Pynchemalangaki Bareh vs State Of Meghalaya on 10 September, 2026

Author: Prashant Kumar Mishra

Bench: Prashant Kumar Mishra

2026 INSC 984

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 4337 OF 2026
[ARISING OUT OF S.L.P. (CRIMINAL) NO.9809 OF 2025]

PYNCHEMALANGAKI BAREH … APPELLANT

VERSUS

STATE OF MEGHALAYA … RESPONDENT

JUDGMENT

PRASHANT KUMAR MISHRA, J.

1. Leave granted.

2. The present Appeal challenges the final judgment and order dated 08.07.2024 in Crl.A. No. 38/2023 passed by the High Court of Meghalaya at Shillong, whereby the High Court upheld the conviction of the appellant by Special Judge (POCSO) vide judgment and order dated 16.06.2021 in Special (POCSO) Case No. 9/2020 for the offences under Sections 506 of the Indian Penal Code, 18601 and Section 3(a) of the Protection of Children from Sexual Offences Act, 20122 punishable under Section 4 of the POCSO Act. The appellant was sentenced to rigorous imprisonment of twenty years with a fine of Rs. 5,000/-, in default to undergo six months simple imprisonment under 1 For short, 'IPC' 2 For short, 'POCSO Act' Section 4 of the POCSO Act and rigorous imprisonment of two years for offence under Section 506 of the IPC.

FACTUAL MATRIX

3. On 27.11.2019, the informant Lainehskhem Sutnga (P.W.-2) of Sutnga village, Wallong, East Jaintia Hills, lodged an FIR to the effect that on 26.11.2019 her daughter (victim/prosecutrix) 13 years of age was raped at Mokoidaling, Sutnga by the accused Pynchemalangaki Bareh, a resident of Sutnga village, Wallong, who is the appellant before us.

4. On receipt of the FIR, the Officer-in-Charge of Khliehriat Women Police Station accordingly registered the case vide Khliehriat Women P.S Case No.49 (11) 19 under Section 3/4 of the POCSO Act and entrusted to WPSI. S Kharsati for carrying out the investigation.

5. After investigation, a charge-sheet dated 27.11.2019 was laid before the Court of the Chief Judicial Magistrate and the case was committed to the Special Judge (POCSO) for trial and charges were framed against the accused under Section 506 of the IPC and under Sections 3 and 4 of the POCSO Act.

6. The prosecution, in order to substantiate the commission of the offence against the accused, examined 14 witnesses and exhibited 11 material exhibits and one paper mark (Baptismal Certificate). A statement under Section 164 of the Code of Criminal Procedure, 19733 was obtained from the victim girl. The accused denied the charges levelled against him.

3 For short, 'Cr.PC'

7. On perusal of the depositions of all the witnesses (P.W.1 to P.W.14), the Trial Court concluded that they were unanimous in their oral testimony that the appellant had sexually assaulted the victim and nothing could be elicited in cross to disbelieve their depositions as their statements are firm and convincing. Additionally, at the conclusion of examination of the prosecution witnesses, the appellant was examined under Section 313 of the Cr.PC, however, he declined to adduce defence evidence.

8. The Trial Court vide judgment dated 16.06.2021 convicted and sentenced the appellant as mentioned in paragraph 2 above. Basing the statement of the mother of the victim and the Baptismal Certificate, which was found to be proved in the course of trial and also the medical report (Annexure P-3), the age of the victim was found to be 13 years.

9. Under the impugned judgment dated 08.07.2024, the High Court dismissed the criminal appeal filed by the appellant and upheld the conviction and sentence imposed by the Trial Court. Hence, the present Appeal. APPELLANT'S SUBMISSIONS

10. Assailing the conviction under the POCSO Act, it was argued that the age of the victim has not been proved as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 20154. Therefore, in view of this Court's 4 For short, 'JJ Act' judgment in P. Yuvaprakash v. State5, the conviction under the POCSO Act is not sustainable.

