

**AFR****IN THE HIGH COURT OF ORISSA AT CUTTACK**

CRLA No.286 of 2020
CNR No.ODHC010270902020

(In the matter of an application under Section 374 of the Criminal Procedure Code, 1973)

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Appellant

-Versus-

State of Odisha

.....

Respondent

For the Appellant : Mr. Debidutta Mohapatra, Advocate

For the Respondent : Mr. Ashok Kumar Apat, AGA
Mr. Samvit Mohanty, Amicus Curiae

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 19.08.2026 : Date of Judgment: 30.09.2026

S.S. Mishra, J. The present Criminal Appeal is arising out of the judgment of conviction and order of sentence dated 05.03.2020 passed by the learned Additional District & Sessions Judge-cum-Special Court under the POCSO Act, Angul in Special (POCSO) Case No.14 of 2016, whereby the appellant, was convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 read with Sections 450, 376(2)(i) and 376(2)(n) of the Indian Penal Code. The learned trial Court sentenced the appellant to



undergo rigorous imprisonment for fifteen years together with fine of Rs.20,000/-(Rupees twenty thousand only) and in default of fine to suffer further rigorous imprisonment for a period of one year for the offence punishable U/s. 6 of the POCSO Act and to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/-(Rupees five thousand) in default of payment of fine to undergo rigorous imprisonment for three months U/s. 450 of I.P.C.

2. It is noteworthy to mention here that from the record, it reveals that the appellant has already undergone custody for more than 12 years.

3. Heard Mr. Debidutta Mohapatra, learned counsel appearing for the appellant, Mr. Ashok Kumar Apat, learned Additional Government Advocate appearing for the State and Mr. Samvit Mohanty, learned Amicus Curiae.

4. The prosecution case, in brief, is that on 05.02.2016 the mother of the victim lodged an FIR alleging that her daughter, aged about fourteen years, was found to be approximately four months pregnant. Upon being questioned, the victim allegedly disclosed that the appellant had committed rape upon her about one year earlier and had



thereafter repeatedly subjected her to sexual intercourse by threatening and intimidating her.

5. The FIR described the period of occurrence as extending from February 2015 till February 2016. During investigation, statements were recorded, medical examination was conducted, school records were seized and ultimately charge-sheet was submitted under Sections 450, 376(2)(i), 376(2)(n) IPC read with Section 6 of the POCSO Act.

6. In order to substantiate the charges, the prosecution examined 11 witnesses. P.W.1 was the victim, PW.2 was the informant, PW.3 was the clerk of Satyasai Ashram School, Katranga, PWs.4 and 5 were independent witnesses, PW.6 was the doctor, PW.7 was the father of the victim, PWs.8 to 10 were police personnel and P.W.11 was the I.O. The defence, on the other hand, led no evidence.

7. The learned trial Court, upon appreciation of the evidence adduced by the prosecution, held that the victim was below sixteen years of age on the date of occurrence by relying primarily upon the school admission register, treated the testimony of the prosecutrix as trustworthy, found corroboration from the evidence regarding pregnancy and childbirth, invoked the statutory presumption under



Section 29 of the POCSO Act and convicted the appellant under Section 6 of the POCSO Act. The relevant part of the aforesaid judgment is reproduced herein for ready reference:-

“14. Above being the evidence on record, it is found that the CICL has committed aggravated penetrative sexual assault on the victim at different times. There is evidence on record that the first sexual assault on the victim was forcible. Thereafter, the CICL kept on committing such sexual intercourse with the victim on many occasions on the pretext of marriage. The evidence of PW.1 in the cross-examination shows that they were meeting each other in the house of the paternal uncle of the CICL. Pertinent to mention here that the POCSO Act leaves no room for ambiguity about consent. Use of force or coercion, pressure or absence of resistance, and consent are not relevant or necessary ingredients of the offences under the POCSO Act. “Rape” and “sexual assault” are two different things. In order to attract the offence of rape as defined U/s. 375 of I.P.C. and punishable U/s. 376 I.P.C., “consent” and “will” are two material points whereas for sexual assault on a child under the POCSO Act, consent is irrelevant. As per Sec. 375 of I.P.C., prior to the Criminal Law Amendment Act, 2018, the age of the victim was 16 years when consent was found to be immaterial. The present case fits into that category. Now, after the above Amendment Act, 2018, it is 18 years. The victim was below 16 years at the time of commission of the offence. So, Sec. 376(2)(i) and 376(2)(n) of I.P.C. are attracted.

