IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.599 of 2023

Arising Out of PS. Case No.-211 Year-2020 Thana- BELHAR District- Banka

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[redacted] C/o Krishna Kumar Pandit @Krishnadeo Pandit Resident Of Village -Bara, Police Station -Belhar, District- Banka

... ... Appellant

Versus

1. The State of Bihar
2. Respondent (X)

... ... Respondents

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Appearance :
For the Appellant : Mr. Ajay Mukherjee, Advocate
For the State : Mr. Parmeshwar Mehta, APP
For the Resp No. 2 : None

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 16-03-2026

Heard Mr. Ajay Mukherjee, learned counsel for the appellant and Mr. Parmeshwar Mehta, learned Additional Public Prosecutor for the State.

2. Despite valid service of notice on respondent no. 2, no one has entered appearance on her behalf to oppose this appeal.

3. The sole appellant in this case is seeking setting aside of the judgment of conviction dated 18.05.2023 (hereinafter referred to as ‘impugned judgment’) and the order of sentence dated 20.05.2023 (in short called the ‘impugned order’), passed by the Child Court-cum-1st Additional Sessions Judge, Banka (in

short ‘learned trial court’) in POCSO Case No.211 of 2020 (arising out of Belhar P.S. Case No. 211 of 2020) dated 18.06.2020, registered for the offences alleged under Sections 376, 506/34 of Indian Penal Code (hereinafter referred to as ‘IPC’) and Section 4 of Protection of Children from Sexual Offences Act (hereinafter referred to as ‘POCSO Act’).

4. By the impugned judgment, the learned trial Court has been pleased to convict the appellant for the offences under Section 376 of IPC and Section 5(j) (ii)/6 of POCSO Act. Having convicted the appellant under these provisions, the learned trial Court has ordered the appellant to undergo imprisonment for 13 years for the offence under Section 6 of the POCSO Act, the appellant has been directed to pay a fine of Rs. 20,000/-. In default of payment of fine, the appellant shall undergo simple imprisonment for one year more. No separate sentence was awarded under Section 376 of IPC and Section 5(j) (ii)/6 of the POCSO Act.

Prosecution Story

5. The prosecution case is based on a written information submitted by victim girl (X). In her written information dated 18.06.2020 giving rise to Belhar P.S. Case No. 211 of 2020 under Sections 376, 506/34 of IPC and Section 4 of

POCSO Act. The informant/victim alleged that the appellant approached the victim and expressed his desire to marry her, while simultaneously pressuring her to engage in a physical relationship. In the pretext of his false promise, the victim entered into physical relationship with the appellant, and when she became pregnant, he refused to follow through on his marriage proposal. When the appellant's parents knew of the situation, they went to the victim's house and asked her mother and grandmother to proceed with the abortion, to which the victim's mother responded that her husband was outside and insisted to wait for him. They then threatened the victim's family to face dire consequences if they would not proceed with the abortion. It is alleged that the conduct of the appellant clearly demonstrates that he sexually exploited the victim under the false pretext of marriage.

6. On the basis of this written application FIR was registered being Belhar P.S. Case No. 211 of 2020 dated 18.06.2020 for the offences under Sections 376, 506/34 IPC and Section 4 POCSO Act against the accused persons, namely, (1) Father of the appellant, (2) Mother of the appellant and (3) this appellant. After investigation and upon completion of the same, charge-sheet was filed being Chargesheet No. 352 of 2020 dated 20.09.2020 against the appellant only under Section 376 IPC and

Section 4 of the POCSO Act, showing other accused not sent up for trial. Learned Trial Court vide order dated 19.10.2020 took cognizance of the offences punishable under Section 376 IPC and Section 4 of the POCSO Act against the appellant.

7. The charges were explained to the appellant in Hindi on which he pleaded not guilty and claimed to be tried. Thereafter, the learned trial court vide order dated 21.08.2021 framed the charges under Section 376 of IPC and Section 4 of the POCSO Act.

8. In course of trial, the prosecution examined as many as seven witnesses and exhibited various documents. The list of the witnesses and the description of the documents marked exhibits on behalf of prosecution are provided hereunder in a tabular form:-

List of Prosecution Witnesses:-

PW-1	Mother of the victim
PW-2	Ashwasthama Kumar
PW-3	Dilip Kumar Yadav
PW-4	Father of the victim
PW-5	Informant/Victim (X)
PW-6	Dr. Indubala Prasad
PW-7	Rita Kumari (I.O.)

