

THE HIGH COURT OF SIKKIM ; GANGTOK
(Criminal Appellate Jurisdiction)

30th May, 2025

SINGLE BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE

CRL. A. No. 03/2024

Bickey Pariyar *alias* Darjee
Son of Robin Pariyar,
Resident of Mickkhola,
Namchi,
District: Namchi, Sikkim
Presently: Rongyek Jail

... Appellant

Versus

State of Sikkim

... Respondent

Appearance: Ms. Puja Lamichaney, Advocate for the appellant.

Mr. Thinlay Dorjee Bhutia, Public Prosecutor and Mr.
Yadev Sharma, Additional Public Prosecutor for the
respondent.

JUDGMENT

1. The instant Criminal Appeal arose in respect of a judgment and order dated 29th November, 2023, rendered by the learned Special Judge (POCSO Act, 2012), Gangtok, Sikkim in S.T. (POCSO) Case No. 51 of 2021, whereby the appellant, Bickey Pariyar *alias* Darjee, was convicted of an offence committed under section 4(2) of the Protection of Children from Sexual Offences Act, 2012 (for short, "the POCSO Act, 2012") and sentenced with simple imprisonment for a term of 20 years and to pay a fine of Rs.2,000/- (Rupees two thousand only), with a default stipulation.

2. A Division Bench of this Court heard the instant criminal appeal, being Crl. A. No. 03 of 2024. The Division Bench rendered two separate

judgments on 05th March, 2025. One of the Hon'ble Judges (Meenakshi Madan Rai, J.) acquitted the convict (being the appellant herein) and the other Hon'ble Judge (Bhaskar Raj Pradhan, J.) upheld the judgment and order of conviction rendered by the learned Special Judge (POCSO Act, 2012). This has resulted in a divergence of views and in such circumstances, the matter was referred before this Bench for a final decision on the issue.

3. Since the facts of the case have already been elaborately discussed in the two judgments dated 05th March, 2025, only in order to avoid prolixity, this Bench does not dwell upon the same while rendering its opinion in the matter.

4. A careful reading of both judgments reveals the following:-

One of the Hon'ble Judges (Meenakshi Madan Rai, J.) has held that the prosecution has failed to establish that the victim was a minor or that the appellant had forcefully sexually assaulted her or coerced her into a sexual relationship. The other Hon'ble Judge (Bhaskar Raj Pradhan, J.), disagreed with the aforesaid findings and recorded his dissent in a separate judgment, which followed the first judgment of acquittal rendered in the matter.

5. Before analysing the two judgments and coming to a final decision in the matter, this Court hastens to state at the very outset that the principles of justice require not only procedural fairness but also a substantive fidelity to the protective arms of criminal statutes, particularly those designated to safeguard the vulnerable sections of society. The POCSO Act, 2012, was enacted with an uncompromising object to criminalise sexual activity with children — irrespective of consent — in recognition of their vulnerability and incapacity to give lawful consent.

6. In the light of the above principles, this Court will now proceed to dwell upon and analyse the evidence with regard to the age of the victim and whether the same was conclusively proved. The first and most critical element in any POCSO case is the determination of the victim's age. The prosecution, in the facts of the instant case had presented the following evidence before the learned Trial Court: -

- (i) Birth Certificate (Exhibit P-2)
- (ii) Attested copy of School Admission Register (Exhibit P-11)
- (iii) Victim's own testimony (PW-1), corroborated by her mother (PW-2).

7. In this regard, one of the Hon'ble Judges (Meenakshi Madan Rai, J.) has come to a conclusion that it could not be said that the age of the victim has been proved beyond reasonable doubt and on this aspect she was constrained to differ with the findings of the learned Trial Court, which, while relying on the birth certificate and the testimony of PW-2, concluded that the victim was a minor. In this regard, the Hon'ble Judge (Meenakshi Madan Rai, J.) has observed, *inter alia*, as follows: -

"11. In a case like the present one, it is absolutely imperative that the Prosecution should prove the age of the victim beyond reasonable doubt. Any grey areas or lacuna in such proof have to be viewed by the Courts with the seriousness and gravity it deserves. The Court has to be alive to the fact that an erroneous consideration of date of birth of the alleged victim, sans adequate proof, would render a person suspected of having committed the offence, to long years of incarceration and most of his productive life being laid to waste in front of his eyes."