11. It was further submitted that the prosecution failed to duly prove the age of the victim, as it solely relied on the Baptismal Certificate dated 18.09.2016 reflecting her date of birth as 05.03.2006 without examining the Church Minister nor is there any proof basing which the date of birth of the victim was recorded in the Baptismal Certificate. It was further contended that the Baptismal Certificate, having been issued by a private church authority, is not a public document and is, therefore, inadmissible under Section 35 of the Indian Evidence Act, 1872 and, moreover, the document was merely marked as "Papermark-I" and was not formally exhibited. Hence, the same

cannot be relied upon in evidence.

12. It was further submitted that the Investigating Officer (P.W.-13) neither recorded the statement of the Church Minister nor subjected the victim to an ossification test. Resultantly, the mandatory requirements under Section 94 of the JJ Act were not complied with, thereby rendering the presumption regarding the victim's minority unsustainable and, consequently, vitiating the applicability of the POCSO Act.

13. It was next submitted that the determination of the age of the victim was crucial, as proof that the victim was 13 years old would attract Section 4(2) of the POCSO Act and Section 376(3) of the IPC, both prescribing a minimum 5 2023 SCC OnLine SC 846 sentence of 20 years, whereas if she was a major, only Section 376(1) of the IPC carrying a minimum sentence of 10 years would apply. Hence, the benefit of doubt ought to go to the accused.

14. It was submitted that the Medico-Legal Certificate6 only recorded the victim's statement regarding menarche and did not contain any independent medical findings. Clause 14 titled "Relevant Medical/Surgical History", which merely documents the victim's version and does not constitute a medical finding. It was argued on behalf of the appellant that P.W.-9's opinion regarding the victim being a minor was unsupported by any scientific or forensic examination, as no ossification or dental test was conducted. It was further contended that P.W.-9's claim regarding the vaginal swab not being menstrual blood lacked any laboratory or medical support. Accordingly, the prosecution failed to conclusively establish the age or biological status of the victim, rendering the enhanced sentence under Section 4(2) of the POCSO Act unsustainable.

15. The learned counsel would further submit that there are material contradictions and progressive embellishments in the victim's statement affecting the credibility of the prosecution's case. The learned counsel would take this Court through the statements of the victim and the other witnesses.

16. It was submitted that the forensic evidence failed to corroborate the prosecution's case. The defence pointed out that although blood was detected on the vulval swab, the FSL report did not identify its origin and no seminal stains 6 For short, 'MLC' were found, thereby undermining the allegation of penetrative sexual assault. It was further argued that despite the MLC recording anal bleeding, the anal swab tested negative for blood, and no DNA analysis was conducted on the biological material found on the victim's clothes to link it to the appellant. Additionally, the stone allegedly used by the victim to strike the appellant tested negative for blood, thereby failing to support her version of events.

17. Without prejudice to the preceding submissions, it was argued that even if the victim were assumed to be a minor, her testimony was not of sterling quality and could not safely sustain the conviction. RESPONDENT'S SUBMISSIONS

18. Shri Amit Kumar, learned Advocate General for the respondent-State submitted that the present Appeal challenges concurrent findings of conviction recorded by both the Trial Court and the High Court without demonstrating any manifest illegality or perversity in the impugned judgments. It was

contended that the appellant merely seeks re-appreciation of evidence and re-agitation of issues already settled, which falls beyond the scope of the present proceedings, and reliance was placed on settled precedents of this Court in this regard, Pappu v. State of Uttar Pradesh7 and Dalbir Kaur and Others v. State of Punjab8.

19. It was submitted on behalf of the respondent-State that both the Trial Court and the High Court, after meticulous appreciation of the evidence on 7 (2022) 10 SCC 321 8 (1976) 4 SCC 158 record, passed detailed and well-reasoned judgments finding the appellant guilty under the POCSO Act. It was contended that the present challenge is based on untenable and unsubstantiated grounds, including disputes regarding the victim's minority, alleged inconsistencies in her statements, discrepancies between medical evidence and oral testimony, lack of linkage between the appellant's injuries and the alleged incident, and purported inconsistencies in the FSL report.

20. It was further submitted on behalf of the respondent-State that the age of the victim stood conclusively established through documentary and oral evidence, particularly the Baptismal Certificate dated 18.09.2016 issued by the Khasi Jaintia Presbyterian Assembly, which recorded her date of birth as 05.03.2006. It was contended that the victim was, therefore, approximately 13 years old at the time of the incident and squarely fell within the definition of a minor under the POCSO Act, and that the said certificate remained uncontroverted on record.

