that the grandmother thereafter came to the house when the victim girl disclosed the incident to her grandmother. The complaint further recorded that similar acts of sexual abuse had been committed upon her on three or four earlier occasions. The victim further stated that she had initially refrained from informing her mother on account of fear due to her mother's relationship with the accused. According to her, when the accused again came to the house on March 14, 2016, she became frightened and cried before her grandmother and narrated the incidents to her. The grandmother thereafter took the victim girl to the police station.
7. On the basis of the aforesaid statement, Chetla Police Station Case No. 50 dated March 14, 2016, was registered for investigation against Mrinmoy for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act, and the investigation of the case commenced.



8. In the course of investigation of the case, the victim girl was medically examined on March 14, 2016. The vaginal swab of the victim girl was collected. Her statement was also recorded by the learned Magistrate under Section 164 of the Cr.P.C. on March 21, 2016. The Investigating Officer, in the course of investigation, seized the Birth Certificate of the victim girl apart from seizing certain articles of clothing as well. The I.O. thereafter inspected the place of occurrence and prepared a site map. Pertinently, the statement of the maternal grandmother was also recorded before the learned Judicial Magistrate in terms of Section 164 Cr.P.C. The Investigating Officer also medically examined the appellant, who was found capable of sexual intercourse. The wearing apparel of the victim and the vaginal swab were also forwarded for forensic examination. The forensic report received by the Investigating Officer, however, did not detect semen or sperm on any of the articles. After completion of the investigation of the case, the I.O. submitted a charge-sheet against the appellant.
9. In the usual course, on June 17, 2016 charges were framed against the appellant for committing rape upon the minor girl, for criminal intimidation, and for aggravated penetrative sexual assault, punishable under Sections 376(2)(i) and Section 506(II) IPC and Section 6 of the POCSO Act. The charges framed against the appellant alleged an occurrence on or about December 24, 2015, and three similar occurrences prior to the said date. The appellant pleaded not guilty to the charges against him and claimed to be tried in accordance with law.

II. EVIDENCE ADDUCED BY THE PROSECUTION

10. The victim girl was examined as PW-1 in camera. In the course of her deposition before the court, the victim girl stated that on the afternoon of December 24, 2015, she, her younger brother, and the appellant were watching television in a room while her mother was away for work. After her brother fell asleep, the appellant allegedly removed her clothes and his trousers and committed penetrative sexual assault on the



victim girl. When she threatened to inform her mother, the appellant threatened to kill her brother. The victim girl stated that on the following morning, the appellant asked her to put the mosquito net over her bed, enquired whether she had disclosed the previous incident to her grandmother, and thereafter once again subjected her to penetration. The victim girl further deposed that on the next day, the appellant called her on the pretext of inquiring about an oil jar, took her to the first floor, closed the door, and caught hold of her. In such circumstances, she raised an alarm. She further stated that only that morning, the appellant asked her to find his mobile phone, which had fallen behind a sewing machine, and when she bent down, he removed her trousers and penetrated her again, whereupon her younger brother came and witnessed the incident. She stated that thereafter she came downstairs and disclosed the matter to her grandmother, who called local persons and asked the appellant to leave the house immediately. It is further stated by the victim girl that the appellant subsequently stopped visiting the house and later on when he returned on March 14, 2016 she got frightened and was eventually apprehended by Raju, stated to be a police person, following which she reported the matter to the police. The victim girl proved her signature on the complaint, the medical documents, and the statement recorded under Section 164 Cr.P.C., and identified the appellant present in court. In the course of cross-examination, it was elicited that the appellant had a relationship with her mother, used to visit and stay at their house, purchase household articles, and occasionally cook there. She further stated that neither she nor her grandmother approved of the relationship of the appellant with her mother, and that she did not have a good relationship with the appellant. She has further stated that she reported the matter at the instance of the grandmother, that the police officer asked her to narrate the occurrence to a lady police officer, and that she had not stated before the learned Magistrate that her grandmother had witnessed the alleged occurrence.



11. PW-2, a resident of the same locality as victim's mother, deposed that victim's father died around three years before the occurrence of incident, and that victim's mother lived with her mother. PW-2 deposed that she heard from other women that the accused had committed sexual intercourse with the victim, but she herself never saw the accused.
12. PW-3, Kajal Mondal, is a Constable of Police in the Detective Department at Lal Bazar. She deposed that she and LSI Meghna Kar visited and she prepared a rough sketch map of house, on instructions of LSI Meghna Kar. She prepared final version of sketch map on 29.03.2016 and denied the allegation that rough sketch map does not match the final version.
13. PW-4, Saumen Mondal, is the RMO-cum-Clinical Tutor at S.S.K.M. Medical College and Hospital, who on 14.03.2016 at about 4.30 A.M., medically examined the girl, aged about 12 years, brought to the hospital by L.S.I. Anita Guha. The child gave a history of repeated intercourse by the accused. On examination, the child was found conscious, alert and co-operative, with an old healing scar on right arm and a fresh bruise-injury on left elbow. He deposed that her abdomen was soft with no tenderness, she had not attained menarche, breast and pubic hair development were at Tanner Stage II, there was no bleeding from vagina, the hymen was absent, the vagina admitted one finger, and no external injury was found on the thighs or perineum. A vaginal swab was collected for forensic examination, and victim was advised to undergo pregnancy test. He admitted in cross-examination that report was written by his junior, Dr. Asmita (not signed by her) and no note that history was read over to victim. Written consent was obtained from victim's mother.
14. PW-5, is the grandmother of the victim, who deposed that her daughter's husband died on 15.11.2014, leaving behind a son and daughter. The accused had relationship with the mother of the victim



and visited her house. PW-5 exhibited victim's birth certificate to prove victim's age. On 25.12.2015, around 9 to 10 AM, PW-5 went to victim's house and upon being informed by victim's brother, she found the accused gagging the naked victim on "*macha*", while sitting over her with no lower garment, and that the victim told her about prior incidents of intercourse. The accused was driven away by local people but returned two months later and assaulted victim's brother, prompting the police complaint. Accused was apprehended by residents on 13.03.2016 and handed to Chetla P.S. where the victim's clothes were seized in PW-5's presence (Ext. 7) and her own statement recorded, including under Section 164 Cr.P.C. before the Magistrate (Ext. 8 series). In cross-examination, she admitted her family's disapproval of the accused's relationship with the victim's mother, but denied any grudge.

