ABC 2025 (II) 722 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Ahsanuddin Amanullah & Joymalya Bagchi, JJ.)

Criminal Appeal No. of 2025

(Arising Out Of Special Leave Petition (Crl.) No. 10377 of 2025)

Decided On 10 September 2025

LAXMAN JANGDE ***- Appellant(s).***

Versus

STATE OF CHHATTISGARH ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 – S. 375, 376, 376 AB – Bharatiya Nyaya Sanhita, 2023 – S. 63, 64, 65(2) – Rape – Ingredients of – Penetration of penis to any extent into vagina/ mouth/urethra/anus – Insertion of object or body part – Manipulation causing penetration – Application of mouth – Required for offence – Allegation of touching private parts of victim and accused touching his own sexual organs – No penetration – Does not satisfy ingredients – Conviction u/s 376 AB IPC not sustained – Held, offence not proved from FIR, S. 164 CrPC statement, and trial deposition. (Paras 3-6)***

(B) Protection of Children from Sexual Offences Act, 2012 – S. 3(c) – Penetrative Sexual Assault – Manipulation of any part of child's body to cause penetration into vagina/urethra/anus or any part of body – Required – No penetration – Offence not made out – Conviction u/s 6 POCSO not sustained – Held, allegation does not attract provision – Presumption of penetrative assault not supported by medical report or consistent statements of victim and witnesses on three occasions. (Paras 3-6,8)

(C) Indian Penal Code, 1860 – S. 354 – Bharatiya Nyaya Sanhita, 2023 – S. 74 – Assault or Criminal Force to Woman with Intent to Outrage Her Modesty – Assault or use of criminal force intending or knowing it likely to outrage modesty – Touching private parts of victim – Falls under – Conviction modified from S. 376 AB IPC to S. 354 IPC – Sentence modified to RI for 5 years. (Paras 4,7,9)

(D) Protection of Children from Sexual Offences Act, 2012 – S. 7, 9(m) – Sexual Assault – Aggravated Sexual Assault – Touching vagina/penis/anus/breast of child with sexual intent – Without penetration – On child below 12 years – Constitutes aggravated sexual assault – Conviction modified to S. 10 POCSO – Sentence

modified to RI for 7 years – Sentences under IPC S. 354 and POCSO S. 10 to run concurrently. (Paras 4,7,9)

(E) Protection of Children from Sexual Offences Act, 2012 – S. 42 – Alternate Punishment – Conviction under IPC and POCSO for same act – Sentencing to be done under POCSO provision providing higher punishment – Applied where POCSO S. 6 initially invoked but modified. (Para 3)

(F) Code of Criminal Procedure, 1973 – S. 164 – Bharatiya Nagarik Suraksha Sanhita, 2023 – S. 183 – Statement of Victim – Recorded during investigation – Consistent with FIR and trial deposition – Allegation of touching without penetration – Relevant for determining nature of offence – Held, does not support rape or penetrative assault. (Para 4)

Facts:- *The appellant was convicted by the Trial Court u/s 376 AB IPC and S. 6 POCSO for alleged rape on a girl under 12 years, sentenced to 20 years RI and Rs.50,000 fine, upheld by the High Court u/s 6 POCSO per S. 42 POCSO. On appeal to the Supreme Court, it was found from consistent statements in FIR, u/s 164 CrPC, and trial deposition that the act involved touching private parts without penetration, not satisfying ingredients of rape u/s 375 IPC or penetrative sexual assault u/s 3(c) POCSO. Medical report also did not support penetration. Conviction modified to S. 354 IPC and S. 10 POCSO, sentence reduced to 5 years and 7 years respectively running concurrently, fine retained as compensation to victim. Appellant had already served 5.5 years.*

Law of relief:- ***(i) Allegation of touching private parts of victim and accused touching his own sexual organs – No penetration – Does not satisfy ingredients of rape.***

(ii) No penetration – Offence not made out – Conviction u/s 6 POCSO not sustained.

Counsel:-

For Appellant(s): *Charulata Chaudhary.*

For Respondent(s): *Prashant Singh.*

JUDGMENT

Ahsanuddin Amanullah, J.: -

1. Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the impugned judgment dated 28.01.2025 passed by the High Court of Chhattisgarh at Bilaspur in CRA No.1434 of 2022, by which the conviction and

sentence imposed on the appellant by the Trial Court vide its judgment dated 30.07.2022 under Section 376 AB of the Indian Penal Code, 1860 (for short, the "IPC") and also, under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the "POCSO Act") has been upheld by the High Court. Whereas, keeping in view the provision of Section 42 of the POCSO Act which provides for alternate punishment, the sentencing has been done only under Section 6 of the POCSO Act by which the appellant was sentenced to undergo twenty years of Rigorous Imprisonment (R.I.) along with fine of Rs.50,000/ (Rupees Fifty Thousand) and in default, to undergo R.I. for another one year.