15. So far as the offence of Sec. 450 of I.P.C. is concerned, the prosecution has to prove house-trespass for the purpose of commission of any offence punishable with imprisonment for life. “House-trespass” has been defined U/s. 442 of I.P.C. as criminal trespass by entering into or remaining in any



building, tent or vessel used as a human dwelling, is said to commit “house-trespass”. The CICL entered into the house of the informant with the intention to commit the offence of aggravated penetrative sexual assault on the victim. The offence is punishable with life imprisonment or death. Therefore, Sec. 450 I.P.C. is also attracted.

Statutory Presumption

16. A “Statutory Presumption” has been provided U/s. 29 of the POCSO Act. When offences U/s. 3, 5, 7 and 9 are there against a person, the Special Court shall presume that such person has committed the offence unless the contrary is proved. The defence has taken some pleas but has not been able to shatter the statutory presumption.

17. Above being the evidence on record, I find that the prosecution has been able to prove its case against the CICL U/s. 450, 376(2)(i), 376(2)(n) of I.P.C. read with Sec. 6 of the POCSO Act beyond all reasonable doubt and the CICL is convicted thereunder.

Applicability of the Probation of Offenders Act, 1958:

18. Regard being had to the facts and circumstances of the case, the gravity of the offence and the manner of its commission against a minor girl below 14 years and taking into account her pregnancy and birth of a child who is now one and half years, I am not inclined to invoke the benevolent provisions of the Probation of Offenders Act, 1958 in favour of the CICL. Hence, I want to hear the CICL and learned counsels for both the sides on the question of sentence.”

8. Mr. Mohanty, learned Amicus Curiae appearing for the appellant submitted that the impugned judgment suffers from a fundamental jurisdictional error since the appellant, who was admittedly a child in conflict with law aged about seventeen years at



the time of the alleged occurrence, was subjected to an adult criminal trial without strict compliance with the mandatory safeguards engrafted under the Juvenile Justice (Care and Protection of Children) Act, 2015. It was contended that although the prosecution alleged that the occurrence continued till February, 2016 and therefore attracted the 2015 Act, the Juvenile Justice Board failed to conduct the statutory exercise in the manner contemplated under Section 15 of the Act and Rule 10A of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. He argued that the Board proceeded merely on the prosecution's assertion regarding the appellant's age without independently determining whether he had completed sixteen years of age, despite such determination being the foundational jurisdictional requirement before undertaking any preliminary assessment. It was further submitted that no Social Investigation Report or Social Background Report was obtained, the expert reports relied upon by the Board were never supplied to the appellant, and the Board mechanically accepted the opinions of the psychologist, counsellor and medical officer without independently evaluating the statutory parameters of mental capacity, physical capacity, ability to



understand the consequences of the alleged offence and the circumstances in which it was allegedly committed.

9. Mr. Mohanty contended that the most serious illegality occurred after the matter was transferred to the Children's Court under Section 18(3) of the Act. According to him, the Children's Court completely omitted to exercise the independent jurisdiction vested in it under Section 19 of the 2015 Act before commencing an adult criminal trial. It was argued that the order-sheet unmistakably demonstrates that immediately after receipt of the records from the Board, the learned trial Court proceeded to frame charges and conduct a regular sessions trial without first recording an independent determination as to whether the appellant was required to be tried as an adult or whether the Court itself ought to have conducted an inquiry as a Board. Relying upon *Barun Chandra Thakur v. Master Bholu* reported in (2023) 12 SCC 401, *Ajeet Gurjar v. State of Madhya Pradesh* reported in 2023 Livelaw (SC) 857, and *X v. State of Bihar* reported in 2026 LiveLaw (SC) 702, learned Amicus Curiae submitted that Sections 15 and 19 create a mandatory two-tier safeguard before a child can be exposed to an adult criminal trial, and



non-compliance with these jurisdictional safeguards vitiates the entire proceedings. It was, therefore, urged that the conviction and sentence deserve to be set aside.