15. PW-6, a neighbour, deposed that she learnt about the occurrence of incident of rape of victim from her grandmother, and was not interrogated by the police.
16. PW-7 is SI Goutam Mondal at Chetla P.S., who on 14.03.2016 received the statement of the victim girl and registered Case No. 50 for offences u/s 376 IPC and S. 4 of the POCSO Act, recording the formal F.I.R. in his own hand and signature (Ext. 9, signature Ext. 9/1). The then Officer-in-Charge endorsed the case to L.S.I. Anita Guha for investigation. She recorded victim's statement (Ext. 1/1), which was the written complaint. PW-7 seized victim's clothes from her mother, prepared a seizure list (Ext. 7/2, signature Ext. 7/2), and accompanied the victim and LSI Anita Guha to S.S.K.M. Hospital for her medical examination, and personally arrested the accused. In cross-examination, he admitted that he recorded the FIR at about 00.15 hours on 14.03.2016, that the medical examination lasted about half an hour, and arrested the accused at about 01.10 A.M., prepared seizure list between 1.20 and 1.30 A.M., and denied that the accused



was taken from his house, and stated that clothes were sent for FSL examination.

17. PW – 8, Anita Guha, Lady S.I. of Police, who was posted at Chetla P.S. on 14.03.2016 when the case was registered. On that date, she recorded the victim girl's statement (Ext. 1/1). The then Inspector-in-Charge of Chetla P.S. endorsed the case to her for investigation, and she identified his signature on the formal F.I.R. (Ext. 3). She took the victim to S.S.K.M. Medical College and Hospital for medical examination. She recorded Section 161 Cr.P.C. statements of three available witnesses, visited place of occurrence, and had a Detective Department expert prepare rough sketch map of the spot. She seized victim's birth certificate from her mother, prepared a seizure list, and kept the birth certificate in mother's custody under a Zimmanama (Ext. 10), and then handed over the investigation to another officer on the superior's direction. She admitted in cross-examination that the timings of her site visit and exit was not recorded in case diary, names of persons residing nearby were not personally ascertained by her, sketch map was not prepared by her, and the names of witnesses whose statements she took was not mentioned in case diary, and denied that the investigation was perfunctory.
18. PW-9 is a Lady S.I. of Police posted at the Special Juvenile Police Unit, Detective Department, Lal Bazar. On 21.03.2016, she took over the investigation from L.S.I. Anita Guha. She met the victim at CINI ASHA shelter home and recorded her Section 161 Cr.P.C. statement, along with statements of other witnesses. She collected sketch map prepared by PW-3 and interrogated the accused in jail custody. She sent the victim and the accused for medical examination by Dr. T.K. Roy and collected the report (Ext. 11, 12 respectively). She arranged for recording the victim's and her grandmother's Section 164 Cr.P.C. statement. She sent victim's vaginal and urethral swab and accused's seized clothes for forensic examination to C.F.S.L., Kolkata and



collected the FSL Report (Ext. 13). She submitted Charge sheet No. 48 of 2016 dated 23.05.2016 against accused.

III. DOCUMENTARY EXHIBITS ADDUCED BY THE PROSECUTION

19. The first version of the girl was through the statement recorded by LSI Anita Guha, which was treated as a written complaint and marked as Exhibit 1(1), with the signatures, etc thereon being marked as Exhibits 1(1), 1(2), and 1(3). On the basis of such complaint, the formal FIR was registered and marked as Exhibit 9, with the signature of the officer being marked as Exhibit 9(1). The statement of the victim girl recorded by the Judicial Magistrate under Section 164 CrPC was marked as Exhibit 2 series, while the corresponding statement made by her maternal grandmother, PW 5, was marked as Exhibit 8 series. These statements contained their respective versions regarding the act of sexual assaults, the circumstances of disclosure, and the applicant's access to the victim girl.
20. The victim's age was proved by the Birth Certificate issued by the Kolkata Municipal Corporation, recording her date of birth as December 2, 2004. The signature of PW5 on the seizure list was marked as Exhibit 6, and the seizure list was marked as Exhibit 6/1, with the signature of PW8 thereon marked as Exhibit 6/2. The birth certificate was subsequently returned upon execution of Zimmanama marked as Exhibit 10. The rough sketch map of the place of occurrence was marked as Exhibit 5, and the final plan was marked as Exhibit 5/1, with the signatures of the plan maker being marked as 5/2 and 5/3. The seizure relating to the wearing apparel was marked as Exhibit 7/1, while the signatures of the witnesses and the police officer thereon were marked as Exhibit 7/7 and 7/2.
21. The medical report prepared at S.S.K.M Hospital after the examination of the victim girl on March 14, 2016, was marked as Exhibit 3/1, while the victim's and doctor's signatures were marked as Exhibit 3 and 3/2,



respectively. The consent relating to her medical legal examination was marked as Exhibit 4. A subsequent medical legal report relating to the victim was marked as Exhibit 11, and the medical examination report of the appellant was marked as Exhibit 12.

22. The medical report of the victim recorded that the victim's hymen was ruptured, the vagina admitted one finger, and that she had been subjected to sexual intercourse, while the subsequent report recorded that the appellant was capable of performing sexual intercourse. The forensic report was marked as Exhibit 13. It has been recorded that no semen or sperm could be detected on the garments or vaginal swabs sent for examination. It was further noted that the vaginal smears and the urethral swab and smears referred to in the forwarding memo were not found in the parcel received by the laboratory.
23. The appellant was examined under Section 313 CrPC by the learned trial court, where the accused had consistently denied the prosecution case and pleaded innocence.

IV. FINDINGS OF THE TRIAL COURT

24. Upon consideration of the evidence adduced by the prosecution, the learned Trial Judge accepted the testimony of the victim girl as truthful and reliable. The Trial Court held that she had given a clear account of the repeated acts of penetration and of the threat extended by the appellant, and that the substance of her account remained consistent with the written complaint. The variations appearing in the evidence were treated as minor discrepancies which did not affect the core of the prosecution case.
25. The Trial Court also believed the victim's account in the evidence of her maternal grandmother, PW 5, and in the medical evidence. It accepted the documentary evidence regarding the victim's date of birth and held that she was below twelve years of age on the dates of occurrence. The



delay in lodging the FIR was found to be sufficiently explained by the threats given to the child, the relationship between the appellant and the victim's mother, and the circumstances in which the appellant again came to the house.

26. The learned Trial Court thereafter invoked the presumption under Section 29 of the POCSO Act. Having found that the prosecution had established the foundational facts constituting aggravated penetrative sexual assault, the Trial Court held that the appellant had failed to prove the contrary. It accordingly convicted the appellant under Sections 376(2)(i) and 506 (II) of the IPC and Section 6 of the POCSO Act.