List of Exhibits:-

Exhibit ‘P1’	Signature of the informant on written report
Exhibit ‘P2’	Statement under Section 164 Cr.P.C.

Exhibit ‘P3’	Signature of M.O. on five injury reports
Exhibit ‘P4’	Supplementary Injury report
Exhibit ‘P5’	Endorsement and pagination

9. Thereafter, the statement of the appellant was recorded under Section 313 Cr.P.C. in which he accepted that he had established physical relationship with the victim and he is the father of the child and took a plea that he is innocent.

10. In course of trial, the defence brought as many as nine witnesses, but not exhibited any oral or documentary evidence. List of defence witnesses are being mentioned hereunder in tabular form:-

List of Defence Witnesses

DW-1	Ganesh Pandit
DW-2	Govind Pandit
DW-3	Bablu Pandit
DW-4	Ghanshyam Pandit
DW-5	Hari Shankar Pandit
DW-6	Vidya Nand Pandit
DW-7	Rajkumar Yadav
DW-8	Jaykant Pandit
DW-9	Chhedi Pandit

<u>Finding of the learned Trial Court</u>

11. Learned trial court after analysing the evidences available on the record found that the appellant established physical relationship with the victim on the pretext of marriage due to which

she became pregnant. Learned trial court observed that the victim's testimony is true and trustworthy, and it is corroborated by other circumstantial evidence.

12. Learned trial court after carefully considering all the facts and circumstances of the case held that the prosecution has been able to prove the charges levelled against the appellant beyond all reasonable doubts, accordingly, the appellant was convicted of the charges under Section 376 IPC and Section 5(j)(ii)/6 of the POCSO Act.

Submission on behalf of appellant

13. Mr. Ajay Mukherjee, learned counsel for the appellant, submits that in this case, the learned Juvenile Justice Board (in short 'JJB') as well as the learned trial court/children court, have committed gross error by not adhering to the mandatory provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short 'JJ Act'). Attention has been drawn towards Section 15 and 19 of the JJ Act. It is submitted that in the case of **Lalu Kumar @ Lal Babu @ Lallu vs. The State of Bihar** reported in **2019 (4) PLJR 833**, the Hon'ble Division Bench of this Court has discussed the principles of *parens patriae*. The constitutional and procedural rights of a juvenile - a Child in Conflict with Law (in short 'CICL') have been duly recognised in

India. It has been held that a CICL should be treated in a manner consistent with the promotion of the child's sense of dignity and worth. The scheme of the JJ Act has been discussed and it has been held that Section 15 of the JJ Act is a special provision to tackle the child offenders committing heinous offences in the age group of 16 to 18 years. Paragraph '98' to '103' of the judgment have been relied upon to demonstrate the mandatory requirements of Section 15 of the JJ Act.

14. Learned counsel has further taken this Court through Section 19(1)(i) of the JJ Act in connection with the trial of a child as an adult. In case of **Lalu Kumar** (supra), this aspect of the matter has also been discussed and the Hon'ble Division Bench has analysed the scope of Section 19(1)(i) of the JJ Act. It has also been held that this provision is mandatory and the children's court cannot dispense with the requirements of this provision. Further, while passing the final order with regard to a CICL, the children's court shall ensure that the order 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. The children's court is also required to 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 21 years, thereafter the person shall be transferred to jail.

15. It is submitted that in the present case, neither the learned JJB nor the children court has followed the mandatory provisions. The learned trial court/children court has convicted the appellant/CICL under Section 376 IPC and Section 5(j)(ii)/6 of the POCSO Act. The court proceeded to impose a sentence of 13 years imprisonment with a fine of Rs. 20,000. In case of non-payment of fine, the appellant would be required to undergo further one year simple imprisonment.

16. Learned counsel for the appellant has further submitted that the prosecutrix (PW-5) has repeatedly stated that the appellant is of the same age group and if he would have married her, then this case would not have been lodged. She has stated that she could not know for a period of three months that she had become pregnant and her mother had not come to know about her pregnancy even as she was having five months pregnancy.

Submission on behalf of State

17. Learned Additional Public Prosecutor for the State submits that in this case, the evidence of the prosecutrix (PW-5) is itself beyond doubt and more than sufficient to record conviction of the appellant. She has stated that at the time of occurrence, she was

16 years old and on the pretext of marrying her, the appellant had established physical relationship with her. The victim had become pregnant because of the said physical relationship with the appellant, but the appellant refused to marry her. As regards the non-compliance with the provision of Sections 15, 19(1)(i) and 19(3) of the JJ Act, learned Additional Public Prosecutor for the State does not contest the submission of learned counsel for the appellant.

