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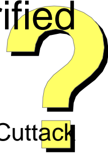

IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.75 OF 2019

An appeal from judgment and order dated 17.08.2019 passed by the Special Judge (POCSO) -cum- Second Addl. Sessions Judge, Berhampur, Ganjam in G.R. Case No.11 of 2016.

	....	Appellant

-Versus-

State of Odisha	....	Respondent

For Appellant:	-	Mr. Rajib Lochan Pattnaik Amicus Curiae
For Respondent:	-	Mr. Manoranjan Mishra Addl. Standing Counsel

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P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Judgment: 02.08.2023

S.K. SAHOO, J. The appellant , who is the father of the victim, faced trial in the Court of learned Special Judge (POCSO) -cum- Second Addl. Sessions Judge, Berhampur, Ganjam in G.R. Case No.11 of 2016 for commission of offences punishable under sections 354/354-A(2)/354-B/354-D/376(2)(f)(i)(k)(n) of the Indian Penal Code (hereinafter, >I.P.C.?) read with sections 6 and 10 of the Protection of Children from Sexual Offences Act

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(hereinafter, >POCSO Act?) on the accusation that he used criminal force against the victim intending to outrage her modesty and on different occasions, committed sexual harassment by committing physical contact and advancing unwelcome and explicit sexual overtures to the victim and also made a demand for sexual favours from her and used criminal force against her with the intention of disrobing her and in the process made her naked and attempted to foster personal interaction repeatedly despite a clear indication of disinterest by the victim and being the father of the victim and being in a position of control and dominance over her, the appellant committed rape repeatedly on her when she was under sixteen years of age and being in a position of trust and authority, he committed aggravated penetrative sexual assault on her and touched the vagina, breasts and different parts of her body with sexual intent. He was also indicted for commission of criminal intimidation by threatening the victim with dire consequences with intent to cause alarm.

The learned trial Court vide impugned judgment and order dated 17th August 2019 found the appellant guilty of the offences under sections 354/354A(2)/354B/376(2)(f)(i)(k)(n) of the I.P.C. as well as sections 6 and 10 of the POCSO Act and sentenced him to undergo rigorous imprisonment for ten years

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and to pay a fine of Rs.10,000/- (Rupees ten thousand), in default, to undergo rigorous imprisonment for a further period of six months for the offence under section 376(2)(f)(i)(k)(n) of the I.P.C., to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/-(Rupees five thousand), in default, to undergo rigorous imprisonment for a further period of three months for the offence under section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/-(rupees two thousand), in default, to undergo rigorous imprisonment for a further period of two months for the offence under section 354B of the I.P.C. However, in view of section 42 of the POCSO Act, no separate sentence has been awarded for the offences under sections 354/354A(2) of the I.P.C. and section 6 of the POCSO Act. All the substantive sentences were directed to run concurrently. The appellant was acquitted of the charges under sections 354D/506 of the Indian Penal Code.

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The Prosecution Case:

The prosecution case, in short, as per the first information report lodged by the victim (P.W.3) on 05.02.2016 before the Inspector in-charge of Hinjili police station, is that the appellant is her father and she is the only daughter of her parents and she has a younger brother. The appellant was

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unemployed and he used to return home in inebriated state and assault the family members. It is further stated in the F.I.R. that on a day in the month of Srabana (in the month of July) in the year 2015, during the evening hours, while her younger brother had been to attend tuition and her mother had also gone to implant paddy seedlings, the victim was preparing the dinner and at that time the appellant came and embraced her and touched different parts of her body by his hands. In view of the relationship, the victim could not say anything to the appellant but only cried. Then for committing rape, the appellant tried to undress the victim and touched her breasts and private parts. When the victim started crying loudly, the appellant left the house. In that night, the appellant slept near the victim, made her naked and inserted his finger into her private part (vagina) for which she cried. Such thing was done repeatedly and the appellant used to sexually exploit the victim in spite of her protest and he was not only touching different parts of the body of the victim, but also inserting his finger into her private parts. When the situation became unbearable, the victim disclosed the misdeeds of the appellant before her mother (P.W.2), for which there was a quarrel between P.W.2 and the appellant. The victim also disclosed about the occurrence to her cousin brother and his

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wife. As per the advice given by P.W.2, she lodged the first information report.