V. DEFENCE ARGUMENTS

27. Mr. Saumya Nag, learned advocate appearing for the appellant, has assailed the judgment of conviction and the order of sentence on the following grounds:
- a. The prosecution has failed to prove a consistent, coherent, and identifiable case of actual occurrence of the alleged offences.
 - b. The prosecution has relied heavily upon the evidence of PW-1. However, her own evidence is inconsistent with her earlier statements at the stage of the FIR, at the stage of the 164 CrPC statement before the Judicial Magistrate as well as at trial. It is submitted that the evidence of PW-1 is not believable. He relies upon ***Rai Sandeep @ Deepu v. State (NCT of Delhi), (2012) 8 SCC 21***, to argue that PW-1's testimony cannot be termed as that of a 'sterling witness'. He also relies upon ***Abbas Ahmad Choudhury v. State of Assam, (2010) 12 SCC 115***, to contend that there is no presumption of law that the entire statements of the victim girl should necessarily be treated as truthful.



- c. The case made out in the complaint leading to registration of the FIR proceeds on the basis that the main occurrence and three to four earlier occurrences had taken place before December 25, 2015. However, her subsequent statements are contradictory to her earlier statements. While at one stage she has stated that her brother was sleeping beside her during the first occurrence, her subsequent statements with regard to the presence of her brother are also contradictory. He relies upon the judgment reported in ***Nirmal Premkumar v. State, (2024) 20 SCC 293***, to contend that material contradictions in the victim's successive versions may make the deposition of the victim girl unsafe, if the same is used as sole basis for convicting the accused.
- d. The testimony of PW-5 is also unreliable, as she has given different narrations of the event by claiming that, on the morning of December 25, 2015, she went upstairs and first personally found the appellant sitting without his lower garment, over the naked victim girl. However, the same is in contradiction with the evidence of PW-1. He refers to the deposition of PW-1 and PW-5 to show that the same are mutually destructive versions regarding the same incident.
- e. He further argues that the formal charges framed by the trial court specifically restricts the prosecution case to the occurrence “on or about 24th December 2015” and three occasions preceding that day. No charges were framed with regard to incidents dated 25th December 2015, 26th December 2015, or 27th December 2015. Nor were the charges altered under Section 216, CrPC. However, in the judgment convicting the appellant, incidents of all four days have been collectively attributed to the appellant.
- f. The prosecution has failed to examine material neutral witnesses, namely the victim's brother, her mother, and neighbours, who would have thrown light upon the incident. He contended that



adverse inference under Section 114, illustration (g) of the Evidence Act must be drawn against the prosecution.

- g. That Section 29 of the POCSO Act does not automatically come into play upon the registration of the case, and that unless the foundational facts are proved, no presumption could be raised. He submits that in the instant case, the foundational facts have not been proved. Reliance has been placed on ***Debraj Dutta v. State of West Bengal, 2026 SCC Online SC 664***, which holds that a statutory presumption cannot arise solely upon inconsistent evidence of the child witness. Similarly, ***Vikash v. State (NCT of Delhi), 2026 SCC Online Del 5787***, has been relied upon to contend that foundational facts must be proved before the presumption under Section 29 of the Act can be raised. ***Nirmal Kumar v. State (NCT of Delhi), 2026:DHC:4028*** has been cited to argue that material inconsistency, which dilutes the foundational facts, must result in a benefit of doubt in favour of the accused.
- h. It has been argued that surrounding circumstances may prevent raising of presumption under Section 29 of the Act, notwithstanding apparent inconsistency between the prosecution witnesses. In this regard, reliance has been placed upon ***Subrata Biswas v. State, 2019 SCC Online Cal 1815***. Further, ***Ganesh Orang v. State of West Bengal, 2022 SCC Online Cal 255***, has been cited to argue that contradictions relating to time, place, number and circumstances of the alleged offence cannot be cured by resorting to the presumption of Section 29 of the Act.
- i. Medical evidence has also not corroborated the prosecution case. He has argued that Exhibit 11 has not been proved by the doctor. He refers to Exhibit 3 to argue that, on medical examination, no bleeding or external injury to the thigh or perineum was found. He relies upon ***Mostafa Sk. @ Mostu Sk. V. State of West Bengal,***



2014 SCC Online Cal 17542, to contend that a medical report, not proved by its author, cannot support a prosecution case. He next relies on **Vijender v. State of Delhi, (1997) 6 SCC 171**, to contend that the medical finding must ordinarily be proved by the doctor concerned. He next relies upon **Rajesh Patel v. State of Jharkhand, (2013) 3 SCC 791**, for the principle that, in a rape prosecution non-examination of the doctor deprives the defence of the right to test the medical findings on cross-examination. It is lastly contended that Exhibit 11, even if held to be admissible, its bare conclusion that the victim had been subjected to sexual intercourse is of no consequence to the present case. He relies on **State of Himachal Pradesh v. Jai Lal, (1999) 7 SCC 280**, to contend that an expert's opinion derives its probative value from the reasons and supporting data given by the expert.

VI. ANALYSIS OF THE EVIDENCE ADDUCED IN THE CASE

28. In order to convict the accused for the offences punishable under sections 376(2)(i) and section 506(II) of the Indian Penal Code read with sections 6 of the POCSO Act, 2012, the prosecution at trial was required to establish by evidence that the accused, Mrinmoy Halder, committed aggravative penetrative sexual assault upon the victim girl, committed rape and threatened her with dire consequences of killing the younger brother, in the event she discloses the incidents to the adult members of the family.
29. It is required to be seen whether the foundational facts necessary for raising the statutory presumption under Section 29 of the POCSO Act have been established and what is the consequence of the delay in lodging the FIR in this case, non-examination of the younger brother and the mother of the victim girl, and, most importantly, the heavy reliance of the defence counsel on the contradictions of the evidence of the victim girl and her grandmother being PW-1 and PW-5, respectively.



30. Each aspect of the case is examined below.

i. Proof of Foundational facts to raise the presumption of section 29 of the POCSO Act

31. Before a presumption under Section 29 of the Act can be raised against the accused, the foundational facts regarding commission of the offence must to be proved. Once the foundational facts necessary to raise a presumption under Section 29 of the Act are placed on record by way of cogent and reliable evidence, the reverse burden, as contemplated in the statutory provisions of the Act, stands shifted upon the accused, who would then must rebut the same.

A. The Age of the victim

32. PW5 has brought on record the Birth Certificate of the victim girl issued by the Kolkata Municipal Corporation that records her date of birth as December 2, 2004. The Birth Certificate has been marked as Exhibit 6. The defence has not disputed the fact that the victim girl was a minor and below 12 years of age. In fact, the evidence adduced on record establishes that the age of the victim girl on the date of the sexual assault was less than 12 years. The fact that the victim girl was a minor and below 12 years of age is thus well established and proved.