8. That apart, the Hon'ble Judge has observed as follows with regard to adverse inference that could be drawn against the prosecution while referring to section 114 Illustration (g) of the Indian Evidence Act, 1872: -

- "9.
- (i)
- (ii)** PW-2 identified Exbt P-2/PW-1 as the Birth Certificate of the victim and her date of birth as 03-09-2006. PW-2 did not

state that the Police seized Exbt P-2/PW-1 from her possession. While PW-11 the I.O. stated that Exbt P-2/PW-1 was seized from the victim's mother PW-2, under Seizure Memo Exbt P-19/PW-11 and identified Exbt P-19(b) and Exbt P-19(c) as the signatures of the witnesses to such seizure. The I.O. failed to state the names of the witnesses to the Seizure Memo, however a perusal of Exbt P-19/PW-11 would indicate the names of the witnesses at Sl. No.6(i) and 6(ii). As the said seizure witnesses were not furnished by the Prosecution to establish seizure of the Birth Certificate from PW-2, this fact, considered in tandem with the failure of PW-2 to mention such seizure from her possession, raises suspicions about the authenticity of the seizure and thereby the document Exbt P-2/PW-1. In the absence of the seizure witnesses with no reasons furnished by the I.O. for their absence, an adverse inference as provided under Section 114 *Illustrations* (g) of the Evidence Act can be drawn against the Prosecution. There is therefore no proof of seizure of Exhibit Exbt P-2/PW-1 which appears to be a document furnished in isolation."

9. The other Hon'ble Judge of the Division Bench (Bhaskar Raj Pradhan, J.), while giving a note of dissent with regard to whether the age of the victim was conclusively proven, *inter alia*, observed that the birth certificate (Exhibit P-2) and the school admission register maintained by the Government Girls' Senior Secondary School were public documents and therefore admissible in evidence without the examination of its authors. The birth certificate (Exhibit P-2), providing the victim's date of birth as registered by the Registrar and provided to the informant, was proved by both the victim and her mother (PW-2). The birth certificate (Exhibit P-2) issued by the Chief Registrar of Births and Deaths, Health and Family Welfare Department, Government of Sikkim, is a certificate issued under section 12/17 of the Registration of Births and Deaths Act, 1969. It bears the signature of the Issuing Authority, i. e., the Registrar of Births and Deaths. Section 12 mandates that the Registrar shall, as soon as the registration of a birth or death has been completed, give, free of charge, to the person who gives information under section 8 or section 9 an extract of the prescribed particulars under his hand from the register relating to such birth or death. Section 17 provides that any person could cause a search to be made by the Registrar for any entry in a register of

births and deaths and obtain an extract from such register relating to any birth or death. Sub-section 2 of section 17 provides that all extracts given under the section shall be certified by the Registrar or any other officer authorised by the State Government to give such extracts as provided in section 76 of the Indian Evidence Act, 1872, and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates. Chapter II of the Registration of Births and Deaths Act, 1969 relates to appointments of various Registrars. It is seen that the Chief Registrar, the District Registrar and the Registrars are all appointed by the State Government. As such, they are all public servants. Section 77 of the Indian Evidence Act, 1872, provides that certified copies of public documents may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. Section 79 mandates that the Court "shall presume" to be genuine every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the State Government. Section 79 also provides that the Court "shall" also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper. The Hon'ble Judge went on to further observe in paragraph 19 of his opinion that both the public documents were exhibited by the prosecution without a protest from the defence. Thereafter, the Hon'ble Judge has, in addition to taking note of section 79 of the Indian Evidence Act, 1872, which mandates the Court to presume that public documents are genuine, also relied on section 35 of the Indian Evidence Act, 1872, and observed that the documents made *ante litem motam* can be relied upon safely when such documents are admissible under section

35 of the Indian Evidence Act, 1872. The Hon'ble Judge relied on the decision rendered by the Hon'ble Supreme Court in ***Murugan vs State of Tamil Nadu***¹, in this regard.