On receipt of such report, the Inspector in-charge of Hinjili police station registered Hinjili P.S. Case No.20 dated 05.02.2016 under sections 354/354A(1)/354B/354D/376(2)(f)(i)(k)(n) of the I.P.C. read with section 6 of the POCSO Act.

P.W.8 Prasanta Kumar Sahoo, the then Inspector in-charge of Hinjili police station himself took up the investigation of the case and as per his direction, one lady Inspector Bhagyashree Swain (P.W.4) recorded the statement of the victim. The wearing apparels of the victim were seized as per seizure list Ext.5. The I.O. visited the spot, prepared the spot map vide Ext.9, examined the witnesses and recorded their statements, apprehended the appellant, seized his wearing apparels and prepared the seizure list vide Ext.7. The victim so also the appellant were sent for medical examination to M.K.C.G. Medical College and Hospital, Berhampur along with the escorting police officials. Thereafter, he made some formal seizure and arrested the appellant and forwarded him to the Court and prayed for recording of the 164 Cr.P.C. statement of the victim. The seized exhibits were sent to R.F.S.L., Berhampur for chemical examination. The School Admission Register of the victim was produced by the Headmaster of the school which was

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seized as per the seizure list vide Ext.13 and the same was given in the zima of Headmaster after execution of zimanama vide Ext.14. The School Admission Register revealed the date of birth of the victim to be 25.03.2002. The I.O. received the medical examination report of the victim as well as the appellant on 31.05.2016 and thereafter, on completion of investigation, he submitted the charge sheet against the appellant for commission of offences punishable under sections 354/354A(1)/354B/354D/ 376(2)(f)(i)(k)(n) of the I.P.C. and section 6 of the POCSO Act.

The learned trial Court on 05.08.2016 framed the charges against the appellant as already stated and since the appellant refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute him and establish his guilt.

The defence plea of the appellant was one of denial. It was pleaded that due to illicit relationship of P.W.2 (mother of the victim) with the appellant?s elder brother, a false case has been foisted upon him.

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<u>Witnesses & Exhibits</u>:

During course of trial, in order to prove its case, the prosecution examined as many as nine witnesses.

P.W.1 Dr. Sudeepa Das was the Associate Professor in F.M.T. Department of M.K.C.G. Medical College and Hospital,

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Berhmapur who examined the victim on police requisition and proved her report vide Ext.1

P.W.2 Sanju Behera is the mother of the victim. She supported the prosecution case and stated that the victim disclosed before her the misdeeds committed by the appellant on her by touching her private parts.

P.W.3 is the victim so also the informant in this case. She supported the prosecution case and stated as to how the appellant sexually harassed her and committed rape on her.

P.W.4 Bhagyashree Swain was the S.I. of police attached to Hinjili police station and as per the direction of the I.I.C., Hinjili police station, she recorded the statement of the victim under section 161 Cr.P.C. in presence of her mother (P.W.2).

P.W.5 Ushalata Dash was the constable attached to Hinjili police station and she is a witness to the seizure of biological samples of the appellant so also the victim.

P.W.6 Ranjit Kumar Patra was the constable attached to Hinjili police station and is a witness to the seizure of red colour check towel and a printed green colour lungi of the appellant. He is also a witness to the seizure of the wearing apparels of the victim vide seizure list Ext.5.

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P.W.7 Dr. Bhakta Narayan Munda was working as Asst. Surgeon in the Department of F.M.T., M.K.C.G. Medical College and Hospital, Berhampur and on police requisition, he examined the appellant and proved his report vide Ext.8.

P.W.8 Prasanta Kumar Sahoo is the Investigating Officer of the case.

P.W.9 Nabin Chandra Pattnaik was the Headmaster of the school where the victim was prosecuting her studies and he stated about the seizure of school admission register vide seizure list Ext.13 and took the same in zima as per zimanama Ext.14.