10. Per contra, learned counsel for the State submitted that the Juvenile Justice (Care and Protection of Children) Act, 2015 applies to the case, as the prosecution case is not founded upon a solitary act of sexual intercourse committed before the commencement of the said Act, but upon a continuing course of repeated sexual intercourse with the minor victim extending up to February, 2016. It was contended that the fact that the victim was found to be approximately four months pregnant on 02.02.2016 cannot, by itself, conclusively determine the date of the alleged offences or establish that all the acts of intercourse had taken place prior to the coming into force of the 2015 Act. The learned counsel further submitted that the Juvenile Justice Board had conducted a preliminary assessment under Section 15 of the 2015 Act and, by order dated 08.11.2016, directed that the appellant be tried as an adult, and that the appellant had not disputed his age during the said proceedings. It was argued that even assuming any non-compliance with Section 19 of the 2015 Act, such procedural



irregularity could not obliterate the finding of guilt recorded based on the evidence adduced during trial. At the highest, the consequence would be to modify the manner of treatment and sentence in accordance with the protective and rehabilitative scheme of the 2015 Act. In support of the proposition that conviction for sexual assault can be founded upon the testimony of the prosecutrix when her evidence inspires confidence, reliance was placed upon *State of Himachal Pradesh v. Manga Singh*, reported in (2019) 16 SCC 759, wherein the Supreme Court held that corroboration of the prosecutrix is not a requirement of law and that her solitary testimony, if trustworthy and free from basic infirmity, can be sufficient to sustain conviction. Reliance was also placed upon *Phoolsingh v. State of Madhya Pradesh*, reported in (2022) 2 SCC 74, wherein it was reiterated that the testimony of the prosecutrix, when found to be credible, unblemished and of sterling quality, can form the sole basis of conviction and ought not to be discarded on mere assumptions or surmises.

11. Learned counsel for the State further submitted that the prosecution had established the age of the victim through the School



Admission Register, her pregnancy and subsequent delivery were corroborated by independent witnesses, and the victim's deposition regarding the sexual assault remained consistent and substantially unshaken in cross-examination. The delay of three days in lodging the FIR was satisfactorily explained by the village meeting convened to resolve the matter and, therefore, could not discredit the prosecution case. The learned counsel also submitted that the absence of a positive forensic or chemical examination report was not fatal in view of the direct and credible testimony of the victim and the other incriminating circumstances proved during trial. With regard to the delay in reporting the offence, reliance was placed upon *Srivalla Srinivas Rao and others v. State of U.P.*, reported in (2011) 8 SCC 113, to contend that delay in reporting a sexual offence, particularly in view of the social stigma and trauma associated with such an offence, does not by itself detract from otherwise credible evidence. It was further argued that once the foundational facts constituting penetrative sexual assault upon a child were established, the statutory presumptions under Sections 29 and 30 of the POCSO Act operated against the appellant and the defence failed to rebut the same. In respect of the



consequence of non-adherence to Section 19 of the 2015 Act, learned counsel relied upon *Dinesh Kumar v. State of Haryana*, reported in *2026 SCC OnLine SC 1547*, submitting that any procedural infirmity concerning the manner in which a child in conflict with law was tried as an adult would not, by itself, require the finding of guilt to be erased, and that the appropriate course, if such infirmity were established, would be to extend the statutory protection available to the juvenile and modify the sentence in accordance with the 2015 Act. On the aforesaid grounds, learned counsel submitted that the appeal deserves to be dismissed.

12. Having heard the rival submissions, this Court finds that the controversy is required to be examined primarily from the perspective of the special statutory protection accorded to a child in conflict with law under the Juvenile Justice (Care and Protection of Children) Act, 2015. The principal controversy centres upon whether the statutory safeguards governing the transition of a child in conflict with law to an adult criminal trial were complied with in their true legal spirit.