10, The following judgments of the Hon'ble Supreme Court were also referred to and relied upon by the Hon'ble Judge in his dissenting opinion:-

(i) In ***Harpal Singh and Another vs. State of Himachal Pradesh***², the Hon'ble Supreme Court held:

"3. In the instant case the prosecution has proved the age of the girl by overwhelming evidence. To begin with, there is the evidence of Dr Jagdish Rai (PW 14) who is a radiologist and who, after X-ray examination of the girl found that she was about 15 years of age. This is corroborated by Ext. PF, which is an entry in the admission register maintained at the Government Girls' High School, Samnoli (wherein the girl was a student) and which is proved by the Headmaster. That entry states the date of birth of the girl as October 13, 1957. There is yet another document viz. Ext. PD, a certified copy of the relevant entry in the birth register which shows that Saroj Kumari, who according to her evidence was known as Ramesh during her childhood, was born to Lajwanti, wife of Daulat Ram on November 11, 1957. Mr Hardy submitted that in the absence of the examination of the officer/Chowkidar concerned who recorded the entry, it was inadmissible in evidence. We cannot agree with him for the simple reason that the entry was made by the concerned official in the discharge of his official duties, that it is therefore clearly admissible under Section 35 of the Evidence Act and that it is not necessary for the prosecution to examine its author. From whatever angle we view the evidence, the conclusion is inescapable that Saroj Kumari was below 16 years of age at the time of the occurrence. Accordingly we agree with judgments of the courts below and see no merit in this appeal which is dismissed."

[emphasis supplied]

(ii) The Hon'ble Supreme Court in ***Sham Lal vs. Sanjeev Kumar***³, held:

"Question 3

21. One of the documents relied upon by the learned District Judge in coming to the conclusion that the plaintiff is the son of the deceased Balak Ram is Ext. P-2, the school leaving certificate. The learned District Judge, while dealing with this document has observed:

¹ (2011) 6 SCC 111

² (1981) 1 SCC 560

³ (2009) 12 SCC 454

"On the other hand, there is a public document in the shape of school leaving certificate, Ext. P-2 issued by Head Master, Government Primary School, Jabal Jamrot recording Kuldip Chand alias Sham Lal to be the son of Shri Balak Ram. In the said public document as such Kuldip Chand alias Sham Lal was recorded as son of Shri Balak Ram."

The findings of the learned District Judge holding Ext. P-2 to be a public document and admitting the same without formal proof cannot be questioned by the defendants in the present appeal since no objection was raised by them when such document was tendered and received in evidence.

22. It has been held in *Dasondha Singh v. Zalam Singh* [(1997) 1 PLR 735 (P&H)] that an objection as to the admissibility and mode of proof of a document must be taken at the trial before it is received in evidence and marked as an exhibit. Even otherwise such a document falls within the ambit of Section 74, Evidence Act, and is admissible per se without formal proof.

[emphasis supplied]

11. The Hon'ble Judge (Bhaskar Raj Pradhan, J.) in paragraph 25 of the dissenting opinion has further observed as follows: -

"25. In the light of the clear exposition of the Supreme Court as above, the mere denial by the defence in the cross-examination of the victim and her mother (PW-2) that 03.09.2006 was not the date of birth of the victim and that the birth certificate was not of the victim would not disprove the "legal presumption" or the "compulsory presumption" under section 79 of the Indian Evidence Act, 1872 as no evidence to disprove it was presented by the defence. Both the victim and her mother (PW-2) had denied the suggestion."

