

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 257 of 2019****Reserved on: 23.9.2025****Date of Decision: 27.11.2025**

Inder Kumar**...Appellant****Versus****State of H.P.****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Appellant : Ms Shwetima Dogra, Advocate,
vice Mr Vinod Kumar Gupta,
Advocate.****For the Respondent : Mr Jitender K. Sharma,
Additional Advocate General.**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction dated 31.10.2018 and order of sentence dated 21.11.2018, passed by learned Special Judge, Shimla, H.P., vide which the appellant (accused before learned Trial Court) was convicted of the commission of offences punishable under Sections 376 and 506 of the Indian Penal Code (IPC) and Section

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

4 of Protection of Children from Sexual Offences Act (POCSO Act) and was sentenced as under:-

Under Section 376 of IPC	To suffer rigorous imprisonment for a period of seven years, pay a fine of ₹50,000/- and in default of payment of fine, to undergo simple imprisonment for three months.
Under Section 506 of IPC	To suffer rigorous imprisonment for six months, pay a fine of ₹500/- and in default of payment of fine, to undergo further simple imprisonment for seven days.
Under Section 4 of POCSO Act	To suffer rigorous imprisonment for a period of seven years, pay a fine of ₹50,000/- and in default of payment of fine, to undergo simple imprisonment for three months.
All the substantive sentences of imprisonment were ordered to run concurrently.	

(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 376 and 506 of the IPC and Section 4 of the POCSO Act. It was asserted that the victim (name withheld to protect her identity)

was 17 years old on the date of making the report to the police. She met the accused two years before reporting the matter to the police. She and the accused liked each other. The accused was residing at Mehli. He used to call the victim to Mehli. He repeatedly maintained sexual relations with the victim in his room. He used to threaten the victim on her refusal to maintain sexual relations. He also promised to marry the victim. The victim became pregnant, and she told the accused about the pregnancy, but the accused advised her to abort the fetus. The victim found that the petitioner was already married. The accused had sexually exploited the victim by promising to marry her. She filed an application (Ex.PW22/A). The police registered the FIR (Ex.PW22/B). SI Reena (PW22) investigated the matter. She sent the victim to Deen Dayal Upadhaya Hospital (DDU), Shimla, for her medical examination along with an application (Ex.PW15/A). Dr. Ganga (PW15) conducted the medical examination of the victim and found that the victim was pregnant for 28 to 30 weeks. She collected the blood sample of the victim on an FTA card for DNA analysis. She issued the MLC (Ex.PW15/B). She advised an ultrasound examination for gestational age and other fetal parameters. The period of

gestation was found to be 22 weeks and 2 days as per the ultrasound report. SI Reena arrested the accused and sent him to DDU for his medico-legal examination, along with an application (Ex.PW2/A). Dr Surender Kumar (PW2) conducted the medical examination and found that there was nothing to suggest that the accused was incapable of performing sexual intercourse. He obtained the blood sample of the accused on an FTA Card and other samples. He issued MLC (Ex.PW2/B) and handed over the samples and the FTA Card to the police officials accompanying the accused. SI Reena visited the spot and prepared the site plan (Ex.PW22/D). She took the photographs (Ex.PW22/E1 and Ex.PW22/E2). She recorded the statement of the victim, which was videographed and transferred to DVD (Ex.PW17). The DVD was put in a parcel (Ex.P16), and the parcel was sealed with seal 'C'. The seal impression (Ex.PW22/F) was taken on a separate piece of cloth. The samples were sent to the State Forensic Science Laboratory (SFSL), Junga, for analysis. SI Reena filed an application (Ex.PW20/A) for obtaining the date of birth certificate. Manula Thaur (PW20) issued the certificate (Ex.PW20/B) showing that the date of birth of the child victim was 9.9.1999. An application (Ex.PW16/A) was filed before Ms

Sonal Thama (PW16), learned Judicial Magistrate First Class, Court No.VI for recording the statement of the child victim. Ms Sonal Thama recorded the statement of the child victim (Ex.PW16/A). She put the preliminary questions (Ex.PW16/C), prepared the memorandum of inquiry (Ex.PW16/D) and passed the orders (Ex.PW16/E and Ex.PW16/F) before recording the statement of the child victim. The victim gave birth to a male child on 10.6.2017. SI Reena filed an application (Ex.PW22/H) to preserve the blood sample of the newly born baby of the victim on the FTA Card. The photographs (Ex.PW22/J to Ex.PW22/J3) were taken. The blood sample was taken on the FTA card and was sent to SFSL, Junga. The victim died on 15.6.2017. SI Reena filed an application (Ex.PW19/A) for conducting the postmortem examination of the child victim. She prepared the inquest report (Ex.PW19/B). Dr Sangeeta Dhillon (PW19) conducted the postmortem examination of the child victim and found that she had died due to septicemic shock. She issued the report (Ex.PW19/C), preserved the viscera and handed it over to the police official accompanying the child victim. SI Reena took the photographs (Ex.PW22/K1 and Ex.PW22/K2). The custody of the baby was handed over to the victim's parents vide memo