21. Learned Advocate General for the respondent-State submitted that the validity of the Baptismal Certificate as proof of age stands supported by the decision of this Court in Luis Caetano Viegas v. Estrelina Mariana R.M.A Da'Costa and Others9, wherein it was held that a birth certificate based on baptism records, read and verified before the godparents, constitutes valid evidence and cannot be discarded merely on that ground. It was, therefore, 9 (2002) 9 SCC 144 contended that the Baptismal Certificate relied upon in the present case was a valid and reliable document for establishing the age of the victim.

22. It was submitted on behalf of the respondent-State that the minority of the victim was further corroborated by the MLC dated 27.11.2019, which recorded under "Relevant Medical History" that the "Onset of Menarche" was "No," and further noted that emergency contraception was not advised as she had not attained menarche. It was contended that these medical findings conclusively established that the victim was in a pre-pubescent stage, thereby reinforcing proof of her minority.

23. It was further submitted that both the victim and her mother categorically deposed during trial that the victim was a minor at the time of the incident. It was further contended that the appellant did not dispute the victim's age during cross-examination, thereby impliedly admitting her minority.

24. It was submitted that the alleged contradictions in the victim's statements under Sections 161 and 164 of the Cr.PC regarding the place of occurrence and threats extended by the appellant were minor and did not affect the core of the prosecution's case. It was contended that the victim consistently maintained that the appellant dragged her into the bushes, threatened to kill her, committed sexual assault upon her, and that she struck him with a stone before fleeing, thereby rendering her testimony cogent, consistent, and reliable.

25. The respondent-State placed reliance on State of Punjab v. Gurmit Singh and Others10 wherein this Court held that in cases of sexual offences, the sole testimony of the prosecutrix is sufficient to sustain conviction if it inspires confidence and is found reliable. It was contended that minor discrepancies or inconsistencies which do not affect the core of the prosecution's case cannot be grounds to discard the testimony of the victim, and corroboration is not an indispensable requirement in every case of sexual assault.

26. It was submitted on behalf of the respondent that the testimony of the victim stood corroborated by the medical evidence, particularly the MLC dated 27.11.2019, which recorded findings such as "Hymen Open Torn" and noted "Partial Penile Penetration of the Vagina." It was contended that these medical findings were fully consistent with the victim's account of forcible sexual assault and strongly supported the prosecution's case.

27. It was submitted by the respondent-State that the appellant's MLC dated 27.11.2019 recorded abrasions and a cut injury on the forehead, consistent with the victim's allegation that she struck him with a stone while resisting the assault, thereby lending credibility to her version of events. It was further contended that the FSL report dated 29.05.2020 strengthened the prosecution's case, as Exhibit M (Pink and Dark Blue Jacket of the Victim) and Exhibit N(i) (Black Long Pant of the Victim) tested positive for human blood of Group "B," matching the appellant's blood group and thereby linking him to the offence. 10 (1996) 2 SCC 384

28. It was submitted by the respondent-State that since the present case falls under the POCSO Act, once the prosecution establishes a prima facie case, Section 29 of the Act raises a presumption of guilt against the accused, shifting the burden to him to prove his innocence. It was contended that the appellant failed to discharge this burden, as he neither explained his injuries nor led any defence evidence or established an alibi.

29. It was submitted by the respondent-State that, in view of the overwhelming material on record, the presence of the appellant at the scene of occurrence stood established beyond reasonable doubt. It was contended that the cumulative effect of the victim's testimony, medical evidence, and forensic findings, including blood of the appellant's group allegedly found on the victim's clothing, unerringly pointed to his involvement in the commission of the offence. It was further argued that the appellant failed to discharge even the basic burden of rebuttal, as his statement under Section 313 of the Cr.PC consisted only of bald denials without any plausible explanation to dislodge the prosecution's case.