12. The judgment relied upon by the learned counsel for the appellant in **Madan Mohan Singh and others vs. Rajni Kant and another**⁴ was distinguished by the Hon'ble Judge (Bhaskar Raj Pradhan, J.) by observing as follows:-

"26. In **Madan Mohan Singh** (supra), the facts were different than the present case. In that case, as noted by the Supreme Court the documents placed on record were school leaving certificate, school registers, voters lists, and other documents prepared by authorised persons in exercise of their official duty. The Supreme Court noted the entries made in the electoral rolls for the legislative assembly for three consecutive elections which recorded different particulars of the same lady. The Supreme Court found that as per the first document the lady should have been born in 1941 as she was 34 years of age in 1975; as per the second list she should have been born in 1943 as she was 36 years of age in 1979. The Supreme Court also noted that immediately after one year in 1980 she became 41 years of age and according to this document she should have been born in

⁴ (2010) 9 SCC 209

1939. It was held by the Supreme Court that there is so much inconsistencies that these documents cannot be read together for the reason that in 1979 if the lady was 36 years of age, in 1980 she has been shown 41 years of age. So, after expiry of one year her age has gone up by five years. Similar inconsistencies were recorded with regard to other document as well. The Supreme Court held that the aforesaid document placed on record by the appellants and so heavily relied upon by them if taken into consideration, they would simply lead to not only improbabilities and impossibilities but absurdities also. It is in this context that the Supreme Court held that therefore a document may be admissible, but as to whether the entry contained therein has any probative value "*may still be required to be examined*" in the facts and circumstances of a particular case.

27. I am afraid that in the present case, the exhibited public documents which establishes the proof of age of the victim has no such improbabilities, impossibilities or absurdities for this Court to venture to examine its probative value."

13. Thereafter, the Hon'ble Judge (Bhaskar Raj Pradhan, J.) has proceeded to further observe as follows: -

"28. In ***Lall Bahadur Kami vs. The State of Sikkim***⁵, we had noted the conflicting evidence given by the prosecution witnesses of the birth certificate and the fact that none of the prosecution witnesses have been able to vouch safe for the truth of the contents thereof. We had also noted that neither the school admission register nor the register of births and deaths or the Class X mark sheet were seized by the investigating officer. It is in that fact situation that we sought to examine the probative value of the birth certificate which was seized in isolation.

29. In the present case, as held earlier, the victim's mother who would be the most natural person to give evidence about the birth of the victim, has categorically stated that the victim was born on 03.09.2006 and identified the birth certificate (exhibit P-2) as the birth certificate of the victim. The victim herself stated that she was born on 03.09.2006, identified her birth certificate (exhibit P-2), deposed that she was 16 at the time of her deposition, i.e., 01.07.2022 and that she was studying in Class VIII then.

30. In ***Mangala Mishra @ Dawa Tamang @ Jack vs. State of Sikkim***⁶, we noted the exposition of law by the Supreme Court in ***Madan Mohan Singh*** (supra) distinguishing between the admissibility of a document and its probative value while noting the conflicting evidence led by the prosecution regarding seizure of the birth certificate of the victim. We also noted that the victim's mother who was examined as a prosecution witness neither made any claim that the birth certificate was seized by her nor did she mention about the victim's age. We noted that there was conflicting evidence as to from whom the birth

⁵ SLR (2017) Sikkim 585

⁶ SLR (2018) Sikkim 1373

certificate of the victim was seized from. After examining section 94 of the JJ Act of 2015, we held that in the first instance the date of birth from the school or matriculation of the child is unavailable then resort can be taken to a birth certificate given by a corporation or a municipal authority. We held that the provisions of section 94 of the JJ Act of 2015 have not been complied with and hence the prosecution had failed to establish the first requirement of the case under POCSO Act, viz., to establish that the victim was below the age of 18 years as is the requisite provided under section 2(d) of the POCSO Act.

