RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (Db) No. 86/2021
CNR: RJHC020367692021 | URN: CRLAD / 156U / 2021

Rajasthan High Court
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Sahjad @ Kala Son Of Matluba @ Ramjan, Resident Of Gangoh, Station Gangoh, District Saharanpur, (U.P). At Present Ward No 19, Bhagat Singh Circle, Pilani, At Present Pahadi Ke Pass, Makan Anil Jat, Pilani, Police Station Pilani, District Jhunjhunu (Raj)
(At present accused appellant confined in Central Jail Bikaner)

----Accused Appellant

Versus

State Of Rajasthan, Through Public Prosecutor

----Respondent

For Appellant(s)	:	Mr. Dinesh Chand Sharma, Advocate
For Respondent(s)	:	Mr. Amit Punia, PP

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

Date of Judgment :: 29/10/2026

(PER HON'BLE BHUWAN GOYAL J.)

1. The appellant has preferred instant appeal under Section 374 of the Code of Criminal Procedure, 1973 against the impugned Judgment and Order dated 23.1.2019 passed by the learned Special Judge (Protection of Children from Sexual Offences) Act, 2012 and Child Right Protection Commission Act, 2005, Jhunjhunu (Raj.) in Sessions Case No. 74/2018 (177/2017) CIS No. 89/2018 (State of Rajasthan vs. Sahjad), whereby the accused-appellant has been convicted for the offence under Sections 366A, 376 IPC and Section 5 / 6 of the Protection of Children from Sexual Offences Act and sentenced as under:

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Offence	**Sentence**	**Fine**	**Sentence in default of payment of fine**
U/s. 5/6 of POCSO Act	To undergo life imprisonment	Rs. 10,000/-	To further undergo 2 months' simple imprisonment
U/s. 376 IPC	To undergo life imprisonment	Rs. 10,000/-	To further undergo 2 months' simple imprisonment
U/s. 366(A)IPC	To undergo 10 years' rigorous imprisonment	Rs. 5,000/-	To further undergo 1 month's simple imprisonment

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2. Brief facts relevant and germane for disposal of the present appeal are that on 16.3.2017, the complainant submitted a written report to SHO, Police Station, Pilani to the effect that on that day at about 2.00-3.00 PM, accused appellant took his minor daughter with him for eating something. When the accused alongwith his daughter returned back in the evening about 6.00 PM, blood was oozing from his daughter's private part and she was weeping. She disclosed him that the accused appellant assaulted her in the bushes, asked her to keep mum and forcefully committed rape with her. On the basis of the said report, FIR No. 95/2017 was registered at Police Station, Pilani, District Jhunjhunu for the offence under Sections 376, 363A IPC and Section 4 and 6 of the POCSO Act and investigation commenced. After completion of the investigation, the police submitted charge-sheet against the accused-appellant for the offence under Sections 366(A), 376 IPC and Sections 4 & 6 of POCSO Act before the trial court.

3. Learned trial court framed charges against the accused-appellant for the offence under Sections 366(A), 376 IPC and

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Section 5/6 of POCSO Act. The accused-appellant pleaded not guilty and claimed trial.

4. The prosecution examined as many as 16 witnesses and exhibited documents Ex.P/01 to Ex.P/42. After conclusion of the prosecution evidence, accused-appellant was examined under Section 313 of Cr.P.C. and was confronted with the circumstances appearing against him in the prosecution case, which he denied and stated that he had been falsely implicated in the case. He did not produce any evidence in his defence.

5. Learned trial court, thereafter, proceeded to hear the arguments of the Public Prosecutor and the defence counsel, appreciated the evidence available on record and delivered the impugned judgment and order dated 23.1.2019, whereby the accused-appellant has been convicted and sentenced as stated above. Aggrieved with the same, present appeal has been filed by the accused-appellant before this Court.

6. Learned counsel for the appellant submits that the accused-appellant is innocent and he has been falsely en-roped in this case. He further submits that there are major contradictions in the statement of prosecution witnesses and entire judgment is based on surmises and conjectures. He further submits that Dr. Vinod Kumari (PW-2) categorically stated in her evidence that the injury could have been sustained by juvenile Ms. 'S' due to falling on a wooden stake, thus, no offence, as alleged is made out against the appellant. He has therefore, prayed that the impugned judgment and order dated 23.1.2019 passed by the trial court is bad in law, therefore, same may be set-aside; the appeal may be

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allowed and the accused-appellant may be acquitted of charges levelled against him.

7. Per contra, learned PP appearing for the State while supporting the judgment and order of sentence has submitted that the prosecution has produced cogent evidence and proved its case against the accused-appellant beyond all reasonable doubt. By referring to Section 29 of the POCSO Act, 2012, learned PP has submitted that in a case, where the accused is prosecuted for offence committed under Sections 3, 5, 7 and 9 of the POCSO Act, the court is empowered to draw presumption of guilt of the accused. Learned trial court, having regard to the facts and circumstances of the case as well as evidence brought on record, has rightly recorded conviction against the accused appellant for the alleged offences. In this view of the matter, no interference with impugned judgment and order by this Court is called for.