4. Learned senior counsel for the appellant submitted that from the FIR, subsequent statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 (for short, the "Cr.P.C.") and the deposition of the victim-girl before the Court during trial, it is clear that the offence under Section 376 AB as well as under Section 6 of the POCSO Act, is not proved. It was submitted that the allegation was that the appellant had touched the private parts of the victim and put his hand in his sexual organs. Thus, it was submitted that the said allegation, which has been reiterated, both before the Court in a statement recorded under Section 164 of the Cr.P.C. as also during trial, would clearly not bring the behaviour under the purview of Section 376 AB of the IPC and also, under Section 6 of the POCSO Act since there has not been actual rape committed on the victim as there was no penetration. For the same reason, submission is that Section 6 of the POCSO Act would also not be attracted because there was no penetrative sexual assault. It was contended that at worst, it can be a case under Section 354 of the IPC and under Section 9(m) of the POCSO Act. Accordingly, learned senior counsel submitted that the Court may consider this vital aspect especially, in the background that the appellant has already spent five and a half years in prison.

5. Learned counsel for the respondent-State submitted that the appellant has committed an offence as defined under Section 375 of the IPC and under Section 3(c) of the POCSO Act. Thus, contention was that the appellant having committed such offence that too, with a girl under twelve years of age, needs no sympathy of this Court and both the conviction and the sentence needs no interference.

6. Having considered the matter in depth, we find substance in the submission of learned senior counsel for the appellant. A plain reading of the evidence and other materials on record reveal that the

offence made out from such allegation do not satisfy the ingredients of either Section 375 of the IPC or Section 3(c) of the POCSO Act. Thus, to that extent, the conviction cannot be sustained. For the purpose of considering the same, we deem it appropriate to reproduce Section 375 of the IPC:-

"375. Rape.—A man is said to commit "rape" if he—

penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

Section 3(c) of the POCSO Act is also reproduced hereinunder:-

"3. Penetrative sexual assault.—A person is said to commit "penetrative sexual assault" if—

….

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

….."

7. We are of the considered opinion that what has come right from the beginning by way of complaint/FIR, subsequent deposition of the victim as also, the other witnesses, the so-called act of the appellant will come under the purview of Section 354 of the IPC and Section 9(m) of the POCSO Act. For the purpose of ready reference, Section 354 of the IPC is reproduced hereinunder:-

"354. Assault or criminal force to woman with intent to outrage her modesty.— Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

Section 7 (Sexual assault) and Section 9(m) (Aggravated sexual assault) of the POCSO Act are also reproduced hereinunder:-

"7. Sexual assault.— Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

"9. Aggravated sexual assault.—(a) Whoever, being a police officer, commits sexual assault on a child—

.....

(m) whoever commits sexual assault on a child below twelve years; or"

....."

8. The presumption by the Trial Court as upheld by the High Court that there was penetrative sexual assault, cannot be sustained for simple reason that the same is neither supported by the medical report nor by the statement of the victim herself on three different occasions as also, that of the mother of the victim. From the said reading of all the three statements which have common thread, the direct allegation is of touching the private parts of the victim and also at the same time, the appellant touching his private organs. In such view of the matter, we find that the conviction recorded under Section 376 AB of the IPC and under Section 6 of the POCSO Act, cannot be sustained.

9. For reasons aforesaid, we modify the conviction of the appellant to that under Section 354 of the IPC and under Section 10 of the POCSO Act. Accordingly, the sentence of the appellant also stands modified to that of R.I. of five years under Section 354 of the IPC and seven years under Section 10 of the POCSO Act. However, the said sentences shall run concurrently. As far as the fine amount is concerned, the same is retained as Rs.50,000/ (Rupees Fifty Thousand) and should be paid to the victim as compensation within two months from today.

10. The appeal stands allowed to the extent indicated above.

11. Pending application(s), if any, shall stand disposed of.

***Result*:-** Appeal allowed to the extent indicated. Conviction modified. Sentence modified.