31. The learned counsel for the appellant also emphasised on a suggestion by the defence during the cross-examination of the Principal (PW-10). It was suggested that the school of which she was the principal and in which the school admission register was maintained was not the first school attended by the victim. This suggestion as is clear is as per the requirement of Rule 12(3)(a)(ii) of *the Juvenile Justice (Care and Protection of Children) Rules, 2007 (the 2007 Rules)*. However, this is not the requirement of section 94 of JJ Act of 2015. JJ Act of 2015 has replaced Rule 12 of the 2007 Rules. As such, the suggestion of the defence has no consequence whatsoever in the facts of the present case as the FIR (exhibit P-3) was lodged on 04.10.2021 when the JJ Act of 2015 had already been enforced. There is no suggestion by the defence that the entry made in the school admission register was untrue. As noted above, the attested copy of the school admission register (exhibit P-11) contains the details of the victim's birth certificate."

14. With regard to adverse inference that could be drawn against the prosecution (as observed by Meenakshi Madan Rai, J.), the Hon'ble Judge (Bhaskar Raj Pradhan, J.) — while referring to section 114 *Illustration (g)* of the Indian Evidence Act, 1872 — observed, *inter alia*, as follows:-

"32. The learned counsel for the appellant submitted that the seizure memo (exhibit P-19) was not proved by the two witnesses who were named in it. Thus, even the seizure of the birth certificate (exhibit P-2) is suspect.

33. The Investigating Officer deposed that the birth certificate of the victim was seized from her mother vide seizure memo (exhibit P-19) wherein exhibit P-19(a) is the signature of the victim's mother. He also identified the signatures of the witnesses in the seizure memo and the birth certificate (exhibit P-2) seized through the seizure memo.

34. Nothing substantial was brought out during the cross-examination of the Investigating Officer (PW-11) to demolish the facts stated by him in his examination-in-chief regarding the investigation and the seizure of the birth certificate (exhibit P-2).

35. The birth certificate (exhibit P-2) was seized by the Investigating Officer (PW-11) from the victim's mother (PW-2) through seizure memo (exhibit P-19) which was exhibited by him as its maker - a police officer who is authorised to conduct the search. It is noticed that the seizure memo is under section

102 Cr.P.C. The said provision does not mandate the requirement of any witnesses for the procedure. There is no such inflexible proposition of law that there ought to be independent witnesses associated with the seizure. Section 102 Cr.P.C does not require it. The police officer in the course of investigation can seize any property if such property is necessary to link with the commission of offence. However, the seizure memo (exhibit P-19) records that the seizure was effected in the presence of the two witnesses. The two witnesses however were not cited as witnesses in the final report. They were, therefore, not examined. The Investigating Officer (PW-11) was examined and he proved the seizure memo (exhibit P-19). No suggestion was given by the defence to the Investigating Officer (PW-11) that the two witnesses named in the seizure memo were withheld for any purpose. The seizure memo (exhibit P-19) records the seizure of only the birth certificate (exhibit P-2) of the victim from her mother (PW-2). The birth certificate (exhibit P-2) had been produced in the original and exhibited by the victim without any objection from the defence. The victim's mother (PW-2) was also examined. She did not depose that the birth certificate (exhibit P-2) was seized from her although she identified the birth certificate (exhibit P-2). The defence did not suggest that the birth certificate of the victim (exhibit P-2) was not seized from her. The identification of the signature [exhibit P-19(a)] of the victim's mother in the seizure memo (exhibit P-19) by the Investigating Officer (PW-11) was not objected to by the defence. The seizure memo (exhibit P-19) shows the seizure of the birth certificate (exhibit P-2) and nothing else. In the circumstances, it would be extremely difficult for the Court to disbelieve the Investigating Officer (PW-11) when he deposed about the seizure of the birth certificate (exhibit P-2) and in those circumstances, question the veracity of the birth certificate (exhibit P-2) itself. Even if the prosecution failed to produce the witnesses to the seizure, the birth certificate (exhibit P-2) which has been proved by both the victim and her mother (PW-2) in whose custody it ought to have been, cannot be wished away. As such, the presumption under section 114(g) of the Indian Evidence Act, 1872 would be of no benefit to the appellant merely because the two seizure witnesses were not produced. As held above, there was not a suggestion from the defence that the birth certificate (exhibit P-2) was a false certificate.