B. The access of the Appellant to the victim.

33. The fact that the appellant had an affair with the mother of the victim girl is also established by direct oral evidence of PW-1 and PW-5. The fact that the appellant had free access to the household would also be evident from the fact that the appellant used to spend nights with the mother of the victim girl at their residence, occasionally help the family with money, and also



cook food occasionally at the house. The fact clearly establishes that the appellant had free access to the victim girl. The identity of the accused is also established. The fact that the victim girl had identified the appellant on the dock, as the perpetrator of the crime, in the course of her evidence before the court also conclusively establishes the identity of the appellant as the person who had committed the heinous crime.

C. The direct oral evidence of the penetrative sexual assault on the victim by the appellant

34. The victim girl has, in course of her oral complaint to the Police Station on March 14, 2016, to the Judicial Magistrate under Section 164 of the CrPC on March 21, 2016 and finally before the Special Court in the course of her deposition on December 20, 2016 and December 21, 2016 has constantly deposed that the appellant had committed penetrative sexual assault on repeated occasions. The defence has not been able to shake her clear and direct testimony regarding the aggravative penetrative sexual assault.
35. In her complaint to the police, she has stated that the appellant entered the room while she was alone, removed his trousers and her clothes, gagged her, and forcibly penetrated her. She further stated that similar acts of forceful sexual intercourse had occurred on three or four earlier occasions, and that she remained silent because of fear of her brother being killed and also because of the appellant's relationship with the victim girl's mother.
36. Before the learned Magistrate, in the course of her recording under Section 164 of the Code of Criminal Procedure, 1973, as well as in her oral testimony before the trial court, the victim girl has maintained the core allegation of the appellant being the



perpetrator, that he obtained access inside the residence because of her acquaintance with her mother, that he removed the clothing, that he penetrated her, and that he prevented the disclosure to anyone by gagging and threatening her. The abuse was repeated. She has also identified the appellant in court, and her evidence on these essential matters remained unshaken in the cross-examination. All that the defence has attempted to do is to find inconsistencies in her statements at the three stages. On careful perusal of her evidence throughout, made before the police, the Judicial Magistrate, and finally before the Special Court, there is no room for doubt that the consistent core of the evidence of penetrative sexual assault on repeated occasions by the appellant stands conclusively proved and is found to be unblemished and of sterling quality.

D. Medical and forensic evidence

37. PW4 examined the victim girl on March 14, 2016. Her evidence is on record. She has deposed that the child was conscious, alert, and cooperative. The hymen was absent, and the vagina admitted one finger. It was found that there was no fresh bleeding or external injury to the thighs or perineum. These facts are corroborative of the evidence of prior penetration. The absence of fresh injuries in her private parts is unsurprising, when it is seen that such medical examination took place nearly 80 days after the last sexual assault. It is pertinent to mention that penetration, within the meaning of Section 3 of the POCSO Act, may be slight and does not require proof of ejaculation or injury. The aforesaid medical evidence, is therefore, found to be consistent with the case of PW-1 regarding repeated sexual assault upon her and does not, in any manner, contradict her oral testimony in court or elsewhere.



38. The absence of injury to private her parts, non-detection of semen or sperm on the garments or vaginal swab or the negative semen results are of little evidentiary value in establishing the innocence of the appellant, particularly because the prosecution case was of penetration and not necessarily ejaculation.
39. The evidence that the appellant was capable of penetrative sexual assault is also on record and only lends support to the prosecution version.
40. The aforesaid foundational facts narrated above unmistakably results in raising the mandatory presumption of guilt under Section 29 of the POCSO Act against the accused

ii. Presumption under Section 29 of the POCSO Act:

41. The presumption under Section 29 of the POCSO Act is invoked only after finding that the foundational facts have been duly established by the prosecution. In the present case, those foundational facts are summarized as :
- (a) the victim was below 12 years of age;
 - (b) the appellant had regular access to the household and was known to the victim girl;
 - (c) PW-1's direct and reliable evidence identifying the appellant and giving a detailed account of sexual penetration, gagging, and repeated sexual abuse;
 - (d) her evidence remained consistent throughout the three stages of the police complaint, examination before the Judicial Magistrate under Section 164 CrPC, and finally before the trial court in the course of the trial; and
 - (e) the medical findings are compatible with the prior penetration and in no way contradict the testimony of the minor girl.



42. Ld. Counsel places reliance on ***Debraj Dutta v. State of West Bengal, 2026 SCC OnLine SC 664***, to argue that the statutory presumption under Section 29 of the POCSO Act is not an automatic presumption and that the prosecution must first prove the foundational facts before raising such presumption. The present case cannot be equated with the factual position of *Debraj*. In this case, the victim girl's statement is consistent regarding the core allegations of sexual assault and this is not the case that there exist material discrepancies in her statements, thus, the foundational facts have been properly laid down by the prosecution in the present case. For the same reasons, ***Vikash v. State (NCT of Delhi), 2026 SCC OnLine Del 5787 and Nirmal Kumar v. State (NCT of Delhi), 2026:DHC:4028, Ganesh Orang v. State of West Bengal, 2022 SCC OnLine Cal 255 and Subrata Biswas v. State, 2019 SCC OnLine Cal 1815*** relied upon by the defence are completely distinguishable on facts as there are no material inconsistencies or variations which goes to the genesis of the prosecution case.
43. The aforesaid clear evidence establishes the ingredients of penetrative sexual assault under Section 3 and aggravated penetrative sexual assault under Section 5(m) of the Act. Her evidence of repeated acts also attracts Section 5(l). The foundational facts, therefore, contemplated in ***Sambhubhai Raisangbhai Padhiyar v. State of Gujarat, (2025) 2 SCC 399***, therefore, stand firmly established, wherein, in paras 33, 35, the Hon'ble Supreme Court observed that the evidence clearly established and constituted foundational facts for raising presumption under Section 29 of the POCSO Act, and the same was available to be raised for commission of offence under Section 3 and Section 5 of the POCSO Act, when foundational facts are clearly established.



44. Further, in a decision of a Co-ordinate Bench of this Court in **Raju Roy v. State of West Bengal (2022 Cri LJ 439)**, it was held was held :

“57. We are aware that Section 114A of the Evidence Act was introduced by way of an amendment in the year 2013. It lays down a rule of presumption as to absence of consent in certain prosecution case for rape. The POCSO Act 2012 provides for two presumptions, namely, the presumption as to certain offences, (Section 29) and the presumption of culpable mental state (Section 30). In contrast to the normal idea of ‘presumption of innocence’ (innocent until proven guilty) in criminal law, the POCSO Act, as a special statute, allows for a movement toward ‘presumption of guilt.’