8. We have given our thoughtful consideration to the arguments advanced at the Bar and have gone through impugned judgment and have minutely sifted through the evidence available on record.

9. First, we propose to decide the question as to whether Ms. 'S' falls within the definition of 'Child'. In the present case, though no school document relating to the age of the juvenile Ms. 'S' has been exhibited, but prosecution has exhibited age examination report of the juvenile Ms. 'S' (Ex. P/7), according to which her age is between 7 to 9 years and the said document is also duly proved from the evidence of Dr. Nawal Kishore Saini (PW-13). Further, the age of the juvenile Ms. 'S' is also duly

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established from the statement of PW-3 (father of the juvenile Ms. 'S'), in which he stated that his elder daguther's age is 7 years. The said age of the juvenile Ms. 'S' has not been rebutted or disputed by counsel for the appellant during the course of arguments. Thus, it is clear that at the time of commission of offence, juvenile Ms. 'S' was about 7 to 9 years of age minor girl and she fell within the definition of 'child'.

10. In relation to the child evidence, Hon'ble Supreme Court in the case of **Dattu Ramrao Sakhare Versus State of Maharashtra** reported in 1997 (5) SCC 341, has held that:

> "A child witness if found competent to depose to the facts and reliable on such evidence could be the basis of conviction. In other words, even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his / her demeanour must be like any other competent witness and there is no likelihood of being tutored."

11. In the case of **Hari Om Versus State of U.P.** (2021) 4 SCC 345, the Hon'ble Apex Court held as under:

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”22. The evidence of the child witness cannot be rejected per se, but the Court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. If the child witness is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances would like to mix up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the

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confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not. The evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law."

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12. Now coming to the question as to whether juvenile Ms. 'S' was subjected to sexual assault / rape by the appellant, we have carefully examined her statement in the light of the aforesaid judgments. The juvenile Ms. 'S' in her statement under Section 164 CrPC as also in the Court statement, has categorically stated that on the fateful day, she was taken by the accused in the bushes, where he committed sexual assault with her. Her deposition remained unimpeached during her cross-examination. We also find that her statement stood duly corroborated from the testimony of Dr. Vinod Kumari (PW-2), who had prepared the sex-assault report (Ex.P/3) and categorically stated that fresh blood was present in the external vaginal of the juvenile Ms. 'S'. There was an injury in the side of the vagina, which was extended from lower part to anus. She further stated that possibility of the sexual intercourse with the juvenile cannot be ruled out.

13. As per FSL report (Ex. P/35), human semen was detected in ex. 1 (Pants), ex. 2 (Frock Kurta), ex. 3 (pants), ex. 4

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(T-shirt), ex. 5 (vaginal swab) and ex. 6 (Vaginal smear). Further, as per FSL report (Ex.P/36), the male DNA profile obtained form exhibit no. 11 (control blood sample of suspect Sahjad @ Kala) matched with the DNA profile obtained form semen stains detected from exhibit no. 2 (Frock / Kurta of victim).

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14. So far as argument of learned counsel for the appellant with regard to contradiction in the statement of the witnesses is concerned, we also do not agree with the same as in our opinion, the contradictions are minor in nature and it is natural to have minor contradictions in statements because it is not possible for a person to reiterate the incident verbatim after lapse of some time of the incident.

15. Section 29 of the POCSO Act permits the Court to draw a presumption regarding guilt of the accused being prosecuted under the provisions of the Act. In a trial conducted under the Cr.P.C., the accused can remain silent and the burden would be upon the prosecution to prove the charge beyond reasonable doubt by leading cogent evidence. However, an exception to this general rule has been introduced in case of prosecution under the POCSO. In view of Section 29 of the POCSO Act, there would be reverse onus upon the accused to displace any presumption of guilt.

16. Section 29 of the POCSO Act is reproduced herein below for ready reference :-

> *"**29. Presumption as to certain offences**.- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act,*

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the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved."

17. In the instant case, we are convinced that the prosecution has been able to establish foundational facts necessary to constitute offence against the accused-appellant, but the accused appellant has failed to rebut the presumption of guilt.

18. In view of the unrebutted / undisputed age of the juvenile Ms. 'S', which has been determined as 7 to 9 years, her statement, statement of Dr. Vinod Kumari (PW-2) and the FSL reports, we are of the considered opinion that the learned trial court has not erred in passing the judgment and order dated 23.1.2019 convicting and sentencing the accused-appellant for the offences alleged him.

19. Accordingly, the present criminal appeal is dismissed and the judgment and order dated 23.1.2019 passed by the learned trial court is upheld.

20. The record of the learned trial court be sent back forthwith.

(BHUWAN GOYAL),J (MAHENDAR KUMAR GOYAL),J

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