36. The records of the learned Special Court reveal that the prosecution had placed the original birth certificate of the victim (exhibit P-2), the certificate (exhibit P-10) of the Principal (PW-10) certifying the date of birth as recorded in the school admission register and the attested copy of the school admission register (exhibit P-11) which was compared with the original school admission register produced and examined by the learned Special Court and found to be true. There is no suggestion from the defence that what is recorded therein is not the truth. The date of birth recorded in all the three documents is 03.09.2006. These documents corroborate what both the victim as well as her mother (PW-2) deposed before the Court. Additionally, the victim while deposing on 1st July, 2022, also stated that she was 16 years and studying in Class VIII. The victim exhibited her birth certificate (exhibit P-2) and her mother (PW-2) identified it before the Court. The only suggestion given by the defence to the victim regarding the birth certificate (exhibit P-2) was that it was not hers. The victim emphatically denied the suggestion.

During the cross-examination of the victim's mother (PW-2), a suggestion was made that the date of birth of the victim was not 03.01.2006 and that exhibit P-2 was not her birth certificate. The victim's mother also emphatically denied the suggestions.

37. Thus, the seizure of the birth certificate (exhibit P-2) of the victim cannot be doubted. Merely because the two witnesses to the seizure memo (exhibit P-19) were not examined, the birth certificate cannot be thrown out without consideration.

38. In **Lakhi Ram Tambi**⁷ (*sic*, **Takbi**), we have held that the birth certificate is a public document admissible in evidence and as no objection was raised when it was admitted in evidence nor any issue raised on its probative value it cannot be questioned by the defence at the stage of appeal. I am not inclined to accept a contrary view to that of the Division Bench of this Court."

15. In the opinion of this Bench, a hyper-technical stand to the effect that two witnesses to the seizure memo (Exhibit P-19) were not examined, cannot render a public document such as a birth certificate issued by the Registrar of Births & Deaths, Health & Family Welfare Department, Government of Sikkim, as not proved before the Trial Court. The birth certificate is a public document and is admissible in evidence by itself and in the facts of the instant case, no objection was raised when it was admitted in evidence nor any issue raised regarding its probative value. As such, this Bench is in agreement with the opinion expressed by Bhaskar Raj Pradhan, J, that the same cannot be questioned by the defence at the belated stage of appeal. The view of the Division Bench of this Court in **Lakhi Ram Takbi**'s case (*supra*), cannot be contradicted, as rightly observed by the Hon'ble Judge (Bhaskar Raj Pradhan, J.).

16. Meenakshi Madan Rai, J. in her judgment, observed that the physical relationship between the victim and the appellant was consensual in nature and that she was in a romantic relationship with the appellant and had gone out with him voluntarily. She referred to the testimony of PW-5, according to whom PW-1 had voluntarily informed her that she had

⁷ SLR 2019 Sikkim 45

sexual relation with the appellant in September, 2021, and again had another such encounter. PW-1 had lied to her parents of having gone out of town with PW-5, when, in fact, she was with the appellant, thereby proving that all acts of the victim with the appellant were voluntary and consensual. She further observed, notably, the victim is not the complainant and it is not the prosecution's case that she was forced into the act. The Hon'ble Judge has also observed in her judgment as follows:-

"13. PW-2 deposed in Court that on 02-10-2021 her daughter suddenly fell ill and on her medical examination she came to learn that the child was pregnant. She lodged the FIR Exbt P-2/PW-1 on 04-10-2021. However, in the FIR she claims to have learnt through the Doctor on 28-09-2021 that PW-1 was pregnant. These anomalies in the dates have gone unexplained by the Prosecution which is indeed indicative of slipshod and callous investigation.