30. The learned Advocate General for the respondent-State has relied upon the decisions rendered by this Court in Madan Gopal Kakkad v. Naval Dubey and Another11; Ranjit Hazarika v. State of Assam12; State of H.P. v. Gian Chand13; State of Rajasthan v. Om Prakash14; State of T.N v. Ravi alias 11 (1992) 3 SCC 204 12 (1998) 8 SCC 635 13 (2001) 6 SCC 71 14 (2002) 5 SCC 745 Nehru15; Ganesan v. State16; Phool Singh v. State of Madhya Pradesh17; and Nawabuddin v. State of Uttarakhand18.

ANALYSIS AND CONCLUSION

31. Considering the submissions made by the learned counsel for the parties, as noted above, and the material on record, this Court needs to dwell upon the following issues:

> (i) Whether the age (minority) of the victim has been rightly determined by the Trial Court and affirmed by the High Court for convicting the appellant for committing offence under Section 3 of the POCSO Act punishable under Section 4 of the said Act?
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> (ii) If the age (minority) of the victim has not been proved in accordance with law, whether the appellant can be held guilty for committing offence under Section 376(1) of the IPC?

ISSUE NO.(I)

32. The issue as to legal requisite for determination of age of a victim under the POCSO Act has been considered by this Court in at least following three judgments cited before us.

33. In Jarnail Singh v. State of Haryana19, a two-Judge Bench of this Court, referred to Rule 12 of the Juvenile Justice (Care and Protection of 15 (2006) 10 SCC 534 16 (2020) 10 SCC 573 17 (2022) 2 SCC 74 18 (2022) 5 SCC 419 19 (2013) 7 SCC 263 Children) Rules, 200720 to hold that the said statutory provisions could be the basis for determining the age, even of a child who is a victim of crime. Following has been held in paragraphs 22 and 23:

> "22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the 2007 Rules"). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:
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> "12.Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
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> (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be 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 in jail.
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> (3) In every case concerning a child or juvenile in conflict with 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 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;

(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 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 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

20 For short, '2007 Rules' proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule. (6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining 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 minority is concerned, between a child in conflict with 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 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), 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 entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or 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 age of the child concerned, on the basis of medical opinion." (emphasis supplied)

34. Thereafter, in State of Madhya Pradesh v. Anoop Singh21, this Court referred and relied upon its earlier judgment in Mahadeo v. State of Maharashtra and Another22, to hold that the age of a rape victim should be determined on the basis of the provisions contained in the 2007 Rules and the same yardstick can be rightly followed by the Courts for the purpose of ascertaining the age of a victim as well.

35. While the above two judgments were in the context of a minor victim where the accused was charged for commission of offence of rape under the IPC, the recent judgment in the case of P. Yuvaprakash (supra) dealt with a matter where the accused was tried for offences under the POCSO Act. By referring to Sections 34 and 94 of the JJ Act, this Court in P. Yuvaprakash (supra) held thus:

> "14. 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:
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> "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.
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> (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or 21 (2015) 7 SCC 773 22 (2013) 14 SCC 637 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 examination Board concerned, 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 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 person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

15. It is evident from 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 him 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 of which the Juvenile Justice Act requires consideration is that the court concerned has to determine the age by considering the following documents:

"94. (2)(i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, 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."

16. 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 examination board concerned 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 authority concerned i.e. Committee or Board or Court.

> 17. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ext. C-1 i.e. the school transfer certificate showed the date of birth of the victim as 11-7-1997. 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 been fallen back upon a document which it had never relied upon. Furthermore, DW 3, the Revenue Official (Deputy Tahsildar) concerned had stated on oath that the records for the year 1997 in 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, Ext. C-1 could not have been relied upon to hold that 'M' was below 18 years at the time of commission of the offence.

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22. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the examination board concerned or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW 9, Dr Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the x-ray reports and deposed that in terms of the examination of 'M', a certificate was issued stating "that the age of the said girl would be more than 18 years and less than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor". This finding is, in this Court's considered view, incorrect and erroneous.