The prosecution also proved sixteen documents as exhibits. Ext.1 is the medical examination report of the victim, Ext.2 is the F.I.R., Ext.3 is the consent memo for medical examination of the victim, Ext.4 is the statement of the victim under section 164 Cr.P.C. before Magistrate, Ext.5 is the seizure list relating to wearing apparels of the victim, Ext.6 is the seizure list relating to biological samples of the appellant and the victim, Ext.7 is the seizure list of the wearing apparels of the appellant, Ext.8 is the medical opinion report of the appellant proved by the doctor (P.W.7), Ext.9 is the spot map, Ext.10 is the command certificate, Ext.11 is the forwarding letter of the learned S.D.J.M., Berhampur to the Dy. Director, R.F.S.L., Berhampur for

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examination of the exhibits, Ext.12 is the acknowledgment receipt issued by R.F.S.L., Berhampur, Ext.13 is the original school admission register, Ext.14 is the zimanama, Ext.15 is the school admission register and Ext.16 is the transfer certificate.

The appellant neither examined any witness nor proved any document.

Finding of the learned Trial Court:

The learned trial Court, after analyzing the oral and documentary evidence on record, came to hold that the victim was under sixteen years of age at the time of alleged occurrence and the age of the victim has not been challenged. It was further held that there was no medical evidence to corroborate the recent sexual intercourse and there was no bodily injury suggesting forcible sexual intercourse. but the possibility of past sexual intercourse could not be ruled out. Learned trial Court further held that delay in lodging of F.I.R. in a case of rape cannot be a factor to discard the prosecution evidence, particularly in view of the relationship between the appellant and the victim. It was further held that despite resistance by the victim and protest by her mother, the appellant did not desist from making sexual assault on the victim and therefore, it can never be a false implication as claimed by the appellant. There is intrinsic value in the oral evidence of the victim and her mother

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so far as the allegation of rape and other sexual assault on the victim are concerned. The learned trial Court further held that being the father of the victim, since the appellant sexually assaulted the victim, by virtue of section 9(n) of the POCSO Act, he was held to have committed >aggravated sexual assault? punishable under section 10 of the POCSO Act. It was further held that the version of the victim regarding threat given to her by the appellant to throttle her neck does not find support from the F.I.R. story or her statement before police and it creates doubt whether any such threat had in fact been given by the appellant and therefore, no offence punishable under section 506 of the I.P.C. is made out against the appellant. The learned trial Court further held that the victim was proved to be under sixteen years of age at the time of alleged occurrence and the appellant being the father of the victim was in a position of control and dominance over her and as has been proved by the prosecution that the appellant had committed rape on the victim repeatedly and therefore, he was held guilty as aforesaid.

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<u>Contentions of Parties</u>:

Mr. Rajib Lochan Pattnaik, learned Amicus Curiae appearing for the appellant placed the relevant parts of the impugned judgment so also the evidence of the witnesses and contended that there is inordinate delay in lodging of the first

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information report and the formal F.I.R. itself shows that the occurrence took place on 01.07.2015 whereas the F.I.R. was lodged only on 05.02.2016, which is almost seven months after the date of occurrence. Learned counsel further submitted that in the 164 Cr.P.C. statement, the victim has not stated about commission of rape on her and therefore, her evidence in Court as P.W.3 in that respect is not acceptable. Learned counsel further submitted that the doctor (P.W.1) examined the victim on the date of lodging of the F.I.R. and no sign or symptom of recent penetrative sexual assault was found and there was no bodily injury on her person or on her private part and in view of such evidence of the doctor, the commission of rape on her is not acceptable and it is a fit case where benefit of doubt should be extended in favour of the appellant.

Mr. Manoranjan Mishra, learned Additional Standing Counsel, on the other hand, supported the impugned judgment and argued that in view of the relationship between the appellant and the victim and since it was the question of the future of the victim and also the prestige of the family, in such a scenario, delay in lodging of F.I.R. in a case of this nature cannot be a ground to disbelieve the prosecution case. Learned counsel further argued that the 164 Cr.P.C. statement having not been confronted to the victim (P.W.3) in accordance with law, the

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same cannot be utilized as contradiction. He also argued that the doctor examined the victim after almost seven months of the first occurrence and non-finding of any sign or symptom of recent penetrative sexual assault or any injury on the private part of the victim and particularly, in view of the nature of act committed by the appellant, it cannot be said that on the basis of the medical evidence, the victim?s evidence regarding commission of rape or outraging her modesty by the appellant is to be discarded.