(Ex.PW22/M). The viscera were sent to FSL, Junga. The accused was using Mobile Phone xxx197, which was obtained on the basis of the identification documents of Ajay Kumar. Customer Application Form (Ex.PW5/A), identification document (Ex.PW5/B), call detail records (Ex.PW10/A), and certificate (Ex.PW10/B) were obtained. The child victim was using the Mobile No.xxx744 which was issued in the name of her father. Copy of Customer Application Form (Ex.PW11/A), Identification Document (Ex.PW11/B), Call Detail Record (Ex.PW11/D) and certificate (Ex.PW11/E) were obtained. Smt. Vinay (PW3) supplied the copy of the admission form (Ex.PW3/D), a copy of the affidavit (Ex.PW3/C) and a copy of the admission register (Ex.PW3/B), which were seized by the police. SI Reena filed an application (Ex.PW1/A) for obtaining the treatment summary of the child victim. Dr Rekha Gupta (PW1) issued the treatment summary (Ex.PW1/B). After the analysis, the reports (Ex.PZ), (Ex.PW21/A) and (Ex.PA) were issued, stating that human semen was detected on pubic hair and the coronal swab of the accused, blood was detected on the vaginal smear slide and vaginal swab of the victim, no poison/drug was detected in the viscera, and the victim was the biological mother and the accused was the

biological father of the baby born to the victim. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented learned Special Judge, Shimla (learned Trial Court).

3. Learned Trial Court charged the accused with the commission of offences punishable under Sections 376 and 506 of IPC and Section 4 of the POCSO Act, to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined 22 witnesses to prove its case. Dr Rekha Gupta (PW1) conducted the victim's caesarean section and preserved the blood sample on the FTA Card. Dr Surinder Kumar (PW2) medically examined the accused. Smt. Vinay (PW3) produced the record regarding the admission of the victim. HC Naresh Kumar (PW4) was working as MHC with whom the case property was deposited. Ajay Thakur (PW5) is the owner of the Mobile No.xxx197 which was being used by the accused. LC Yashodha (PW6), LC Jyoti (PW7), and Constable Rohit (PW8) carried the case property to FSL, Junga. HHC Yash Pal (PW9) accompanied the accused to the hospital and brought the samples collected by the Doctor to the Police Station. Devinder Verma (PW10) proved the call detail record and the

Customer Application Form of the Mobile No.XXX197. Hanumant Rai (PW11) proved the Customer Application Form, Identification Document and Call Detail Record of Mobile No.xxx974. (PW12) is the relative, (PW13) is the mother, and (PW14) is the father of the victim. Dr Ranga (PW15) conducted a medical examination of the victim. Ms Sonal Thama (PW16) was posted as Judicial Magistrate First Class, who recorded the statement of the victim under Section 164 Cr.P.C. LHC Kaushalya (PW17) accompanied the victim to the hospital and brought the samples to the Police Station. Ramesh Kumar (PW18) is the witness to the memo of the handing over of the child to the victim's parents. Dr Sangeet Dhillon (PW19) conducted the postmortem examination of the victim. Manula Thakur (PW20) proved the admission and withdrawal register containing the victim's date of birth. Dr Vivek Sehajpal (PW21) conducted the DNA analysis. SI Reena (PW22) investigated the matter.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., admitted that the victim was residing with her parents. He admitted that he was arrested, his medical examination was conducted, and his samples were preserved. He denied the rest of the prosecution's case. He stated that

witnesses deposed falsely against him, and he was falsely implicated. No defence was sought to be adduced by the accused.

6. Learned Trial Court held that the statement made by the victim to her relative, parents, and to the learned Magistrate under Section 164 Cr.P.C. would be admissible under Section 32 of the Indian Evidence Act. The statements were duly corroborated by the statements of the Medical Officers, and the report of analysis showing that the accused was the biological father and the victim was the biological mother of the baby. The victim was proven to be a minor on the date of the incident. Her date of birth was proved from the school she first attended. The accused did not dispute in the cross-examination that he had a relationship with the victim. Therefore, the accused was convicted and sentenced as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused has filed the present appeal asserting that the learned Trial Court erred in convicting and sentencing the accused. The prosecution had failed to prove that the victim was a minor. The victim attended Shivpuri School, as per her father. No birth certificate was produced at the time of her admission, and the admission was given based on the

affidavit. The affidavit was also not proved as per the law. The victim's father stated that the date of entry of birth was recorded in the Municipal record; however, the record was not produced before the Court. The prosecution's witnesses materially improved upon their version, and learned Trial Court erred in relying upon their version. Hence, it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Ms Shwetima Dogra, learned vice counsel representing the appellant and Mr Jitender Sharma, learned Additional Advocate General, for the respondent-State.

9. Ms Shwetima Dogra, learned vice counsel representing the appellant, submitted that the learned Trial Court erred in convicting and sentencing the accused. The prosecution had failed to prove the date of birth of the victim. The victim had died, and the statement made by her could not have been admitted under Section 32 of the Indian Evidence Act. Learned Trial Court erred in relying upon the victim's statement. There was no legally admissible evidence against the appellant. Therefore, she prayed that the present appeal be allowed and the

judgment and order passed by the learned Trial Court be set aside.

10. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the learned Trial Court had rightly held the statements made by the victim to her parents, relatives and learned Magistrate were admissible under Section 32 of the Indian Evidence Act. The report of the analysis proved that the accused is the biological father of the baby delivered by the victim. This report corroborates the victim's version that the accused had entered into a sexual relationship with her. The victim's date of birth was proved by the record of the school where she was first admitted. There is no infirmity in the judgment and order passed by the learned Trial Court, hence, he prayed that the appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. Dr Rekha Gupta (PW1) stated that the victim was complaining of labour pain. She conducted the cesarean section on 10.6.2017. The victim complained of breathlessness at 7.30 PM. She was in respiratory distress during the night. She referred

the patient to IGMC, Shimla, for further treatment. She was not cross-examined regarding this part of her statement.