23. As held earlier, the documents produced i.e. a transfer certificate and extracts of the admission register, are not what Section 94(2)(i) mandates; nor are they in accord with Section 94(2)(ii) because DW 1 clearly deposed that there were no records relating to the birth of the victim, 'M'. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several x-rays of the victim, and on the basis of which PW 9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this Court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW 9." (emphasis supplied)

36. In the case at hand, the Investigating Officer did not obtain the birth certificate from the school where the victim had studied or the matriculation or equivalent certificate from the examination Board concerned or birth certificate given by a corporation, a municipal authority or a panchayat, to prove that the victim was a minor on the date of offence. The victim was also not sent for any age

determination test as provided under Rule 12 of the 2007 Rules or under Section 94(2)(iii) of the JJ Act which is in pari materia with Rule 12 of the 2007 Rules. The said provision prescribes that in the absence of the date of birth certificate from the school or the matriculation or equivalent certificate from the examination Board concerned, or birth certificate given by a corporation, a municipal authority or a panchayat, the 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. Admittedly, the victim was not subjected to any ossification test or any other latest medical age determination test. The only document available on the record for proving the age of the victim is the Baptismal Certificate issued by the Khasi Jaintia Presbyterian Assembly. Although the date of birth in the Baptismal Certificate finds corroboration in the deposition of P.W.-2, the mother of the victim girl, stating the girl was born on 05.03.2006, yet since the document itself is not the one prescribed under Section 94 of the JJ Act, we are of the considered view that the prosecution has failed to prove the age of the victim in the manner required under Section 94 of the JJ Act.

37. The learned Advocate General for the respondent-State has strenuously urged before this Court that the Baptismal Certificate should be taken to be a document which duly proves the date of birth of the victim. For this, reliance has been placed on the decision of this Court in Luis Caetano Viegas (supra).

38. In Luis Caetano Viegas (supra), this Court was dealing with an issue concerning inventory proceedings for partition of inheritance of the property of common ancestors. In the said context, dealing with the issue of parentage, this Court in paragraph 9 held thus:

> "9. The emphasised portion stated above clearly indicates that the baptismal record was read and checked before the godparents, and the same has been signed by the Parson along with them. The learned District Judge felt that the certificate of registration of birth merely proceeds on the basis of the baptism certificate. If the birth certificate is a true reflection of the baptism record and it contains the fact that it was read and checked before the godparents, the same need not be discarded and it must be held that the same had been made in the presence of both godparents. In that view of the matter, the trial court was justified in the conclusion it reached and not the learned District Judge who proceeded on misreading of the record. Hence the High Court ought to have reversed the finding recorded by the learned District Judge who ignored this crucial aspect in the course of his order." It is, thus, apparent that in the above matter, in addition to the Baptismal Certificate, a birth certificate was also issued and was duly proved in the course of proceedings. Thus, the said case did not rest only on the basis of the Baptismal Certificate. Moreover, the present is a case where this Court is dealing with the issue relating to proof of age of a POCSO victim for which a statutory prescription is put in place by the legislation in the form of Section 94 of the JJ Act which had been found applicable in the case of POCSO victims also as held by this Court in the judgments discussed by us in the preceding paragraphs.

> Thus, the case of Luis Caetano Viegas (supra) is not only distinguishable, but it does not apply in the background of the statutory mechanism for proving the age of the POCSO victim with which we are concerned in this case. The argument raised by the learned Advocate General for the respondent-State basing on Luis Caetano Viegas (supra) is, thus, rejected.

39. Reverting to the facts of the case insofar as the proof of commission of rape is concerned, we have found that the factum of rape clearly stands established by way of medical evidence and the said finding cannot be set aside merely on the ground of absence of medical evidence establishing the age of the victim. In such a case, it has been rightly observed in Sucha Singh and Another v. State of Punjab23 that exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice to a rape victim.

ISSUE NO.(II)

40. Minority of the victim has not been established by the prosecution. Therefore, we are required to consider the next limb of the argument raised by the appellant that the conviction and sentence for commission of rape is not 23 (2003) 7 SCC 643 sustainable as no charge was framed against the appellant for commission of offence under Section 376 of the IPC.

41. The issue regarding conviction of accused under Section 376 of the IPC arises only due to absence of a charge framed thereunder by the Trial Court. In the facts of the present case, it was the duty of the Trial Court to be careful in framing charges, particularly charge under Section 376 of the IPC in the alternative to Section 4 of the POCSO Act, in view of prima facie commission of said offence. However, an omission to frame a charge cannot absolve the accused of liability for commission of offence of rape of the victim, where such irregularity can be cured.