13. The appellant was admittedly about seventeen years of age at the relevant time. The prosecution itself treated him as a child in



conflict with law and, accordingly, the case was transferred to the Juvenile Justice Board. Once the appellant entered the statutory framework of the 2015 Act, the Board as well as the Children's Court were required to scrupulously comply with the safeguards prescribed therein. The question before this Court, therefore, is not merely whether the evidence adduced during the trial was sufficient to establish the alleged offence, but whether the appellant could lawfully be subjected to an adult criminal trial in the first place.

14. As regards the applicability of the 2015 Act, the prosecution case as reflected in the FIR and forwarding report is that the alleged sexual assaults were committed repeatedly from about February, 2015 till February, 2016. The FIR was lodged in February, 2016 and the forwarding report also refers to the alleged commission of the offence continuing till the date of the FIR. The fact that the victim was found to be approximately four months pregnant cannot, by itself, conclusively determine the date of the last alleged act of sexual intercourse. In *Sri Ganesh v. State of T.N.*, reported in (2017) 3 SCC 280, the Supreme Court has held that where the allegation is of repeated commission of rape, for determining juvenility it is sufficient



to ascertain whether the accused was a juvenile on the date of the last incident. It was held thus:-

“10. In the present case, the trial court took into account the documentary evidence as contemplated in the statutory provisions and returned a finding that the date of birth of the appellant was 19-10-1991. During the course of its judgment, the High Court could not find such conclusion to be vitiated on any ground. In the face of the relevant documentary evidence, there could be no medical examination to ascertain the age of the appellant and as such the consequential directions passed by the High Court were completely unwarranted. Further, if the allegations of the prosecution are that the offence under Section 376 IPC was committed on more than one occasion, in order to see whether the appellant was juvenile or not, it is enough to see if he was juvenile on the date when the last of such incidents had occurred. The trial court was, therefore, justified in going by the assertions made by the victim in her cross-examination and then considering whether the appellant was juvenile on that date or not.”

Therefore, on the prosecution's own case, the alleged occurrence extended beyond 15.01.2016, the date on which the Juvenile Justice Act, 2015 came into force. This Court, accordingly, holds that the proceedings were rightly required to be dealt with under the 2015 Act. The appellant, however, cannot derive any advantage merely from the fact that the 2000 Act was applicable when the



alleged first incident occurred. The real question is whether the procedure mandated by the 2015 Act was thereafter duly followed.

15. Section 19 of the 2015 Act casts an independent obligation upon the Children's Court upon receipt of the preliminary assessment and the order of the Board. The Children's Court is required to consider whether there is a need for the child to be tried as an adult. If it comes to the conclusion that there is no such need, it is required to conduct an inquiry as a Board and pass appropriate orders in accordance with Section 18. Thus, the legislative scheme does not contemplate an automatic conversion of the Board's recommendation into an adult criminal trial. Sections 18 and 19 of the 2015 Act are reproduced herein for the convenience of ready reference:-

“18. Orders regarding child found to be in conflict with law.—(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the



social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a



special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

- (i) attend school; or*
- (ii) attend a vocational training centre; or*
- (iii) attend a therapeutic centre; or*
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or*
- (v) undergo a de-addiction programme.*

(3) Where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

19. Powers of Children's Court.—*(1) After the receipt of preliminary assessment from the Board under Section 15, the Children's Court may decide that—*

- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and Section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;*
- (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of Section 18.*

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow-up by the probation officer or the District Child Protection Unit or a social worker.



(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow-up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow-up, as may be required."

16. The order-sheet assumes considerable significance in this regard. The record shows that on 08.11.2016 the Juvenile Justice Board directed that the appellant could be tried as an adult and the records were transferred to the Children's Court. Thereafter, the Children's Court proceeded with the matter and ultimately framed charges on 18.12.2017. What is conspicuously absent is any order demonstrating that, upon receipt of the record, the Children's Court independently considered the mandate of Section 19(1) and recorded



its satisfaction that the appellant was required to be tried as an adult. There is no indication of an independent assessment by the Children's Court as to whether, notwithstanding the opinion of the Board, the appellant ought to face an adult trial or whether the Children's Court itself ought to proceed as a Board. The absence of such determination cannot be regarded as a mere irregularity.