58. Considering the same, it has been established that the primary burden is for the prosecution to prove the foundational fact of the case by adducing ‘cogent, trustworthy and reliable’ standard of evidence. Section 29 has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. Thus, without proof of foundational evidence in case under POCSO Act, the onus to prove the reverse burden of proof does not come into operation. The statutory presumption cannot be taken to be absolute. (See Swapan Mondal (Supra)).

59. In the case Sitaram Das v. State of W.B., reported in 2020 SCC OnLine Cal 522, it was held in paragraph 33-35 as follows;

“It is only on proof of foundational evidence being led, the onus gets shifted to accused to prove the contrary in order to discharge the reverse burden of proof, as contemplated in Section 29 of the POCSO Act.... It has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. The statutory presumption thus cannot be taken to be absolute. “... mere proof of medical evidence, which is nothing more than a corroborative piece of evidence, would not by itself pave the way for application of presumption available under Section 29 of the POCSO Act.”

60. In Swapan Mondal, (supra) in a separate concurring judgment delivered by one of us (Soumen Sen J.), the concept of reverse burden of proof was considered and discussed. The factual matrix of the case pertained to the aggravated penetrative assault on a victim girl aged fifteen years. Observing that the main substance of the prosecution's case rests on appreciation of evidence in the context of Section 29 and 30 of the POCSO Act, it was held in paragraph 28-30 that:

“There is hardly any scope for direct application of Section 29 of the POCSO Act, even in a case where there is no foundational evidence being led by the prosecution. ... The issue was addressed by the Division Bench of this court in the case of Subrata Biswas v. The State reported in (2019) 3 CrL (Cal) 331, where the ratio decided was that proof of penetrative sexual



assault is sine qua non prior to making application of the presumption available under Section 29 of the POCSO Act. ... Section 29 has got no direct and automatic application irrespective of the standard of evidence adduced in a particular case. Thus, without proof of foundational evidence in a case under the POCSO Act, the onus to prove the reverse burden of proof does not come into operation. The statutory presumption therefore cannot be taken to be absolute.”

61. Thus, once the foundational facts required for the presumption under Section 29 and 30 of the POCSO Act kick in stand established. The burden of proof falls squarely on the appellant/accused to rebut the said presumptions on the balance of probabilities.”

45. Thus, once the foundational facts have been properly laid out by prosecution, the Court must raise presumption of guilt of the accused under Section 29 and once the presumption under Section 29 is raised, the court has to convict the accused, unless the contrary is proved by the accused in the course of the trial. Needless to mention, the presumption is rebuttable, and the appellant can rebut such a presumption of law through cross-examination, defence evidence, or through circumstances emerging from the prosecution case.

46. In light of the aforesaid statutory presumption being raised in favour of the prosecution case, it is necessary to examine the defence placed on record and argued before this court.

VII. THE DEFENCE CASE

i. Evidence of PW1, victim girl unreliable :

47. Ld. Counsel for the appellant has further relied upon the decision of the Hon'ble Supreme Court in ***Rai Sandeep @ Deepu v. State (NCT of Delhi), (2012) 8 SCC 21***, to argue that the testimony of the witness must be that of a “sterling quality” and the sterling witness must remain consistent on the core facts and should withstand scrutiny during cross-examination. ***Abbas Ahmad Choudhury v. State of***



Assam, (2010) 12 SCC 115 has been relied to show that a unreliable witness cannot form sole basis of an order of conviction.

48. We find that evidence of PW-1 was of a sterling quality, since there were no material variations/inconsistencies in her statements and the same were further corroborated by the deposition of PW-5 as well. The core allegations against the Appellant, in the present case, have been consistent throughout regarding the identity of the offender from the outset, the specific account of the offence, gagging, and repeated abuses. The test laid down in *Rai Sandeep* for a witness to be seen as sterling witness are fully established in this case because of the following:

- a. The sterling witness should be of a very high quality and calibre whose version should be unassailable: In the present case, the victim girl's statement is of high quality and calibre having clearly identified the accused, place of occurrence, manner of occurrence, and specific accounts of repeated abuses with precision, and the same is unassailable.
- b. The truthfulness and consistency of the statement right from the starting point till the end, without any prevarication: In our considered view, the victim girl's statements have been consistent throughout from the date when the FIR was lodged till her deposition before the Court, as she has consistently identified the accused, place of occurrence, time and manner, and the specific account of repeated abuses, without any material variations in the statements.
- c. The witness should be in position to withstand cross-examination, without leaving room for any doubt as to factum of occurrence, persons involved, and the sequence: It is clear, that the victim girl withstood the cross examination without raising any doubt as to material factum of the occurrence, persons involved, and the sequence of the occurrence.



- d. The version should have correlation with each and every one of other supporting material such as manner of offence committed, recoveries made and version of other witnesses: In the present case, victim girl's version clearly has correlation and is further corroborated by the deposition of other witnesses (for instance PW-5) and medical evidence.

49. Reference can also be made to **Vijay @ Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191, the Supreme Court in Paragraph 14,** held that:

"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, required no corroboration, the court may convict the accused in the sole testimony of the prosecutrix."

50. Further, in **Sua v. State of Rajasthan, [2025 INSC 887]**, the Supreme Court held that corroboration is not a sine qua non for conviction in sexual offence cases. If the statement of the prosecutrix is worthy of credence, it requires no corroboration and can form the sole basis for conviction. Reference can be profitably had to **Ganesan v. State, 2020 10 SCC 573, paragraphs 9 to 9.3**, where the Supreme Court reiterated that conviction for a sexual offense may be safely based upon the sole testimony of the victim, when her evidence inspires confidence of the court. Corroboration of such evidence is not an indispensable requirement of law in all cases. What the Court must inquire is whether the contradictions highlighted by the defence result in discrediting the evidence of the victim girl completely.

ii. Delay in lodging of the FIR

51. Mr. Nag has strenuously argued that the delay in lodging the complaint with the local police station and the consequent registration of the FIR must be seen to be fatal to the prosecution case. It is argued that the interval between the incidents in December 2015 and the complaint of



March 14, 2016 requires careful consideration and not an automatic rejection. It is argued that delay has reduced the prospect of recovering biological material and recording fresh injuries, if there was any. It is further argued that while the explanation offered by the victim girl for not immediately informing the adult guardians of the family because of the threat meted out by the appellant, but the continued silence of the mother and the grandmother from December 2015 to March 2016 remains unexplained by a reasonable explanation.