42. In view of Section 464(1) of the Cr.PC, such error will not be material unless it has occasioned a failure of justice, stated as below:

> "464. Effect of omission to frame, or absence of, or error in, charge.—(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby."

43. This Court in Sandeep Yadav v. Satish and Others24, reiterated this position, relying on Rafiq Ahmad alias Rafi v. State of Uttar Pradesh25, wherein Court held that when a charge of a major offence is not made out, conviction for a minor offence even in the absence of the charge for the said minor offence can be sustained. It has also been held that the purpose of framing 24 2026 SCC OnLine SC 474 25 (2011) 8 SCC 300 of charge is to put the accused to notice regarding the offence

for which he is being tried. It was further held that non-framing of a charge or defects therein would not ipso facto vitiate the trial and that the question must always be examined in the facts of each case to determine whether prejudice or failure of justice has been occasioned.

44. On a perusal of Section 375 of the IPC and Section 3 of the POCSO Act, the actus reus mentioned, for constituting rape is the same as the actus reus specified in cases of commission of penetrative sexual assault within the meaning of Section 3 of the POCSO Act. The only distinguishing feature between Section 375 of the IPC and Section 3 of the POCSO Act is the minority of the victim, which determines the charge of offence under Section 376 of the IPC and/or under Section 4 of the POCSO Act. In such a case, where the victim is a minor, the accused is usually tried for prosecution of a charge under Section 376 of the IPC in addition to charge under Section 4 of the POCSO Act. However, where the Trial Court erred in framing a charge under Section 376 of the IPC but factum of rape is clearly proven, and prosecution failed to establish the age of the victim, charge under Section 4 of the POCSO Act fails, while prosecution for charge under Section 376 of the IPC sustains. However, in cases where charge under Section 376 of the IPC has not been framed, nothing impairs the Appellate Court to proceed on examination of commission of offence under Section 376 of the IPC by the accused.

45. Hence, the powers of the Appellate Court are not curbed due to error by the Trial Court in framing a necessary charge under Section 376 of the IPC. The powers of the Appellate Court are wide enough in such cases to alter the findings and nature and extent of sentence awarded by the Trial Court, including the power to make any amendment, consequential or incidental order that may be just. The same has been provided under Section 386 of the Cr.PC in case of an appeal filed against conviction, under clauses (b) and (e) of Section 386 of the Cr.PC in the following words:

> “386. Powers of the Appellate Court.- …
>
> (b) in an appeal from a conviction—
>
> (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or
>
> (ii) alter the finding, maintaining the sentence, or
>
> (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;…
>
> (e) make any amendment or any consequential or incidental order that may be just or proper:…”

46. In Sachin v. State of Maharashtra26, this Court held:

> "40. The question for consideration in this case is, whether, in an appeal against conviction, the appellate court could have directed enhancement of the sentence in an appeal filed by the accused. Under clause (b) of Section 386 CrPC, firstly, the appellate court can no doubt alter the findings and sentence and acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction subordinate to such appellate court or committed for trial. Secondly, the appellate court can also alter the findings but maintain the sentence. Thirdly, the appellate court can, in an appeal from a conviction, with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence but not so as to enhance the same. A plain reading of this would imply that in an appeal against conviction which is obviously filed by the accused, the challenge could be two-fold: firstly, it could be against the conviction itself in which case there is a challenge to the sentence also; and 26 (2025) 9 SCC 507 secondly, the challenge could be only to the sentence while accepting the conviction. In other words, the challenge would also be only for reduction of the sentence. ..."

47. The only determinative test under Section 464 of the Cr.PC is whether there occasioned a failure of justice in upholding findings of the Trial Court. The Trial Court and High Court have concurrently recorded a finding of fact regarding commission of penetrative sexual assault by the accused/appellant within the meaning of Section 3 of the POCSO Act. Section 375 of the IPC and Section 3 of the POCSO Act sharing the same ingredients and actus reus, Section 376 of the IPC being cognate offence, there seems to be no failure of justice when accused was given an adequate opportunity to defend himself against a charge under Section 3 of the POCSO Act. In a case where the accused was charged with an offence, different in nature and kind than the offence charged under POCSO Act, it would not have been in the interest of justice to proceed against him in the event of failure to prove the charge under POCSO Act. Barring the case of commission of sexual assault on a child below the age of sixteen years, a close analysis of punishment provided under clause (1) of Section 376 of the IPC and clause (1) of Section 4 of the POCSO Act also reveals that they are offences of the same nature, both providing for a minimum imprisonment of ten years.