Consideration

18. It appears from the perusal of the trial court records that the learned Juvenile Justice Board assessed the age of the appellant as 17 years 9 months and 16 days vide order dated 21.07.2020/17.08.2020. This was a lock-down period when the Courts were being conducted in limited mode.

19. It further appears that on 19.10.2020, when the records were placed before the Juvenile Justice Board, again it was COVID-19 period and the child in conflict with law (CICL) was not produced before the Court. That day, the record was pending for conducting preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of Children) Act. The J.J. Board had no occasion to even see the CICL from the naked eyes, still on the basis of submissions advanced by the learned Public

Prosecutor and the learned counsel for the accused, the assessment was conducted and the Board directed for transfer of records to the children Court saying that the appellant is required to be tried as an adult. There is nothing on the record to show that there was any psychologist member on the J.J. Board at the time of taking such decision. It is evident from the record that the Board had no occasion to interact with the CICL while passing the order of preliminary assessment under Section 15 of J.J. Act.

20. It further appears that when the records were sent to the learned Children Court-cum-ADJ 1st, Banka, the learned Children Court also failed to consider the matter keeping in view the spirit of sub-section 1 of Section 19 of the J.J. Act. A completely vague order has been passed by the Children Court in which it is stated that there is a need for trial of the child as an adult as per provisions of the Cr.P.C. There is no consideration of the relevant factors which are envisaged by the statute. To this Court, it appears that the order dated 09.08.2021 has been passed by the learned Children Court-cum-ADJ 1st, Banka, without hearing learned counsel for the accused and it was done during the COVID-19 period in complete haste. The order of the learned Children Court does not disclose any application of judicious mind. Therefore, the double safety valve which is otherwise available to

the CICL under the scheme of the statement has failed to protect the interest of CICL.

21. As regards the scope and ambit of Section 15 of the JJ Act, before dealing with the submission of learned counsel for the appellant, we reproduce Section 15 of the JJ Act hereunder for a ready reference:-

> "**15. Preliminary assessment into heinous offences by Board.—**(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:
> Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.
> *Explanation*.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.
> (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):
> Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101: Provided further that the assessment under this section shall be completed within the period specified in section 14."

22. Dealing with the aforementioned provision, in the case of **Lalu Kumar** (supra), the Hon'ble Division Bench of this Court has held as under:-

> "**97.** Section 15 of the Act of 2015, which enumerates special provisions to tackle the child offenders committing 'heinous offences' in the age group of 16 to 18 years is equally important for us. If a child in the age group of 16 to 18 years is alleged to have committed 'heinous offence', as defined in Section 2(33) of the Act, the Board is required to conduct a preliminary assessment.
> **98.** In order to determine, in case of a child in the age group of 16 to 18 years alleged to have committed a 'heinous offence', whether he should be transferred to the Children's Court to be tried as an adult, the Board has to follow certain essential steps.
> **99.** Firstly, it must conclusively determine that the child in conflict with law before it is above the age of 16 years, but below the age of 18 years on the date of commission of the offence. The determination of age is very crucial for the child as the same has the potential to expose him to the possibility of being transferred to the Children's Court to be tried as an adult.
> **100.** Secondly, if the Board comes to the conclusion that the child before it was 16 years or above, but below the age 18 years on the date of commission of the offence, it would be required to conclusively determine whether the offence alleged to have been committed by him is a 'heinous offence' or not.
> **101.** Thirdly, transfer of a child for trial as an adult can only be done after preliminary assessment by the Board. The word 'shall' in Section 15(1) indicates that it is mandatory for the Board to conduct 'preliminary assessment'. The 'preliminary assessment' has to be conducted to assess:—
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> (1) Child's mental and physical capacity to commit alleged offence;
> (2) Child's ability to understand consequences of the offence; and
> (3) the circumstances in which the child allegedly committed the offence.

102. Fourthly, after the preliminary assessment, the Board is required to further determine whether it would deal with the case of the child itself or transfer him to the Children's Court.

103. The aforesaid mandatory requirements are to be carefully conducted while determining whether a child should be transferred to the Children's Court to be tried as an adult or not. The legislature has provided that for the purpose of preliminary assessment the Board may take assistance of an experienced psychologist or psycho-social worker or other experts."

23. At this stage, we also reproduce Section 19 of the JJ Act as under:-

"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 reformative 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."