17. The Supreme Court in *Ajeet Gurjar v. State of Madhya Pradesh*, reported in *2023 Livelaw (SC) 857* has made it clear that the enquiry contemplated under Section 19(1)(i) is not an empty formality. If the Children's Court comes to the conclusion that there is no need to try the child as an adult, the child is entitled to be dealt with in accordance with Section 18. It was held thus:-

“11. Therefore, holding an inquiry in terms of clause (i) of sub-section 1 of Section 19 is not an empty formality. The reason is that if the Children's Court comes to the conclusion that there is no need to try the child as an adult, he will be entitled to be treated differently in the sense that action can be taken against him only in terms of Section 18 of the JJ Act.”

Similarly, in *Barun Chandra Thakur v. Master Bholu*, reported in *(2023) 12 SCC 401*, the Supreme Court has clarified that even after



a matter is referred to the Children's Court under Section 18(3), the Children's Court is required to independently examine whether the child is to be tried as an adult. The preliminary assessment by the Board is the first stage; the determination by the Children's Court is the second and independent stage. It was held thus:-

“85. We are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children's Court under Sections 15 and 19 respectively. The Children's Court, on its own, upon a matter being referred to under Section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under Section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children's Court. This Court cannot delve upon the exercise of preliminary assessment. This Court will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under Section 102, would test the decision of the Board or the Children's Court with respect to its legality or propriety only.”

18. The submission of the learned Additional Government Advocate that the use of the expression "may" in Section 19 renders the exercise discretionary cannot be accepted. The discretion



contemplated by the provision is as to the course to be adopted after the Children's Court applies its mind to the question whether the child needs to be tried as an adult. It cannot mean that the Children's Court is free to dispense with the statutory determination altogether. Such an interpretation would render the safeguard under Section 19 ineffective and would reduce the carefully structured two-stage mechanism into a single-stage procedure controlled entirely by the Juvenile Justice Board.

19. In the present case, the learned Children's Court proceeded directly to the adult criminal trial. The framing of charge on 18.12.2017, in the absence of any preceding order under Section 19 determining the necessity of an adult trial, demonstrates that the statutory jurisdictional exercise was never undertaken. The Children's Court, therefore, did not merely commit an error while conducting an otherwise valid trial; it failed to undertake the statutory exercise which was a condition precedent to its assuming jurisdiction to try the child as an adult.

20. This Court is conscious that the allegations against the appellant are grave and that the victim was a child. The gravity of the



alleged offence, however, cannot authorize the Court to disregard the statutory safeguards prescribed for a child in conflict with law. The Juvenile Justice Act proceeds upon the legislative recognition that children who come into conflict with law require a distinct adjudicatory framework. The more serious the consequence of transferring a child into the adult criminal justice system, the greater the need for strict compliance with the statutory safeguards governing such transfer. The present decision, therefore, does not rest upon any finding that the allegations against the appellant are insignificant; rather, it rests upon the legal conclusion that the appellant was subjected to an adult trial without the statutory preconditions having been fulfilled.

21. Consequently, this Court is of the considered view that the impugned judgment of conviction and order of sentence cannot be sustained. The failure to comply with Section 19 is fundamental and strikes at the legality of the adult trial itself. The judgment of conviction dated 05.03.2020 and the order of sentence passed by the learned Additional District & Sessions Judge-cum-Special Court under the POCSO Act, Angul in Special (POCSO) Case No.14 of



2016 is hereby set aside. The appellant is accordingly acquitted of the charges.

22. For the reasons stated hereinbefore, the Criminal Appeal is allowed.

23. This Court acknowledges the effective and meaningful assistance rendered by Mr. Samvit Mohanty, learned Amicus Curiae in this case. Learned Amicus Curiae is entitled to an honorarium of Rs.7,500/- (Rupees seven thousand five hundred) to be paid as a token of appreciation.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 30th Day of September, 2026/ Subhashis Mohanty

Signature Not Verified

Digitally Signed
Signed by: SUBHASHIS MOHANTY
Designation: Personal Assistant
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 01-Oct-2026 15:03:37