48. The appellant/accused was convicted by the Trial Court for a grave offence under Section 4(2) of the POCSO Act, providing a minimum sentence of twenty years. In a question before this Court on conviction under Section 304B in a trial for offence under Section 302 of the IPC, in the absence of charge framed under Section 304B of the IPC, this Court in Shamnsaheb M. Multtani v. State of Karnataka27, on a conjoint reading of Section 222 of the Cr.PC and Section 464 of the Cr.PC held that such conviction would be valid even if there is any omission or irregularity in the charge, provided there was no failure of justice. This Court held:

> "15. Section 222(1) of the Code deals with a case "when a person is charged with an offence consisting of several particulars". The section permits the court to convict the accused "of the minor offence, though he was not charged with it". ...
>
> 16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the

> context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-

vis the other offence."

49. Recently, this Court in State of Uttar Pradesh v. Ram Swaroop @ Barkat28 reiterated that Section 222(1) of the Code deals with a case where a person is charged with an offence consisting of several particulars. The section permits the Court to convict the accused of the minor offence though he was not charged with it. Section 222 states as below:

> "222. When offence proved included in offence charged.— (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.
>
> 27 (2001) 2 SCC 577 28 2026 SCC OnLine SC 442 (2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied."

50. When the accused has been given an opportunity to defend himself against an offence under Section 3 of the POCSO Act, being of the same nature as offence under Section 376 of the IPC, there is no hesitation in holding that in event of prosecution's failure to prove victim's minority, there would be no failure of justice in proceeding against him under a charge of Section 376 of the IPC.

51. Hence, even in the absence of charge under Section 376 of the IPC, the accused can be convicted under the same where the ingredients are the same as under Section 3 of the POCSO Act, and the accused has been given an opportunity to defend himself against the same. This Court in Rafiq Ahmad (supra) held:

> "31. With the passage of time more and more such cases came up for consideration of this Court as well as the High Courts. The development of law has not changed the basic principles which have been stated in the judgments afore-referred. Usually an offence of grave nature includes in itself the essentials of a lesser but cognate offence.

> In other words, there are classes of offences like offences against the human body, offences against property and offences relating to cheating, misappropriation, forgery, etc. In the normal course of events, the question of grave and less grave offences would arise in relation to the offences falling in the same class and normally may not be inter se the classes. It is expected of the prosecution to collect all evidence in accordance with law to ensure that the prosecution is able to establish the charge with which the accused is charged, beyond reasonable doubt. It is only in those cases, keeping in view the facts and circumstances of a given case and if the court is of the view that the grave offence has not been established on merits or for a default of technical nature, it may still proceed to punish the accused for an offence of a less grave nature and content.
>
> ***
>
> 43. Having stated the above, let us now examine what kind of offences may fall in the same category except to the extent of 'grave or less grave'. We have already noticed that a person charged with a heinous or grave offence can be punished for a less grave of-fence of cognate nature whose essentials are satisfied with the evidence on record.

Examples of this kind have already been noticed by us like a charge being framed under Section 302 IPC and the accused being punished under Section 304, Part I or II, as the circumstances and facts of the case may demand. Furthermore, a person who is charged with an offence under Section 326 IPC can be finally convicted for an offence of lesser gravity under Section 325 or 323 IPC, if the facts of the case so establish."

52. In Willie (William) Slaney v. State of Madhya Pradesh29, the Constitution Bench examined the question of absence of charge in great detail and made observations in paragraph 6 which are of a general application, stated as below:

> "6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself. Then, provided there is 'substantial' compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."

53. In a case involving trial of an accused under Sections 302, 498-A and 304- B of the IPC, while answering issue with respect to conviction of accused under 29 (1955) 2 SCC 340 Section 306 of the IPC in the absence of charge framed under it, this Court in Dalbir Singh v. State of U.P.30 held that having regard to Section 464 of the Cr.PC, Appellate Court or Revisional Court has the power to convict the accused. It was held that conviction is possible if,

(i) the accused was aware of the basic ingredients of that offence,

(ii) the main facts sought to be established against him were explained to him clearly, and

(iii) he got a fair chance to defend himself.