Adverting to the contentions raised by the learned counsel for the respective parties, let me first deal with the evidence on record relating to the age of the victim.

Age of the victim:

The victim (P.W.3) in her evidence, which was recorded on 23.08.2018, stated her age to be seventeen years and she further stated that the occurrence took place in the month of Srabana (in the month of July) three years back. No question has been put by the learned defence counsel in the cross-examination disputing the age of the victim as stated by her. P.W.9, the Headmaster of the school, where the victim was prosecuting her studies, has proved the School Admission Register vide Ext.15 from which it appears that the date of birth of the victim was mentioned to be 25.03.2002. Similarly, the

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transfer certificate issued by the Headmaster of Nodal U.P. School, Sikri on the basis of which, the date of birth was mentioned in the School Admission Register during the admission of the victim has been marked as Ext.16. Of course, the victim has not stated about her date of birth and even the mother of the victim, being examined as P.W.2, has also not stated about the age of the victim or the date of birth of the victim. The Headmaster (P.W.9) has stated that while admitting the victim to the school, he had only verified the C.L.C. and the birth certificate was not produced before him. Therefore, it is clear that the School Admission Register (Ext.15), which was proved by the prosecution, reflects the age of the victim on the basis of the C.L.C. of Nodal U.P. School, Sikri. There is no evidence that the Investigating Officer (P.W.8) has ever visited the Nodal U.P. School, Sikri to verify what was the age of the victim mentioned in the School Admission Register though the transfer certificate of the school has been proved vide Ext.16. Suggestion has been given to the Headmaster (P.W.9) that he did not enter the date of birth of the victim correctly in the School Admission Register to which he has denied. No evidence has been adduced by the defence contradicting the age of the victim as stated by her or as was reflected in the School Admission Register. P.W.1, the doctor has stated that the

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victim?s age was more than fourteen years and less than sixteen years as on the date of her cross-examination which was based on her physical, dental, radiological findings and secondary sexual characteristics and the medical report has been marked as Ext.1. The evidence of the doctor (P.W.1) has not been challenged at all. Therefore, even though the birth certificate of the victim has not been proved by the prosecution but in view of the unchallenged testimony of the victim relating to her age, the evidence of the doctor (P.W.1) and the entry relating to date of birth of the victim in the School Admission Register proved by P.W.9, I am of the humble view that learned trial Court has rightly come to the conclusion that the age of the victim has not been challenged and the victim was under sixteen years of age at the time of the occurrence.

Delay in lodging of F.I.R.:

So far as the delay in lodging of F.I.R. is concerned, the evidence of the victim indicates as to how she was threatened by the appellant to be killed after the first incident, in case she tried to disclose the occurrence before others. She stated that after the appellant ceaselessly repeated the heinous act, when she disclosed the occurrence before her mother (P.W.2), there was a quarrel between P.W.2 and the appellant and again after seven months of the said incident, there was

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another attempt made by the appellant to have sex with her which was witnessed by P.W.2 and as per the advice of P.W.2, she lodged the F.I.R.

In a case of this nature where the perpetrator of the crime is none else than the father of the prosecutrix, the reputation and prestige of the family so also the future of the prosecutrix were at stake, it was not at all unnatural on the part of the family members to have deliberations among themselves before lodging the F.I.R.. Delay in lodging the F.I.R. in such cases is a normal phenomenon as held by the Hon?ble Supreme Court so also by different High Courts including this Court in umpteen number of decisions and therefore, the contention raised by the learned Amicus Curiae appearing for the appellant that on account of seven months delay in lodging of the F.I.R. after the first incident, the prosecution case is to be viewed with suspicion, cannot be accepted. Delay in such cases does not necessarily indicate that the F.I.R. was tainted or it was deliberate or intentional to falsely implicate the appellant in the commission of the crime.