52. Delay in reporting of a sexual offense is not to be used as a standard formula for disregarding the prosecution case. In ***Tulshidas Kanolkar v. State of Goa, (2003) 8 SCC 590, paragraph 5***, the Supreme Court has held that delay requires the court to examine the explanation offered for such delay in lodging the FIR. Where the explanation is satisfactory in the circumstances of the case, the delay does not render the prosecution version brittle. Moreover, the Supreme Court, in plethora of cases, has held that delay in lodging the FIR, in cases of sexual assault should not be equated with other cases to acquit the accused, as there can be several factors weighing in, in the minds of victim and her family before coming to police station to lodge a complaint.

53. In ***State of Himachal Pradesh v. Prem Singh, (2009) 1 SCC 420, the Supreme Court in paragraph 6***, observed that :

“6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction.”

54. Learned counsel for the appellant has placed strong reliance upon ***Rajesh Patel v. State of Jharkhand, (2013) 3 SCC 791, Vijender v. State of Delhi, (1997) 6 SCC 171, State of Himachal Pradesh v. Jai***



Lal, (1999) 7 SCC 280 and Mostafa Sk. @ Mostu Sk. v. State of West Bengal, 2014 SCC OnLine Cal 17542 to assert that in rape prosecution, non-examination of the doctor deprives the defence of the opportunity to test the medical findings on cross examination. In our considered view, the reliance placed upon *Rajesh Patel* is misplaced on facts. In that case, there were consideration of cumulative factors that led to acquittal of the accused, and not solely on the fact that the doctor was not examined. It is pertinent to mention here that in *Rajesh Patel*, neither the doctor nor IO were examined, the evidence of prosecutrix suffered from contradictions and embellishments and were observed to be not natural, consistent and probable to sustain conviction. There was also an unexplained delay in filing FIR, the cumulative effect of which created a reasonable doubt. In the present case, the doctor who authored the report in Exhibit 11 was not examined, however, the doctor who authored the report in Exhibit 3 was duly examined.

55. The child has explained that she was frightened and intimidated by the appellant's threat to kill the brother and was therefore hesitant to speak out. The relationship of the appellant with her mother was also a reasonable hurdle. The accused was thus not a stranger, but a trusted visitor to the household. Such a setting in itself explains the delay so far as the child is concerned. Hence, there are reason which explains and justifies the cause of delay in filing the FIR.
56. It is true that PW-5 was an adult and that an admitted report and an immediate medical examination would have led to more direct evidence against the appellant, if any. Her failure to act immediately and with promptness, in hindsight, may appear desirable, but cannot in itself render the other evidence nugatory. The records further show that the appellants' return to the house in February-March 2016 led to the lodging of the FIR. The delay has undoubtedly reduced the prospect of recovering biological evidence. But the failure to have the additional forensic and medical evidence does not erase the otherwise substantive



evidence of PW-1. The delay, therefore, warrants a caution from this court, which has been duly exercised, but in itself does not create a reasonable doubt. Upholding the argument that the delay in lodging the FIR was fatal to the case, in the facts and circumstances of this case, would result in completely disbelieving all other evidence on record is, therefore, considered and rejected.

iii. Alleged contradictions and their effect upon the prosecution case

57. Ld. Counsel has highlighted the following discrepancies in the prosecution case. It is argued that the discrepancies highlighted hereunder are material. Learned Counsel has argued that reliance cannot be placed on the prosecution case in view of the variations appearing in the written complaint, the statements made under Section 164 CrPC before the Judicial Magistrate and the trial court read with the contradictory statements of the grandmother, PW-5. He submits that these contradictions are not ordinary discrepancies which can be attributable to lapses in memory, but are material contradictions affecting the manner, time, and circumstances of the alleged offense.
58. The contradictions highlighted on behalf of the appellant may be summarized thus:
- a. In her complaint to the police station the victim has stated that during the Christmas vacations she used to remain alone in the afternoon while her mother went out for work and her younger brother attended school, whereas in the deposition before the trial court, her younger brother was present in the room and was watching television before falling asleep.
 - b. In the written complaint, she has referred to one incident during Christmas vacations and to three or four similar earlier incidents, whereas in her deposition before the court, she has described one occurrence taking place on December 24th and the remaining three the following days.



- c. She has stated that during one of such occurrences, her younger brother came upstairs and saw the applicant with her, whereas PW5, in her deposition, claimed that it was the younger brother who alerted her and that she went upstairs thereafter.
- d. According to PW-1, she came downstairs after the incident and disclosed the matter to her grandmother, whereas PW-5 asserted that she herself went upstairs and saw the applicant sitting naked over the child while gagging her.
- e. There were variations regarding the exact place and sequence of occurrences of the offenses, including the reference to the room, the first floor, the *macha*, the mosquito net, the oil jar and the mobile phone lying behind the sewing machine, etc.

59. The aforesaid submissions require careful consideration. Any contradiction becomes material when the same affects the identity of the accused or the fact regarding the nature of the sexual act, which renders the occurrence inherently improbable. Every contradiction relating to time sequence, presence of another person, or the sequence of disclosure does not necessarily result in creating doubt in the mind of the prosecution case. The evidence of the child cannot be approached with an assumption of either infallibility or falsehood. Such evidence must be scrutinized with care and with due allowance for the age of the witness, the traumatic nature of occurrences, the lapse of time before her deposition, and, in the present case, the fact that she was describing repeated acts rather than one isolated incident.

60. The Supreme Court in ***Bharwada Bhoginbhai v. State of Gujarat, (1983) 3 SCC 217***, observed that :

“Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important “probabilities-factor” echoes in favour of the version narrated by the witnesses. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?”



To do so is to justify the charge of male chauvinism in a male dominated society... Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western World. It is wholly unnecessary to import the said concept on a turn-key basis and to translate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the Western Society that a female may level false accusation as regards sexual molestation against a male for several reasons... On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World."

61. In light of the above principles, of law the contradictions pointed out by the defence is now examined:
62. The first the contradiction relates to the presence of the victim's younger brother in the complaint, the victim gave a general description of the circumstances during the Christmas vacations, stating that she would remain at home while her mother went out for work and the younger brother attended school. In her deposition, while describing a particular occurrence, she has stated that her younger brother was watching television in the room and thereafter fell asleep. These statements cannot be read in isolation from her consistent core statements that the appellant assaulted her on several occasions. The presence or absence of the younger brother could therefore have varied from one occurrence to another. Most importantly, neither version alters, affects, or dilutes the essential ingredients of the offense being, the appellant had unrestricted access to the victim girl who took advantage of the absence of the adult members of the family, and ultimately subjected her to sexual assault. The above variations or



contradictions, at the best, relate to surrounding circumstances and not the identity of the offender or the sexual act attributed to him.