13. The victim's mother (PW13) stated that the victim was admitted to DDU Zonal Hospital, Shimla, and she was referred to IGMC, Shimla, where she expired. This was corroborated by the victim's father (PW14), who stated that the victim was taken to DDU Zonal Hospital, where she delivered the male child. She was referred to IGMC, Shimla, where she died. The statements of these witnesses regarding the death of the victim were not challenged in their cross-examination and are to be accepted as correct.

14. Dr Sangeet Dhillon (PW19) conducted the postmortem examination of the victim and found that the cause of death was septicemic shock. She was not cross-examined at all. Therefore, it is duly proved on record that the victim had died because of the complication arising from delivering the baby. The baby was conceived as a result of a sexual act. Therefore, the sexual act was a part of the transaction, which resulted in the victim's death, and the learned Trial Court was justified in treating the statement made by the victim related to the sexual act as admissible under Section 32 of the Indian Evidence Act.

15. In State of *H.P. Vs. Ravinder Sharma* 2016 SCC OnLine HP 1465, the victim lodged an FIR stating that she was raped by the accused. Subsequently, she committed suicide. It was held by this Court that a complaint made by the victim regarding the rape was part of the circumstances leading to the death of the victim and admissible under Section 32 of the Indian Evidence Act. It was observed:-

“24. In the present case also, as noticed hereinabove, the FIR was registered at the instance of the prosecutrix, promptly stating therein that she was raped by the accused on 15.12.2009. She committed suicide after 16 days. The FIR had a direct nexus with her death due to shame. The prosecutrix was medically examined by PW-9 Dr Neena Lal. The learned trial Court has not even discussed the medical evidence, statement of PW-9 Dr Neena Lal, whereby she has categorically testified that there was physical interference with the external genitalia of the prosecutrix.

25. There are series of circumstances which led to the death of the prosecutrix. The rape committed by the accused upon the prosecutrix, and thereafter, she went to the house of her grandmother and committed suicide due to shame. Thus, the judgment relied upon by the learned trial Court in the case of *Sudhakar v. State*, reported in (2000) 6 SCC 671, is distinguishable.”

16. Therefore, the statement made by the victim regarding the sexual intercourse would be admissible as part of the circumstances leading to the victim's death.

17. The victim's relative (PW12) stated that the victim told her about the pregnancy. The victim also disclosed that the fetus belonged to Inder, with whom the victim expressed her true love. She stated in her cross-examination that the victim was interested in getting married to the accused, Inder. She volunteered to say that the victim expressed her intention to marry the accused after she had become pregnant. The victim had not disclosed any such act to her before her pregnancy.

18. It is apparent from the cross-examination of this witness that her statement that the victim had told the accused to be the father of the fetus was not challenged in the cross-examination and is to be taken as correct. It was laid down by the Hon'ble Supreme Court in *State of Uttar Pradesh Versus Nahar Singh 1998 (3) SCC 561* that where the testimony of a witness is not challenged in the cross-examination, the same cannot be challenged during the arguments. This position was reiterated in *Arvind Singh v. State of Maharashtra, (2021) 11 SCC 1: (2022) 1 SCC (Cri) 208: 2020 SCC OnLine SC 4*, and it was held at page 34:

“58. A witness is required to be cross-examined in a criminal trial to test his veracity; to discover who he is and what his position in life is, or to shake his credit, by injuring his character, although the answer to such questions may directly or indirectly incriminate him or

may directly or indirectly expose him to a penalty or forfeiture (Section 146 of the Evidence Act). A witness is required to be cross-examined to bring forth inconsistencies and discrepancies, and to prove the untruthfulness of the witness. A-1 set up a case of his arrest on 1-9-2014 from 18:50 hrs; therefore, it was required for him to cross-examine the truthfulness of the prosecution witnesses with regard to that particular aspect. The argument that the accused was shown to be arrested around 19:00 hrs is an incorrect reading of the arrest form (Ex. 17). In Column 8, it has been specifically mentioned that the accused was taken into custody on 2-9-2014 at 14:30 hrs at Wanjri Layout, Police Station, Kalamna. The time, i.e. 17, 10 hrs mentioned in Column 2, appears to be when A-1 was brought to the Police Station, Lakadganj. As per the IO, A-1 was called for interrogation as the suspicion was on an employee of Dr Chandak since the kidnapper was wearing a red colour t-shirt which was given by Dr Chandak to his employees. A-1 travelled from the stage of suspect to an accused only on 2-9-2014. Since no cross-examination was conducted on any of the prosecution witnesses about the place and manner of the arrest, the argument that the accused was arrested on 1-9-2014 at 18:50 hrs is not tenable.

59. The House of Lords, in a judgment reported as *Browne v. Dunn* (1893) 6 R 67 (HL), considered the principles of appreciation of evidence. Lord Chancellor Herschell, held that it is absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness if not speaking the truth on a particular point, direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged. It was held as under:

“Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in

cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which it is suggested indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but is essential to fair play and fair dealing with witnesses. Sometimes reflections have been made upon excessive cross-examination of witnesses, and it has been complained of as undue, but it seems to me that cross-examination of a witness which errs in the direction of excess may be far more fair to him than to leave him without cross-examination, and afterwards, to suggest that he is not a witness of truth, I mean upon a point on which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which he is telling.”

60. Lord Halsbury, in a separate but concurring opinion, held as under:

“My Lords, with regard to the manner in which the evidence was given in this case, I cannot too heartily express my concurrence with the Lord Chancellor as to the mode in which a trial should be conducted. To my mind, nothing would be more absolutely unjust than not to cross-examine witnesses upon evidence which they have given, so as to give them notice, and to give them an opportunity of explanation, and an opportunity very often to defend their own character, and, not having given them such an opportunity, to ask the jury afterwards to disbelieve what they have said, although not one question has been directed either to

their credit or to the accuracy of the facts they have deposed to.”