The Highest Court of the land has accorded much sensitivity to the issue of sexual exploitation of children and has time and again called for special approach to be adopted to deal with such unfortunate cases. It is deemed apposite to reproduce

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the following observations made by the Hon?ble Supreme Court in the case of **State of Rajasthan -Vrs.- Om Prakash reported in (2002) 5 Supreme Court Cases 745**:

> <19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of the sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of social stigma attached thereto. According to some surveys, there has been steep rise in the child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other mode of sexual abuse. These factors point towards a different approach required to be adopted.=

Even after more than seven decades of independence, unfortunately the women of this country and more particularly, the minor girls have not got true freedom from the vulture like lust of perpetrators of sex crimes. However, the

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crimes are not end in themselves, rather those have spiraling effect on not only the psyche of prosecutrix but also on her and her family?s social repute. These factors often impede the hapless victims to come forward, report the crime and surrender the hopes of justice to the judicial system. Their compulsions should be acknowledged by the Courts in an empathetic manner and the judicial institutions must ensure that bare technicalities of criminal jurisprudence do not become shackles of victimhood, forcing the victims to silently digest their pain. Hence, delay in lodging F.I.R. in cases of child rape should be taken with much sensitivity and the concerned Courts must judiciously weigh all the surrounding factors which led to such delay. It is nothing but adding a pinch of salt to her injury to discard the otherwise meritorious case of the prosecutrix merely because she failed to knock at the portals of justice in a time-bound manner.

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Analysis of the Evidence:

The victim being examined as P.W.3 has stated that in the evening hours on the first day of occurrence, when she was engaged in cooking for dinner, the appellant came to her and moved his hands all over her body including her breasts and private parts for which she wept and the appellant left her. She further stated that the appellant threatened her to kill by throttling in case she would disclose the incident before anybody.

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She also did not disclose before her mother (P.W.2), who returned home in the evening hours, on account of such threat. She further stated that in that very night, the appellant removed her dress and pierced his finger into her private parts for which when she wept, he left her. She further stated that two to three days thereafter, again the appellant touched her private parts by removing her clothes for which she reported the incident to her mother (P.W.2) and a quarrel ensued between P.W.2 and the appellant. After seven months of such incident, again the appellant made an attempt to rape her and P.W.2 witnessed the incident. In the cross-examination, the victim has stated that there are four rooms in their house and the members of the family sleep together in one room. She further stated that since she cried slowly on the fateful night, her mother (P.W.2) who was sleeping in that room could not hear it. She further stated that out of fear, she could not disclose the incident to her mother (P.W.2) when she asked as to why she was weeping in the last night. A contention was raised by the learned Amicus Curiae appearing for the appellant that in the 164 Cr.P.C. statement, the victim (P.W.3) has not stated about commission of rape and therefore, her evidence in Court in that respect cannot be accepted. However, such argument does not hold water inasmuch as the statement of the victim recorded under section

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164 Cr.P.C. has not been confronted to her even though the same has been marked as Ext.4.

Law is well settled that not only the attention of the witness is to be drawn to the previous statement in writing or reduced to writing for the purpose of giving reasonable opportunity to the witness to explain the contradiction, but also the same has to be proved through the I.O. who has taken down the same if it is a statement recorded under section 161 Cr.P.C. and similarly the 164 Cr.P.C. statement contradictions, if any, has to be put to the victim to enable her to explain the same.

In the case of **State of Delhi -Vrs.- Shri Ram Lohia reported in A.I.R. 1960 Supreme Court 490,** it is held that statements recorded under section 164 Cr.P.C. are not substantive evidence and cannot be made use of except to corroborate or contradict the witness and admission by a witness that his statement was recorded under section 164 Cr.P.C. and that what he had stated there was true would not make the entire statement admissible much less that any part of it could be used as substantive evidence in the case.