63. The second contradiction is in relation to the chronology of the occurrences. The complaint refers to one incident during the Christmas vacation and three to four similar incidents preceding it, whereas in her deposition, the victim talked about one incident on December 24, 2015, and described the other occurrences on succeeding days. The court must bear in mind that the victim was about 11 years old, that the allegation involved repeated acts within a comparatively short period, and that she was recounting the same after the passage of some time. A girl subjected to repeated sexual abuse may remember the acts and their surrounding circumstances without being able to arrange every occasion or occurrence in the exact chronological order. Throughout her deposition, the victim remained unshaken with regard to the appellant repeatedly assaulting her sexually. The contradiction as to whether the occurrences happened immediately or subsequent to December 24, 2015, does not, in the opinion of this court, affect the consistent assertion of the victim. The evidence of a truthful witness is rarely a photographic reproduction of the exact occurrence. In ***State of U.P. v. MK, (1984) 1 SCC 505***, the Supreme Court has held that discrepancies which do not go to the root of the matter and shake the basic version of the witness should not be given undue importance.
64. The third contradiction relates to the role played by the younger brother in bringing the incident to the notice of PW-5, the grandmother. PW-1 stated during one of the occurrences, the brother came upstairs and saw the appellant with her. PW-5 stated that the younger brother alerted her, which led her to go upstairs. These variations are not necessarily irreconcilable. The younger brother could have seen the appellant and the victim and thereafter have gone to PW-5. Even assuming that the aforesaid narration of events does not coincide with mathematical precision, the differences or contradictions relate to what the younger brother did after coming to know of the occurrence and to



the manner in which PW-5 was alerted. It does not contradict the clear case/deposition of PW-1 relating to the penetration, the non-examination of the brother and the mother. At the highest, it deprives the prosecution of a possible corroboration regarding the incident, but the same does not affect the consistent core allegation of sexual assault given by PW-1. It must be seen whether the witnesses who were not examined by the prosecution could have provided a missing link to the prosecution case, or whether such evidence would merely add corroboration to the already existing evidence. In the present case, the evidence of the brother and the mother would only have been corroborative, and as such, this court does not feel that non-examination of the said two witnesses could result in creating doubt in the mind of the court.

65. Furthermore, a mere non-examination of witness cannot vitiate the prosecution's case, as has been held by the Supreme Court, in **Rajesh Yadav v. State of Uttar Pradesh, (2022) 12 SCC 200, in para 31**, that:

"31. A mere non-examination of the witness per se will not vitiate the case of the prosecution. It depends upon the quality and not the quantity of the witnesses and its importance. If the court is satisfied with the explanation given by the prosecution along with the adequacy of the materials sufficient enough to proceed with the trial and convict the accused, there cannot be any prejudice. Similarly, if the court is of the view that the evidence is not screened and could well be produced by the other side in support of its case, no adverse inference can be drawn. Onus is on the part of the party who alleges that a witness has not been produced deliberately to prove it."

66. The fourth and more noticeable discrepancy is between PW-1's statement that she came downstairs and disclosed the incident to her grandmother, and PW-5's statement that she went upstairs and personally saw the appellant without his lower garment, sitting over the naked child and gagging her. Both these versions cannot be accepted as the exact narration of the same incident. The proper course, however, is not to allow the possible discrepancies in the statement of PW-5 to destroy the otherwise reliable direct testimony of PW-1. PW-5 was not the victim of the assault. Her evidence was in fact to



corroborate the appellant's presence in the household, the disclosure made by the child and the family's subsequent reaction. Even if PW-5's assertion that she personally witnessed the compromising position, is excluded altogether, PW-1's account of penetration, removal of clothes, gagging or threat, and repeated sexual abuse remains unaffected. The inconsistency thus diminishes the extent of corroboration by the PW-5. It does not show that the statement of PW-1 was contradictory to her own narration of sexual assault.

67. The remaining variations relate to the exact place and sequence of the incidents and to details such as the room, the first floor, the *macha*, the mosquito net, the oil jar and the mobile phone lying behind the sewing machine. These details were narrated in the context of different incidents and cannot be combined as though every witness was describing a single occurrence. Some uncertainty in arranging these details is natural where a child is required to separately recall repeated traumatic occurrences. What remains consistent is that the incidents took place inside the residence, that the appellant was a familiar person having regular access to it, that he used ordinary household situations to isolate or approach the victim, and that he repeatedly subjected her to penetration. None of the variations makes the occurrence inherently improbable or affects the identity of the appellant, the nature of the sexual act, or the victim's consistent accusation against him.
68. It is pertinent to mention that sections 215 and 464 of the Code of Criminal Procedure require the court to consider whether the difference misled the accused and occasioned any failure of justice at any point of time. It is not in dispute that the allegations related to the same child, the same appellant, and a series of sexual assaults within the same house, in a short period of time around December 2015. The deposition of PW-1 was tested on cross-examination by the appellant. We do not find any indication that the description in the Charges in any manner prevented the appellant from meeting the case or advancing a defence



which was otherwise available to him. It is therefore held that the appellant has not been prejudiced in any manner which could persuade this court to set aside the order of conviction.

69. In view of the foregoing discussions, this court does not feel that the contradictions highlighted by the defence are so glaring as to result in putting a doubt in the mind of the court or discrediting the testimony of PW-1 which has remained throughout consistent and specific so far as the repeated sexual act committed against her by the applicant.

VIII. CONCLUSION ON CONVICTION

70. Upon independent analysis of the entire evidence, we find that the evidence of the victim girl on the core allegation of aggravated penetrative sexual assault is reliable. The prosecution has also established the foundational facts necessary for invocation of the presumption under Section 29 of the Act.
71. The appellant has failed to rebut such presumption. The discrepancies highlighted on behalf of the appellant do not affect the substance of the prosecution case. The delay in lodging of the FIR also does not render the prosecution case doubtful. Upon our reappraisal of evidence, we find no ground to interfere with the impugned judgment of the trial court.
72. Accordingly, the conviction of the appellant under Section 376(2)(i) and 506(II) of the IPC and Section 6 of the POCSO Act is affirmed.

IX. SENTENCE

73. We have independently accessed the sentence imposed in the impugned judgment given by the trial court to the appellant. The evidence of PW 1, along with PW5 and other corroborating evidence on record, establishes the charge of aggravated penetrative sexual assault without



any doubt. We therefore are not hesitant to convict the appellant under Section 376(2)(i) and Section 506(II) of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, by order of conviction dated April 8, 2019.