24. In the case of **Lalu Kumar** (supra), the Hon'ble Division Bench has considered the questions framed with respect to the scope of Section 19(1)(i) as also the mandatory nature of this provision in the following paragraphs:-

> "**116.** The sixth question framed by us is in two parts. The first part is "What is the scope of Section 19(1)(i) of the Act of 2015 in connection with the trial of a child as an adult?" and the second part is "Whether the provisions of Section 19 of the Act are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015?"
> **117.** The answer to the above question will also be in two parts.
> **118.** Upon a case of a child having been transferred to the Children's Court, a duty has been cast upon the Children's Court to further decide about the suitability of the child to be tried as an adult.
> **119.** The words used in Section 19(1)(i) and 19(1)(ii) give two options to the Children's Court. First, to try the transferred child as an adult and second not to deal with child as an adult.
> **120.** The Children's Court is required to record its reason while arriving at a conclusion whether the child should be treated as a child or as an adult, in view of Rule 13 (6) of the Rules.

121. In case, the Children's Court decides to deal with child as a child, it has to conduct an inquiry as a Board following the procedures for trial of summons case in accordance with the provisions of Section 18 as would appear from the words used in Section 19(1)(i) of the Act of 2015.

122. In case, it decides to try the child as an adult, it shall follow the procedures, as prescribed by the CrPC for the purpose of trial by Sessions Court and pass appropriate orders after trial without prejudice to the provisions of Sections 19 and 21 of the Act considering special 'needs of the child' the tenets of 'fair trial' and maintaining a 'child friendly' atmosphere as provided under Section 19(1)(i) of the Act of 2015.

123. The aforesaid discussion answers the first part of the sixth question.

124. Having analysed scope of Section 19(1)(i) of the Act of 2015, now let us examine the second part of sixth question framed by us:"whether the provisions of Section 19 of the Act of 2015 are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015?".

125. The opening expression used in Section 19(1) is "after the receipt of preliminary assessment from the Board under Section 15, the Children's Court may decide" gives an impression that the Children's Court may or may not decide in terms of Section 19 whether or not there is need for trial of the child as an adult.

126. However, if Section 19(1)(i) of the Act of 2015 is read together with Rule 13(6) of the Rules framed by the Central Government, which stipulates that the Children's Court shall record its reason while arriving at a conclusion whether the child is to be treated as an adult or as a child, it would be evident that the provisions of Section 19(1) are not optional.

127. The expression used in Rule 13(6) of the Rules is 'shall' and thus mandates the Children's Court to record its reason while arriving at a conclusion whether the child is to be treated as an adult or a child.

> **128.** Hence, the answer to the second part of sixth question is that the provisions of Section 19(1) of the Act of 2015 are mandatory. The Children's Court cannot dispense with the requirement of deciding as to whether there is need to try the transferred child as an adult or to deal with the transferred child as a child. In other words, the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015.
> **129.** Thus, the second part of sixth question for determination is answered, accordingly.”

25. There is yet another judgment of the Hon’ble Supreme Court which mandates the requirement of following the proper procedure while trying a child as an adult by the Children’s Court. In the case of **Barun Chandra Thakur vs. Master Bholu and Another** reported in **(2023) 12 SCC 401**, the Hon’ble Supreme Court has held that looking to the purpose of the JJ Act and its legislative intent, i.e. to ensure the protection of best interest of the child, the expression “may” in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practicing professional with a degree in child psychology or child psychiatry. The Hon’ble Supreme Court further clarified that in case the Board, in view of its own composition with at least one member, who is a practicing professional with a degree in child psychology or child psychiatry,

chooses not to take such assistance, it would record specific reasons therefor. Reference in this regard has been made to Rule 10A of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. We reproduce paragraph '80' to '83' of the judgment in case of **Barun Chandra Thakur** supra hereunder:-

> "**80.** It is a well-settled principle of interpretation that the word "may" when used in a legislation by itself does not connote a directory meaning. If in a particular case, in the interests of equity and justice it appears to the court that the intent of the legislature is to convey a statutory duty, then the use of the word "may" will not prevent the court from giving it a mandatory colour.
> **81.** This Court in *Bachahan Devi* v. *Nagar Nigam, Gorakhpur*[20] held as under : (SCC p. 383, para 18)
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> > "*18*. It is well settled that the use of the word "may" in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word "may" as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word "may", the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word "may" involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word "may" should be interpreted to convey a mandatory force. As a general rule, the word "may" is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word "shall", which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words

20. (2008) 12 SCC 372

"may", "shall" and "must" are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances."