61. This Court, in a judgment reported as *State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850, quoted from *Browne v. Dunn*, (1893) 6 R 67 (HL) to hold that in the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 146 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. This Court held as under: (*State of U.P. v. Nahar Singh*, (1998) 3 SCC 561: 1998 SCC (Cri) 850], SCC pp. 566-67, para 13)

“13. It may be noted here that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of the delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

- (1) to test his veracity,
- (2) to discover who he is and what his position in life is, or
- (3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.”

62. This Court, in a judgment reported *Muddasani Venkata Narsaiah v. Muddasani Sarojana*, (2016) 12 SCC 288: (2017) 1 SCC (Civ) 268, laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. It was held as under: (SCC pp. 294-95, paras 15-16)

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to the factum of execution of the sale deed. PW 1 and PW 2 have not been cross-examined as to the factum of execution of the sale deed. The cross-examination is a matter of substance, not of procedure. One is required to put one's own version in the cross-examination of the opponent. The effect of non-cross-examination is that the statement of the witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in *Bhoju Mandal v. Debnath Bhagat*, AIR 1963 SC 1906. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. A party is required to put his version to the witness. If no such questions are put, the Court would presume that the witness account has been accepted as held in *Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.*, 1957 SCC OnLine P&H 177: AIR 1958 P&H 440.

16. In *Maroti Bansi Teli v. Radhabai*, 1943 SCC OnLine MP 128: AIR 1945 Nag 60, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by another party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet v. A.Y. Derderian*, 1960 SCC OnLine Cal 44: AIR 1961 Cal 359 has laid down that the party is obliged to put his case in cross-examination of witnesses of the opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely a technical one. A Division Bench of the Nagpur High Court, *Kuwarlal Amritlal v. Rekhlal Koduram*, 1949 SCC OnLine MP 35: AIR 1950 Nag 83 has laid down that when attestation is not specifically challenged, and the witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High

Court in *Karnidan Sardav.Sailaja Kanta Mitra, 1940 SCC OnLine Pat 288: AIR 1940 Pat 683* has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.”

19. Victim’s mother stated that PW12 told her about the victim’s pregnancy. She inquired from the victim, and the victim disclosed that the accused had raped her on the pretext of marriage. She also disclosed that the accused had threatened her. She stated in her cross-examination that the wife of the accused told her (the victim’s mother) that the victim was after her husband, and she cautioned the victim not to do so. She admitted that the victim was beaten by her father. It was also suggested to her that the victim was aware of the fact that the accused was married, but she denied this fact. She volunteered to say that the victim was adamant about marrying the accused.

20. The cross-examination of this witness showed that the accused had not disputed the disclosure of rape by the victim. It was suggested to the victim’s mother that the wife of the accused had complained about the victim being after the accused

and the victim being aware of the marital status of the accused. Thus, the part of her testimony that the accused had raped the victim remained unchallenged and was rightly accepted as correct.

21. The victim's father (PW14) stated that his wife disclosed the victim's pregnancy to him. He inquired from the victim, and the victim stated that the accused had raped her. He inquired from the accused, who initially assured him that he would visit the victim's house, but did not do so. He stated in his cross-examination that the wife of the accused came with a complaint in the year 2016 that the victim was after the accused. He admitted that he had beaten the victim and damaged her mobile phone and SIM Card. The victim promised not to repeat her previous act. He was cross-examined regarding the age of the victim and not regarding the disclosure made by the victim.

22. His testimony in the examination in chief that the victim had disclosed about the rape committed by the accused was not challenged in his cross-examination, and it was rightly accepted by the learned Trial Court.

23. Ms Sonal Thama (PW16) recorded the victim's statement under Section 164 Cr.P.C. (Ex.PW16/G). She denied in

her cross-examination that the victim had not made the statement voluntarily; however, there is nothing on record to show that the victim had not made the statement voluntarily. She is a Judicial Officer and has no reason to support the prosecution or depose against the accused.

24. The victim's statement (Ex.PW16/G) reads that the accused used to call the victim, and if the victim refused, he would threaten to take her from her home. The accused had maintained a forcible relationship with her despite her protest. The victim told the accused that she would tell her family members. The accused threatened to kill the victim in case of any disclosure. The accused continued to maintain a physical relationship with her for two years. She found out that she was pregnant. She told the accused about her pregnancy. The accused told her that she would be defamed and that she should get the fetus aborted. She did not narrate this fact to anyone; however, she disclosed this fact to her neighbour, who told her (the victim's) family members. They talked to the accused, who promised to talk to her family members. However, the accused did not visit her home. They again called the accused on the next day, who told them that they could register a case against him.

She came to know that the accused was married, which fact was not disclosed to her earlier.

25. This statement also establishes that the accused had maintained sexual relations with the victim, which led to her pregnancy.