74. The question of sentence of the appellant, however, requires a different exercise of judicial discretion. Section 6 of the POCSO Act, as it stood on the date of commission of the offence, prescribed rigorous imprisonment for a term not less than 10 years which could extend to life imprisonment, as well as fine. The aforesaid penal provision therefore leaves a range within which an accused can be sentenced in light of the facts and circumstances of each case.
75. The Supreme Court in ***Sachin v. State of Maharashtra, 2025 INSC 716***, which held that the Court while affirming an order of conviction can modify and/or alter the sentence given the facts and circumstances of that case. In ***Pradeep Kumar v. State, 2024:DHC:53***, paragraphs 29–35, the conviction under Section 6 of the POCSO Act was maintained while the sentence was reduced after considering the period of custody, satisfactory prison conduct, remission, absence of prison punishment and other criminal involvement, and the possibility of rehabilitation.
76. The sentence of 13 years and 6 months, in our view, balances the gravity of the offence with the circumstances of this case relevant for the purpose of sentence. This court has given due weight to the attending circumstances of this case. The report dated July 27, 2026, submitted by the Superintendent, Baruipur Central Correction Home shows that the Appellant has continuously remained in custody since his arrest on March 14, 2016, and was never released on bail. The report records that the Appellant has earned remission of 498 days as on June 30, 2026, so that the period of actual detention together with the remission earned shows that more than 10 years and four months and 14 days of detention of the Appellant. The report further shows



that the conduct of the Appellant towards his inmates and his overall conduct in the jail is satisfactory. No adverse report or punishment in the prison has been recorded against the Appellant. The accused has no criminal antecedents. He was also released on parole on two occasions for three days each, with police escort, and during such parole, no adverse report was received regarding his conduct. These circumstances indicate substantial period of custody, satisfactory post conviction conduct of the Appellant and reasonable prospect of reformation.

77. While the conviction of the Appellant under Section 376(2)(i) and Section 506(II) of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, is affirmed, the sentence of rigorous imprisonment for 15 years imposed thereunder is modified to a rigorous imprisonment of 13 years and 6 months. The sentence imposed under Section 506 (II) of the IPC is also maintained. All the sentences shall run concurrently. The Appellant shall receive the benefit of set-off under Section 428 CrPC, in accordance with law.
78. Accordingly, the CRA No. 594 of 2019 is dismissed. The judgment of conviction dated April 8, 2019 passed in Sessions Trial No. 05 (06) of 2016 arising out of Special Case No. 100 of 2016 is affirmed. The appellant is convicted of the charges under Section 376(2)(i), Section 506(II) IPC and Section 6 of the POCSO Act. However, the order of sentence dated April 10, 2019 is modified in the manner as stated hereinabove.
79. Accordingly, CRAN 3 of 2026 also stands disposed of.

X. COMPENSATION AND OTHER DIRECTIONS

80. The victim is entitled to compensation and reparation for the heinous crime that has been committed against her at such a tender age. Such a reparation is because of the failure of the State to discharge its



sovereign duty to protect and secure its citizens from crime. Refer to ***Bijoy @ Guddu Das v. State of West Bengal, reported at 2017 Cri LJ 3893***. The Victim Compensation Fund has been duly notified by the State Government under Section 357A, CrPC, which entirely prescribes the minimum amount of compensation that may be awarded for various injuries.

81. While we affirm the judgment of the trial court, we find that the learned trial court has awarded compensation of a sum of Rs.3,00,000 to the victim girl under the West Bengal Victim Compensation Scheme, 2017. But it appears that the learned trial court has omitted to apply the *Note* appended to the *Schedule* under the West Bengal Victim Compensation Scheme, 2017, which provides that where the victim girl is below 14 years of age, the compensation shall be increased by 50% over the amount specified in the schedule. The Schedule is reproduced hereunder:

Schedule		
Sl. No.	Description of Injuries/Loss	Minimum Amount of Compensation
1.	Acid Attack	Rs. 3 lakhs
2.	Rape	Rs. 3 lakhs
3.	Physical abuse of minor	Rs. 2 lakhs
4.	Rehabilitation of victim of Human Trafficking or other offences like witch hunting etc.	Rs. 1 lakh
5.	Sexual assault (Excluding rape)	Rs. 50,000/-
6.	Death	Rs. 2 lakhs
7.	Permanent Disability (80% or more)	Rs. 2 lakhs
8.	Partial Disability (40% to 80%)	Rs. 1 lakh
9.	Burns affecting greater than 25% of the body (excluding Acid Attack cases)	Rs. 2 lakhs
10.	Loss of foetus	Rs. 50,000/-
11.	Loss of fertility	Rs. 1.5 lakhs

Note : If the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified above.



82. Although the offenses under the POCSO Act are not specifically mentioned in the above schedule, the benefit of the compensation to victims of sexual offences under the said Act has been extended to such victims under the POCSO Act as well in *Bijoy alias Guddu (supra)*.
83. It is evident that the victim girl in the present case was below the age of 12 years on the date of the occurrence of the offence and therefore is entitled to such additional compensation. Accordingly, the compensation awarded by the trial court is enhanced by a further sum of Rs.1,50,000, thereby making the aggregate compensation payable to the victim a sum of Rs.4,50,000. If the sum of Rs.3,00,000 has already been paid to the victim girl, the balance sum of Rs. 1,50,000 shall be released by the State within 30 days from the date of communication of this judgment, in accordance with the Scheme and for the benefit of the rehabilitation of the victim. If the said sum of Rs. 3,00,000/- has not yet been paid to the victim girl till date, the entire sum of Rs. 4,50,000/- shall be paid to her within 30 days from the date of communication of this judgment. The Trial Court shall ensure compliance of this part of the direction regarding payment to the victim girl.
84. We are compelled to record, with anguish and disappointment, that notwithstanding statutory provisions of the POCSO Act, the name and other particulars regarding the identity of the victim girl were not redacted by the trial court at different stages of the proceedings. Several portions of the deposition and other documents forming part of the lower court records disclose her name and identity. Such disclosure is not a mere procedural irregularity, it is contrary to the mandate of Section 33(7) of the POCSO Act, and it infringes upon the child's right to privacy and dignity, besides exposing her to stigma. The trial court shall, before granting inspection or supplying any of the records relating to the POCSO Act, must ensure that the name, address, and other particulars which are capable of identifying the victim are suitably redacted.



85. Let the lower court records, together with a copy of his Judgement, be transmitted to the learned Trial Court forthwith for necessary information and records.
86. The identity of the victim shall continue to remain protected in all copies uploaded and supplied to parties.
87. Urgent certified copy of this Judgment, if applied for, shall be made available to the parties upon compliance with due formalities.

I agree.

(Rajasekhar Mantha, J.)

(Anuj Singh, J.)