82. Similarly, this Court in *Dhampur Sugar Mills Ltd.* v. *State of U.P.*[48] held : (SCC pp. 348-49, para 36)

"*36*. … In our judgment, mere use of word "*may*" or "*shall*" is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue."

83. Therefore, looking to the purpose of the 2015 Act and its legislative intent, particularly to ensure the protection of best interest of the child, the expression "may" in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practising professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practising professional with a degree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor."

48. (2007) 8 SCC 338

26. Keeping in view the aforementioned judgments of the Hon'ble Supreme Court and this Hon'ble Court as referred above, when we examine the facts of the present case based on the evidences available on the record, it is found that at both the stages, i.e. at the stage of the JJ Board and then the Children Court, the aforementioned mandatory provisions have not been followed. The order of preliminary assessment nowhere shows that the JJ Board had taken assistance of an experienced psychologist or psycho-social worker or other expert. As a result of this, the appellant/CICL has been deprived of a fair trial.

27. At this stage, we find that the age of the victim/prosecutrix has been determined by the learned Children Court on the basis of the medical report and uncontroverted facts. The medical report of the victim has been brought on record and we have perused the same. The victim was examined by the Medical Board in Sadar Hospital, Banka on 19.06.2020. For age assessment, the radiologist in Jawaharlal Nehru Medical College and Hospital, Bhagalpur gave his opinion (Exhibit 'P-4/PW-6') in which the age of the victim on the basis of radiological report has been assessed between 15-17 years. As regards her age, the victim (PW-5) has herself deposed that at the time of occurrence, she was 16 years old. In her deposition, Dr. Indubala Prasad (PW-6) has

stated that on the basis of the report of the radiologist of Bhagalpur, she had prepared the supplementary medical report (Exhibit 'P-4/PW-6'). She has stated that there may be a difference of two years in the age determination as per her medical opinion.

28. How the age of a victim under the POCSO Act is to be determined has been considered by the Hon'ble Division Bench of the Delhi High Court in the case of **Court on its own motion Vs. State of NCT of Delhi** reported in **2024 SCC Online Del 4484.** The views expressed by the Hon'ble Delhi High Court in the case of **Court on its own Motion** (supra) are as under:

> "46. As an upshot of our foregoing discussion, the Reference is answered as under:-
> (i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?
> Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in 'reference range' be considered as age of the victim.
> (ii) Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.
> Ans: Yes. The margin of error of two years is further required to be applied."

29. In the case of **Rajak Mohammad vs. State of H.P.** reported in **(2018) 9 SCC 248**, the Hon'ble Supreme Court has held as under:-

> "9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.
> 10. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out."

30. From the evidence available on the record as also keeping in view the judicial pronouncements on the subject, we come to a conclusion that in this case, the age of the victim cannot be concluded as being below 18 years. The upper extremity of the age after taking recourse to +/- two years would go to above 18 years. Thus, the victim not being a child within the meaning of Section 2(d) of the POCSO Act, the charges under the POCSO Act is liable to fail.

31. So far as the charge under Section 376 IPC is concerned, the appellant has made out a case for setting aside of his conviction and sentence under Section 376 IPC in view of the

complete non-compliance with the provisions of the JJ Act as discussed hereinabove, which has deprived the appellant of a fair trial procedure.

32. We also find that in this case both the appellant as well as the victim/prosecutrix were of the same age group and the prosecutrix accepts in her deposition that she had entered into physical relationship with the appellant who is of her age because the appellant had promised her to marry. The proximate cause for lodging of the case is the refusal to marry. It is not the case of the victim that she was forced to enter into physical relationship. This, we are observing keeping in view that victim in this case is not kept in the category of a ‘child’. If the victim is not a ‘child’ and she entered into physical relationship under belief that the appellant would solemnise marriage with her but later on marriage could not take place, the benefit of doubt shall go to the accused-appellant.

33. In our considered opinion, the entire trial is vitiated because the Juvenile Justice Board has violated the mandatory provisions of Section 15 of the JJ Act and sent the record to the Children Court for trial of the appellant as an adult. The learned children court also failed to act in terms of Section 19 of the JJ Act.

34. For the aforementioned reasons, we set aside the impugned judgment and order of the learned trial court/Children

Court. The appellant is acquitted of the charges. He is said to be in incarceration. He shall be released forthwith if not wanted in any other case.

35. This appeal is allowed.

36. Let a copy of this judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

Anand/Harsh/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	31.03.2026
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