It is pertinent to cite a recent judgment delivered by this Court in the case of **Bapun Singh -Vrs.- State of Odisha (JCRLA No. 57 of 2019 disposed of on 19.07.2023)** where

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the probative value of statements recorded under section 164 of the Cr.P.C. was analyzed in the following words:

> <Law is well settled that the statement of a witness recorded under section 164 Cr.P.C. is not substantive evidence. Substantive evidence is one which is given by witness in Court on oath in presence of the accused. Statement of a witness under section 164 of the Code is recorded in absence of accused and as such it is not substantive evidence. The statement of a witness under section 164 Cr.P.C. is recorded being sponsored by the investigating agency. During course of trial, if the witness does not support the prosecution case and declared hostile by the prosecution then the prosecution with the permission of the Court can confront his previous statement made before the Magistrate to him. A statement recorded under section 164 Cr.P.C. can be used either for corroboration of the testimony of a witness under section 157 of the Evidence Act or for contradiction thereof under section 145 of the Evidence Act. The mandate of law is that there should be substantial compliance of the requirements under section 145 of the Evidence Act and the purpose of second part of section 145 is to give reasonable opportunity to the witness to explain the contradictions after his attention is drawn to them in a fair and reasonable manner. The Court must ensure that if there is contradiction

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between the previous statement in writing and statement made in the Court then that portion is brought to the attention of the witness and he is given reasonable opportunity to explain the contradictions.=

In the case in hand, on a perusal of the 164 Cr.P.C. statement, which has been marked as Ext.4, made by none else than the victim herself, she has stated as to how the appellant outraged her modesty and attempted to commit rape on her on different dates after disrobing her in absence of other family members. She has further stated that her father (appellant), on a number of occasions, has misbehaved with her (KHARAP BYABAHARA KARUTHILE). Since the previous statement of the victim has not been confronted to her by the learned defence counsel and the victim has got no opportunity to explain the same, I am not inclined to accept the contention raised by the learned Amicus Curiae appearing for the appellant that in view of the absence of specific statement under section 164 of the Cr.P.C. indicating insertion of finger into her private parts, the appellant should be acquitted of the charge under section 376 of the I.P.C.

It is correct that the doctor (P.W.1) who examined the victim did not notice any injury on her person and did not find any sign or symptoms of recent penetrative sexual assault,

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however the time gap between the commission of rape and the date of medical examination of the victim is a factor which is to be taken into account in this case and therefore, the evidence of the victim cannot be disbelieved or discarded only basing upon findings of the doctor.

Coming to the overt act committed by the appellant as per the statement of the victim which also gets corroboration from the evidence of her mother (P.W.2) that the victim disclosed before her that the appellant had on the first date, in the evening hours, moved his hand all over her body including her breasts and private parts and, in that night, she removed her dress and pierced his finger into her private parts and two to three days thereafter, the appellant touched her private parts by removing her clothes and after seven months of the said incident, the appellant attempted to rape the victim which was witnessed by her mother (P.W.2), is clinching and trustworthy and the evidence in that respect adduced by the prosecution has not been shaken at all.

Section 354 of the I.P.C. prescribes punishment for assault or criminal force to woman with intent to outrage her modesty and section 354A(2) prescribes punishment for the offence, inter alia, specified in clause (i) of sub-section (1) of the said section for physical contact and advances involving

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unwelcome and explicit sexual overtures. Section 354B of the I.P.C. prescribes punishment for assault or use of criminal force to woman with intent to disrobe. The evidence of the victim (P.W.3) has remained unshaken that the appellant not only outraged her modesty by making physical contact and unwelcome explicit sexual overtures but also disrobed her. Therefore, the ingredients of the offence under section 354, 354A(2) and 354B of the I.P.C. are attracted against the appellant.

Similarly in view of the definition of ›rape‹ under section 375 of the I.P.C., the insertion of finger into the vagina of a woman would also attract the ingredients of the offence. The appellant being the father of the victim, who was a minor girl, and having been in a position of control and dominance over her, committed rape on her. However, since the victim has stated that only on one occasion, the appellant has inserted his finger into her private part, therefore, I am of the humble view that the ingredients of the offence under section 376(2)(n) of the I.P.C., which deals with punishment for commission of rape repeatedly on the same woman, would not be attracted.