54. There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment making reference to each one of them. Therefore, in view of Section 464 of the Cr.PC, it is possible for the Appellate Court or Revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself.

55. The victim identified appellant/accused all three times during the Test Identification Parade conducted on 13.12.2019 as per P.W.-12, a witness during the same, and the same was also deposed by P.W.-1 during her cross- 30 (2004) 5 SCC 334 examination on 10.03.2021. P.W.-14, Magistrate who conducted the Test Identification Parade, deposed that the victim positively identified the suspect on all three rounds. As per testimony of the prosecutrix, the accused sustained injuries on his forehead which is well corroborated by P.W.-11 (Doctor) who medically examined the accused and found a cut injury 2 x l cm on his left lateral forehead. In cross-examination, P.W.-11 asserted that the cut injury on the forehead as per the accused statement was being hit by the survivor with a stone. P.W.-4 and P.W.-5 deposed in unison that the accused was injured on the forehead and the accused himself has confessed before them of the crime committed by him. They even identified him in Court to be perpetrator of the crime. All the prosecution witnesses, namely P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-5, P.W.-6, P.W.-7, P.W.-8, P.W.-9, P.W.-10, P.W.-11, P.W.-12, P.W.-13 and P.W.-14 were unanimous in their oral testimony that the accused person had sexually assaulted the prosecutrix and nothing was shaken in cross to disbelieved their depositions as their statement are firm and convincing.

56. The FSL has proved the presence of the blood of the accused which was present on Exhibit-M (pink and dark blue jacket of the victim), Exhibit N(i) (black long pant of the victim) and Exhibit-N(ii) (light blue underwear of the victim) and seminal stain was detected on Exhibit F1x (black underwear of the accused). As per P.W.-9, Doctor-chief who examined the victim, blood stains were found in the vaginal swab, which have been further corroborated by the medical examination report (Ex.P1)/clinical findings, conducted on the victim girl (P.W.-1) showed, "Hymen torn, partial penile, penetration of the vagina". The factum of sexual intercourse has also been duly

established by the victim girl (P.W.-1) as per statement under Section 164 of the Cr.PC.

57. The said discussion clearly brings out the fact that the victim was subject to penetrative sexual assault by the appellant/accused, and criminal intimidation under Section 506 of the IPC, established inter alia by way of Medico-Legal Certificate dated 27.11.2019. Resultantly, the appellant can be convicted under Section 376 of the IPC for commission of rape of the victim under Section 375 of the IPC. The conviction under Section 506 of the IPC awarded by Trial Court and upheld by the High Court is confirmed.

58. In view of the above, we find no good reason to interfere with the concurrent judgments convicting the accused and sentencing him under Section 506 of the IPC, details of which have been set out hereinabove. In the facts of present case, the appellant/accused is convicted under Section 376 of the IPC for commission of rape. As provided under sub-clause (iii) to clause (b) of Section 386 of the Cr.PC detailed hereinabove, the powers of the Appellate Court extend to altering the findings and nature and extent of sentence awarded by Trial Court. Hence, we hereby sentence the appellant/accused to undergo 10 years of rigorous imprisonment and fine of Rs.10,000/- under Section 376 of the IPC, in default of payment of fine to undergo additional rigorous imprisonment for 06 months.

59. Consequently, impugned judgments dated 08.07.2024 of the High Court and 16.06.2021 passed by the Special Judge (POCSO), District and Sessions Court in Special (POCSO) Case No. 9/2020, is modified to the extent of conviction and sentence of appellant/accused under Section 376 of the IPC in addition to conviction and sentence under Section 506 of the IPC awarded by Trial Court and upheld by the High Court and the appellant/accused is sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.10,000/-, in default of payment of fine to undergo additional rigorous imprisonment for 06 months.

60. We, therefore, partly allow the Appeal in the above stated terms.

.....J. (PRASHANT KUMAR MISHRA) .....J. (N.V. ANJARIA) NEW DELHI;

SEPTEMBER 10, 2026.