26. The blood samples of the victim, the accused and the baby were preserved. They were sent to FSL, and as per the report (Ex.PW21/A), the accused is the biological father of the baby, and the victim is the biological mother of the baby. It was laid down by the Hon'ble Supreme Court in *Manoj v. State of M.P.*, (2023) 2 SCC 353: 2022 SCC OnLine SC 677 that the report of DNA analysis can be used to corroborate the version of the witness. It was observed:

154. In *Dharam Deo Yadav v. State of U.P.*, (2014) 5 SCC 509: (2014) 2 SCC (Cri) 626, this Court discussed the reliability of DNA evidence in a criminal trial, and held as follows : (SCC pp. 528-29, para 36)

“36. DNA stands for deoxyribonucleic acid, which is the biological blueprint of every life. DNA is made up of a double-stranded structure consisting of a deoxyribose sugar and phosphate backbone, cross-linked with two types of nucleic acids referred to as adenine and guanine, purines and thymine and cytosine, pyrimidines. ... DNA usually can be obtained from any biological material, such as blood, semen, saliva, hair, skin, bones, etc. The question as to whether DNA tests are virtually infallible may be moot, but the fact

remains that such tests have come to stay and are being used extensively in the investigation of crimes, and the court often accepts the views of the experts, especially when cases rest on circumstantial evidence. More than half a century ago, samples of human DNA began to be used in the criminal justice system. Of course, debate lingers over the safeguards that should be required in testing samples and in presenting the evidence in court. DNA profile, however, is consistently held to be valid and reliable, but of course, it depends on the quality control and quality assurance procedures in the laboratory.”

155. The US Supreme Court in *District Attorney's Office for the Third Judicial District v. Osborne*, 2009 SCC OnLine US SC 73: 557 US 52 (2009) dealt with a post-conviction claim to access evidence, at the behest of the convict, who wished to prove his innocence, through new DNA techniques. It was observed, in the context of the facts, that: (SCC OnLine US SC)

“Modern DNA testing can provide powerful new evidence, unlike anything known before. Since its first use in criminal investigations in the mid-1980s, there have been several major advances in DNA technology, culminating in STR technology. It is now often possible to determine whether a biological tissue matches a suspect with near certainty. While, of course, many criminal trials proceed without any forensic and scientific testing at all, there is no technology comparable to DNA testing for matching tissues when such evidence is at issue. ... DNA testing has exonerated wrongly convicted people, and has confirmed the convictions of many others.”

156. Several decisions of this Court —*Pantangi Balarama Venkata Ganesh v. State of A.P.*, (2009) 14 SCC 607 : (2010) 2 SCC (Cri) 190], *Santosh Kumar Singh v. State*, (2010) 9 SCC 747 : (2010) 3 SCC (Cri) 1469, *State of T.N. v. John David*, (2011) 5 SCC 509 : (2011) 2 SCC (Cri) 647, *Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61, *Surendra Koli v. State of U.P.*, (2011) 4 SCC 80 :

(2011) 2 SCC (Cri) 92, *Sandeep v. State of U.P.*, (2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18, *Rajkumar v. State of M.P.*, (2014) 5 SCC 353 : (2014) 2 SCC (Cri) 570 and *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 : (2017) 2 SCC (Cri) 673 have dealt with the increasing importance of DNA evidence. This Court has also emphasised the need to ensure quality control, about the samples, as well as the technique for testing in *Anil v. State of Maharashtra*, (2014) 4 SCC 69: (2014) 2 SCC (Cri) 266: (*Anil v. State of Maharashtra*, (2014) 4 SCC 69 : (2014) 2 SCC (Cri) 266, SCC p. 81, para 18)

“18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material, such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profiles have also shown a tremendous impact on forensic investigation. Generally, when the DNA profile of a sample found at the scene of a crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin. A DNA profile is valid and reliable, but the variance in a particular result depends on the quality control and quality procedure in the laboratory.”

157. This Court, in one of its recent decisions, *Pattu Rajan v. State of T.N.*, (2019) 4 SCC 771: (2019) 2 SCC (Cri) 354, considered the value and weight to be attached to a DNA report: (SCC p. 791, para 52)

“52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible. Thus, it cannot be said that the absence of DNA evidence would lead to an adverse inference against a

party, especially in the presence of other cogent and reliable evidence on record in favour of such party.”

158. This Court, therefore, has relied on DNA reports in the past, where the guilt of an accused was sought to be established. Notably, the reliance was to *corroborate*. This Court highlighted the need to ensure quality in the testing and eliminate the possibility of contamination of evidence; it also held that, being an opinion, the *probative value* of such evidence has to vary from case to case.”

27. The report of analysis duly proved that the accused had maintained a sexual relationship with the victim, which led to the birth of the baby.

28. The prosecution asserted that the victim was aged 17 years at the time of the incident. Therefore, she was a minor and incapable of consent. Vinay (PW3) supplied the copy of the admission form (Ex.PW3/B), a copy of the affidavit (Ex.PW3/C) and a copy of the admission register (Ex.PW3/D) in which the victim’s date of birth was mentioned as 9.9.1999. She stated in her cross-examination that the victim’s father had sworn an affidavit and had not produced any birth certificate at the time of her admission. The victim left the first class in that year itself.