Section 376(2)(f) provides punishment for a person who being a relative, guardian or teacher of, or in a position of trust or authority towards the woman, commits rape on such

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woman. In this case, the appellant being the father did not hesitate to commit such preposterous and bestial act upon her minor daughter. The victim was completely helpless as her father, who is naturally entrusted with the noble duty of caring and protecting her, could not have control over his lust and tried to quench the sexual thirst by exploiting her. This degrading act of the appellant stupefies the judicial conscience of this Court as it is unthinkable to even comprehend that in a country where women are traditionally viewed as an incarnation of the God and daughters are worshipped as >Devi?, such heinous acts are being committed by a father. A daughter needs a father to be the standard against which she will judge all men. When the father who is the creator of the girl child and supposed to act as her protector, takes the role of the predator, it would be sheer betrayal of someone?s trust and faith and has got serious impact on humanity. In this context, it is worthwhile to quote the Sanskrit shloka, **" T T ´ ¸ ˛ `₹ `UT द` UT"** which means tathe Almighty God resides where women are worshipped. Where women are honoured, divinity blossoms there. It highlights the importance of how women should be treated with dignity and respect. There is no doubt that being in a position of authority and trust, the appellant misused his position and sexually

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exploited his innocent minor daughter and raped her. Thus, the ingredients under section 376(2)(f) are made out in this case.

376(2)(i) of the I.P.C. prescribes punishment for commission of rape on a woman when she is under sixteen years of age. As it has already been held that the victim was under sixteen years of age at the time of the occurrence, the ingredients of the offence under 376(2)(i) of the I.P.C. are attracted against the appellant.

Section 376(2)(k) of the I.P.C. prescribes punishment to a person who being in a position of control or dominance over a woman, commits rape on such woman and since the appellant being the father of the minor victim was in a position of control and dominance over the victim, committed rape on her, the ingredients of the offence under section 376(2)(k) of the I.P.C. are also attracted against the appellant.

Section 6 of the POCSO Act prescribes punishment for >aggravated penetrative sexual assault? which has been defined under section 5 of the POCSO Act and section 5(n) states that:

<whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child,

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> commits penetrative sexual assault on such child is said to commit aggravated penetrative sexual assault.=

Section 10 of the POCSO Act prescribes punishment for >aggravated sexual assault? and the same has been defined under section 9 of the POCSO Act and section 9(p) states that:

> <whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else is said to commit aggravated sexual assault.=

In view of the foregoing discussions, I am of the humble view that there is no infirmity or illegality in the impugned judgment and the learned trial Court has rightly found the appellant guilty under sections 354/354A(2)/354B/376(2)(f)(i)(k) of the I.P.C. and sections 6 and 10 of the POCSO Act. The punishment imposed by the learned trial Court for the offences under sections 354B/376(2)(f)(i)(k) of the I.P.C. and section 10 of the POCSO Act cannot be said to be on the higher side, in fact the punishment which has been imposed on the appellant is R.I. for ten years for the offences under section 376(2)(f)(i)(k) of the I.P.C. and the same is the minimum punishment prescribed for such offences. While acquitting the appellant under section 376(2)(n) of the I.P.C., the conviction of

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the appellant under sections 354/354A(2)/354B/376(2)(f)(i)(k) of the I.P.C. and sections 6 and 10 of the POCSO Act and the sentence under sections 354B/376(2)(f)(i)(k) of the I.P.C. and section 10 of the POCSO Act passed by the learned trial Court stand confirmed.

Accordingly, the Jail Criminal Appeal being devoid of merits stands dismissed.

Trial Court Records with a copy of this judgment be sent down to the learned Court concerned forthwith for information and necessary action.

Before parting with the case, I would like to put on record my appreciation to Mr. Rajib Lochan Pattnaik, the learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.7,500/- (rupees seven thousand five hundred only). This Court also appreciates the valuable help and assistance provided by Mr. Manoranjan Mishra, learned Additional Standing Counsel.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 2nd August 2023/Sipun

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