29. Smt. Manula Thakur (PW20) brought the admission withdrawal register and issued the certificate (Ex.PW20/B) mentioning the date of birth of the victim as 9.9.1999. She stated in her cross-examination that this entry was made in the year

2015 when the victim took admission in the school. She had not brought the record pertaining to the admission in class 8th. It was laid down by the Hon'ble Supreme Court in *Jarnail Singh versus State of Haryana (2013) 7 SCC 263* that the provisions of the Juvenile Justice Act (JJ Act) should be followed to determine the age of the victim under the POCSO Act. It was observed:

“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with the law, we are of the view that the aforesaid statutory provision should be the basis for determining the age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of the minority is concerned between a child in conflict with the law and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). *If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has an overriding effect over an option expressed in a subsequent clause. The highest-rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), the matriculation (or equivalent) certificate of the child concerned is the highest-rated option. In case the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence*

of such an entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation, a municipal authority, or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid that Rule 12(3) postulates the determination of the age of the child concerned on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW, PW 6, could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied up to Class 3 only, and thereafter, had left her school and had started to do household work. The prosecution, in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW, PW 6, on the next available basis in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW 4) to prove the age of the prosecutrix, VW, PW 6. Satpal (PW 4) was the Head Master of Government High School, Jathlana, where the prosecutrix VW, PW 6, had studied up to Class 3. Satpal (PW 4) had proved the certificate Ext. PG, as having been made on the basis of the school records, indicates that the prosecutrix, VW, PW 6, was born on 15-5-1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are, therefore, of the view that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW, PW 6. It would also be relevant to mention that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material, including the ossification test, for determining the age of the prosecutrix VW, PW 6. The deposition of Satpal, PW 4, has not been contested. Therefore, the date of birth of the prosecutrix VW, PW 6 (indicated in Ext. PG as 15-7-1977) assumes finality. Accordingly, it is clear that the prosecutrix VW, PW 6, was less than 15 years old on the date of occurrence, i.e. on

25-3-1993. In the said view of the matter, there is no room for any doubt that the prosecutrix, VW, PW 6, was a minor on the date of the occurrence. Accordingly, we hereby endorse the conclusions recorded by the High Court that even if the prosecutrix VW, PW 6, had accompanied the appellant-accused Jarnail Singh of her own free will and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.” (Emphasis supplied)

30. It was held in **Sanjeev Kumar Gupta versus State of U.P.& Ors (2019) 12 SCC 370** that a matriculation certificate, and a date of Birth certificate from the school first attended, if available, and in their absence the birth certificate given by the Corporation Municipal Authority or Panchayat would be considered. These are in hierarchical order. Thus, where a matriculation certificate or the birth certificate from the school is available, the birth certificate given by the Corporation cannot be relied upon. It was observed:

“Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the Examination Board concerned in the same category [namely (i) above]. In the absence thereof, category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the 2007 Rules made under the 2000 Act. Under Rule 12(3)(a) (i), the matriculation or equivalent certificate was given precedence, and it was only in the event of the certificate not being available that the date of birth certificate from

the school first attended could be obtained. In Section 94(2)(i), both the date of birth certificate from the school, as well as the matriculation or equivalent certificate, are placed in the same category.

31. It was held in *Vinod Katara versus State of U.P., 2022 SCC OnLine SC 1204* that clause (a) of Rule 12(3) of 2007 Rules contains a hierarchical order. It was observed:

48. Clause (a) of Rule 12(3) of the 2007 Rules contains a hierarchical ordering, evident from the use of the language “in the absence whereof”. This indicates that where a matriculation or equivalent certificate is available, the documents adverted to in (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained.

49. In *Shah Nawaz v. State of Uttar Pradesh (2011) 13 SCC 751*, this Court, while examining the scope of Rule 12 of the 2007 Rules, had reiterated that medical opinion from the Medical Board should be sought only when the matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended, or any birth certificate issued by a corporation or a municipal authority or a panchayat or municipality is not available. This Court had held that the entry related to the date of birth entered in the mark sheet is valid evidence for determining the age of the accused person, and also the school leaving certificate for determining the age of the appellant.

32. A similar view was taken in *P. Yuvaprakash v. State, 2023 SCC OnLine SC 846*, wherein it was observed:

11. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract Section 34 of the POCSO Act, which reads as follows:

“34. Procedure in case of commission of offence by a child and determination of age by the Special Court. –

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person, and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

12. In view of Section 34(1) of the POCSO Act, Section 94 of the JJ Act 2015 becomes relevant and applicable. That provision is extracted below:

“94. Presumption and determination of age. – (1) Where it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence), that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining–

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the

concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation, a municipal authority, or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided that such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of a person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

13. It is evident from the conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or his being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order that the Juvenile Justice Act requires consideration are that the concerned court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation, a municipal authority, or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “*an ossification test*” or “*any other latest medical age determination test*” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate, matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate, showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court-summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar), had stated on oath that the records for the year 1997 with respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i), as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of the commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki v. State of Uttar Pradesh* (2021) 12 SCR 502, this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in *pari materia*) with Section 94 of the JJ Act and held as follows:

“20. Rule 12 of the JJ Rules, 2007, deals with the procedure to be followed in the determination of age. The juvenility of a person in conflict with the law had to be decided *prima facie* on the basis of physical appearance or documents, if available. But an inquiry

into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, the benefit could be given to the child or juvenile by considering the age on the lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act, this court held in *Sanjeev Kumar Gupta v. The State of Uttar Pradesh* (2019) 9 SCR 735 that:

“Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof, category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i), the matriculation or equivalent certificate was given precedence, and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended could be obtained. In Section 94(2)(i), both the date of birth certificate from the school, as well as the matriculation or equivalent certificate, are placed in the same category.

17. In *Abuzar Hossain @ Gulam Hossain v. State of West Bengal* (2012) 9 SCR 224, this court, through a three-judge

bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

33. A similar view was taken in *Rajni v. State of U.P., 2025*

SCC OnLine SC 1183, wherein it was observed: -

21. Let us first deal with the issue of juvenility. The question for consideration is whether the learned Additional District and Sessions Judge and the High Court were justified in holding respondent No. 2 to be a juvenile and whether any interference is called for in such a decision?

22. Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000, empowered the state government to make rules by notification in the official gazette to carry out the purposes of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('the JJ Act, 2000'). As per the proviso to sub-section (1) of Section 68, the central government was also empowered to frame model rules which would apply to the states also till such time rules were made in that behalf by the concerned state government; and while making any such rules so far as practicable to conform to the model rules framed by the central government.

23. With a view to provide for better implementation and administration of the provisions of the JJ Act, 2000 in its true spirit and substance, the central government in exercise of the powers conferred by the proviso to sub-section (1) of Section 68 of the JJ Act, 2000 made the Juvenile Justice (Care and Protection of Children) Rules, 2007 (briefly, 'the JJ Rules, 2007') laying down the fundamental principles to be applied in the administration of juvenile justice. Rule 12 dealt with the procedure to be followed in the determination of age. As per sub-rule (1), in every case concerning a child or juvenile in conflict with

law, the court or JJB or the child welfare committee was required to determine the age of such juvenile or child or a juvenile in conflict with law within a period of 30 days from the date of making of the application for that purpose. As per sub-rule (2), the court or the JJB or the child welfare committee was required to decide the juvenility or otherwise of the juvenile or the child or the juvenile in conflict with law *prima facie* on the basis of physical appearance or documents if available and send him to the observation home or to jail, as the case may be.

23.1. Sub-rule (3) of Rule 12 is relevant. Therefore, the same is extracted hereunder:

(3) In every case concerning a child or juvenile in conflict with the law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence thereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence thereof;

(iii) the birth certificate given by a corporation or a municipal authority, or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case an exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on the lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may

be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

23.2. Thus, sub-rule (3) of Rule 12 provided that the age determination enquiry should be conducted firstly on the basis of matriculation or equivalent certificate. If such a certificate was not available, then the date of birth certificate from the school first attended (other than a play school). In the absence of such a certificate, the birth certificate given by a corporation or a municipal authority or a panchayat should be the basis. Clause (b) of sub-rule (3) made it clear that only in the absence of such certificates as enumerated above, medical opinion would be sought from a duly constituted medical board, which would declare the age of a juvenile or a child. In case an exact assessment of age could not be done, the court or JJB or the child welfare committee, for the reasons to be recorded, if considered necessary, had the discretion to give benefit to the child or the juvenile by considering his/her age on the lower side within the margin of one year. While passing orders in such a case, evidence as may be available or the medical opinion as provided should be taken into consideration before recording a finding in respect of age.

24. To consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care etc. by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation etc., the Juvenile Justice (Care and Protection of Children) Act, 2015 (already referred to as the JJ Act, 2015) came to be enacted. Section 111 is the repeal and savings clause. As per sub-section (1), the JJ Act, 2000, was repealed.

25. Section 94 deals with the presumption and determination of age. Section 94 reads thus:

94. Presumption and determination of age.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority, or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided that such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of a person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

25.1. Thus, the process of age determination is provided in sub-section (2) of Section 94, which is identical to the procedure prescribed under sub-rule (3) of Rule 12 of the JJ

Rules, 2007. Sub-section (2) of Section 94 says that to undertake the process of age determination, the child welfare committee or the JJB shall seek evidence in the following manner:

- (i) the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned Board, if available;
- (ii) in the absence thereof, the birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) in the absence of (i) and (ii), the age shall be determined by an ossification test or by any other latest medical age determination test conducted on the orders of the child welfare committee or the JJB.

26. Having noticed the relevant legal framework, let us examine as to how the case of respondent No. 2 *vis-à-vis* juvenility was dealt with by the JJB and thereafter by the learned Additional District and Sessions Judge. As already noted above, JJB had held respondent No. 2 to be not a juvenile, which decision was reversed by the learned Additional District and Sessions Judge and affirmed by the High Court.

27. At this stage, we need to mention that the date of the incident is 17.02.2021. On behalf of respondent No. 2, a certificate from the DPS Higher Secondary School, Parvesh Vihar, Meerut, was filed. The date of admission was mentioned as 04.04.2016. The date of birth of respondent No. 2 was mentioned as 08.09.2003. Respondent No. 2 had passed the high school examination in the year 2018 from the said DPS Higher Secondary School, Parvesh Vihar, Meerut. Thereafter, he studied at CRK Inter College, Meerut. Therefore, on the date of the incident, respondent No. 2 was below 18 years of age. In the register of DPS Higher Secondary School and the marksheet of the high school examination, the date of birth of respondent No. 2 was mentioned as 08.09.2003. JJB, in an earlier proceeding relating to respondent No. 2, i.e. Miscellaneous Case No. 9/2000 in respect of Crime Case No. 11/2000 under Section

307 IPC, Police Station Medical College, Meerut, had accepted the date of birth of respondent No. 2 as 08.09.2003. It is seen that in the present proceeding, JJB examined the mother of respondent No. 2, who had applied to declare her son, respondent No. 2, as a juvenile. JJB observed that she did not remember in which school respondent No. 2 had studied from Class 1 to Class 7 before taking admission in DPS Higher Secondary School in Class 8. In her statement, Principal of DPS Higher Secondary School, Smt. Manju Mala Sharma stated that she had been working in the same school since the year 1996 and asserted that respondent No. 2 had obtained his education from her school from Class 4 to High School, but the original records of Class 4 to Class 8 were not available as those were destroyed due to fire.

27.1. JJB also rejected the birth certificate of Meerut Municipal Corporation, which showed the date of birth of respondent No. 2 as 08.09.2003 on the ground that it was issued on 08.06.2020.

27.2. As regards the earlier decision of JJB, it was observed that the present informant was not a party therein. Therefore, she had no opportunity to tender evidence or to rebut the claim of juvenility of respondent No. 2. Thus, the previous decision of JJB was not applicable.

27.3. It was in that context, JJB passed an order for medical examination of respondent No. 2. In compliance with such an order, the Medical Board submitted a report on 27.07.2021 assessing the age of respondent No. 2 as about 21 years.

27.4. JJB accepted the medical report dated 27.07.2021, wherein the age of respondent No. 2 was assessed as about 21 years. On that basis, respondent No. 2 was found to be more than 18 years of age on the date of the incident. Thus, respondent No. 2 was held to be an adult as on 17.02.2021, i.e. the date of the incident.

28. Admittedly, the line of reasoning adopted by the JJB is totally fallacious. When the concerned birth certificate from the school was available as well as the birth

certificate issued by the Meerut Municipal Corporation, JJB could not have opted for ossification test. The statute is very clear that only in the absence of the certificates under clause (i) and clause (ii) of subsection (2) of Section 94 can the JJB order for an ossification test or any other medical test to determine the age of the juvenile. The certificate of the Meerut Municipal Corporation was issued on 08.06.2020, before the date of the incident. In any event, it was not open to the JJB to go behind the available school certificate or the birth certificate of the Corporation and record evidence to examine the correctness or otherwise of such certificate. This is not the mandate of Section 94(2) of the JJ Act, 2015. Therefore, the learned Additional District and Sessions Judge was justified in reversing such a decision of the JJB. Learned Additional District and Sessions Judge gave preference to the date of birth of respondent No. 2 mentioned in the high school certificate, wherein his date of birth was mentioned as 08.09.2003. Thus, respondent No. 2 was 17 years, 3 months, 10 days on the date of the incident. Accordingly, he was declared a juvenile delinquent.

34. Therefore, as per Rule 12(3(a)(ii) of the Juvenile Justice Rules, 2007 and Section 19(4) of the Juvenile Justice Act, 2015, the certificate from the school which was first attended by the victim has to be preferred to the birth certificate issued by the Municipal Corporation or Gram Panchayat. Hence, the fact that the prosecution has not produced the birth certificate from the Municipal Committee would be immaterial because such a birth certificate cannot be preferred to the certificate issued by the school attended by the victim.

35. The victim's mother (PW13) stated in her cross-examination that the victim was first admitted to the school at Kanlog. Victim's father (PW14) stated in his cross-examination that the victim was admitted to Shivpuri School, which is above Kanlog. It was submitted that the birth certificate (Ex.PW3/B) was not issued by the school first attended by the victim. This submission will not help the defence. The certificate (Ex.PW3/B) was issued by the Headmaster of the school at Kanlog. The victim had taken admission to Class 1st, and there is no evidence that the victim had attended any other school except the school at Kanlog. Therefore, the certificate (Ex.PW3/B), issued by the school, has to be accepted as correct.

36. It was submitted that an affidavit (Ex.PW3/C) was executed by the victim's father, which makes the authenticity of the certificate (Ex.PW3/B) doubtful. This submission cannot be accepted. The law requires the certificate from the school first attended by the child, and there is no condition that such a certificate should have been based on the birth certificate issued by the Municipal Committee or the Panchayat. Therefore, the authenticity of the certificate issued by the school cannot be doubted because it was issued based on an affidavit. The affidavit

was executed in 2005, much before the present controversy had arisen, and there is no reason to disbelieve its correctness.

37. Therefore, the learned Trial Court had rightly held that the victim was a minor on the date of the incident. Hence, the learned Trial Court had rightly convicted the accused.

38. Learned Trial Court convicted the accused of the commission of offences punishable under Sections 376 and 506 of IPC and Section 4 of the POCSO Act. Section 42 of the POCSO Act provides that where an act or omission constitute an offence punishable under POCSO Act and also under Section 376 of IPC *inter alia*, then notwithstanding anything contained in any law for the time being in force the offender found guilty of such offence shall be liable to punishment only under this Act or under Indian Penal Code as provides for punishment which is grater in degree. The punishment under Section 4 of the POCSO and Section 376 of the IPC at the relevant time provided for imprisonment of either description for a term which would not be less than seven years but which may extend to imprisonment for life and also to a fine. Therefore, the accused could have been sentenced either under the IPC or the POCSO, but not under both. Learned Trial Court sentenced the accused to undergo rigorous

imprisonment for seven years and to pay a fine of ₹50,000/- and, in default of payment fine, to undergo simple imprisonment for three years for the commission of offences punishable under Section 376 and Section 4 of the POCSO Act. Since a person cannot be punished under both the Acts, therefore, both sentences cannot be sustained. Hence, the sentence awarded by the learned Trial Court for the commission of an offence punishable under Section 376 of the IPC is ordered to be set aside, while the sentence for the commission of an offence punishable under Section 4 of the POCSO is ordered to be maintained.

39. In view of the above, the present appeal is partly allowed, and the sentence imposed by the learned Trial Court for the commission of an offence punishable under Section 376 of the IPC is ordered to be set aside. The fine amount, if deposited, be refunded to the appellant/accused after the expiry of the period of limitation, in case no appeal is filed, and in case of appeal, it will be dealt with as per the orders of the Hon'ble Supreme Court. Subject to this modification, the judgment of conviction and order of sentence passed by the learned Trial Court are upheld.

40. The present appeal stands disposed of, and so are the pending applications, if any.

41. The record of the learned Trial Court be returned along with copy of this judgment.

(Rakesh Kainthla)
Judge

27th November 2025
(Chander)