14. The evidence of PW-8 is touched upon briefly as the crux of the Prosecution case pivots around the alleged pregnancy of the victim, to examine whether there was proof of pregnancy as alleged and as a tangential consideration whether the Prosecution case is thereby worthy of reliance. PW-8 stated that pregnancy was confirmed by a serum beta HCG test, but admitted that urine test for pregnancy is not 100% correct. Besides, it is noticed that the blood test report, medical report, or the ultra sound report after the ultra sound of the victim was conducted by the concerned doctor for the alleged pregnancy were not filed before the Court and PW-8 and the I.O. PW-11 admitted as much. It is also worth noticing that PW-8 claims that ultrasound on the victim was conducted on 30-09-2021 and the last medical test done on 05-10-2021 but the "case summary" Exbt P-5/PW-8 is dated 29-11-2021, with no explanation whatsoever for the delay in its preparation which exceeded a month. PW-8 admitted that the victim was examined by one Dr. Annet Thatal but neither the medical examination report nor the examining Doctor were furnished by the Prosecution to establish the allegation of pregnancy. It thus emanates that in the absence of the aforementioned documents, the Prosecution case lacks proof of the very crux of its case, i.e., the victim's pregnancy due to sexual assault. The Trial Court considered Exbt P-5/PW-8 the Case Summary as proof of the pregnancy and thereby sexual assault, notwithstanding the fact that it was only a summary of what had transpired in the hospital and not of the alleged pregnancy. This document cannot fill the lacuna in the Prosecution case created by the non-production of the actual documents as proof of the medical tests of the victim."

17. In the opinion of this Bench, whether the pregnancy was conclusively proved or not has no rational nexus/correlation with the

sexual assault performed upon a minor in view of the clear and unambiguous language of section 4(2) of the POCSO Act, 2012. A penetrative sexual assault upon a minor may or may not result in pregnancy and as such, the focus of the Court — while examining a fact situation whether offence under section 4(2) of the POCSO Act, 2012, is attracted or not — should be on “**penetrative sexual assault**” alone and not whether any pregnancy results therefrom.

18. Further, once the age of the victim was proved (in this case, about 15 years), it becomes wholly immaterial and utterly inconsequential whether the sexual act was consensual or not. So far as whether the mandate of section 94 of the Juvenile Justice Act of 2015, was fulfilled or not, this Bench is in complete agreement with the opinion expressed by the Hon’ble Judge (Bhaskar Raj Pradhan, J.) in paragraph 43 of his dissenting note, which reads as follows:-

“43. It is, therefore, clear that the mandate of section 94 of the JJ Act of 2015 has been fulfilled by the prosecution by producing the date of birth certificate from the school (exhibit P 10), the attested copy of the school admission register (exhibit P 11) as well as the birth certificate (exhibit P 2) issued by the Registrar of Births and Death, Health and Family Welfare Department, Government of Sikkim (exhibit P 2). Sub section 3 of section 94 provides that the age recorded by the committee or the board to be the age of the person so brought before it shall, for the purpose of this act, be deemed to be true age of that person. If the Special Court conducting the trial of the POCSO case is required to follow the JJ Act of 2015 as per the dicta of the Supreme Court [see **P. Yuvaprakash** (supra)] then the age recorded by the Special Court must be deemed to be the true age of the victim unless it is shown by cogent evidence that it is untrue. The Learned Special Court has categorically held that the prosecution has been able to prove that the victim was born on 03.09.2006.”

19. In the facts and circumstances of the instant case, upon a detailed analysis of the evidence considered by the learned Trial Court and for reasons stated hereinbefore, this Bench is in agreement with the views expressed by the Hon’ble Judge (Bhaskar Raj Pradhan, J.) that the prosecution has been able to establish beyond reasonable doubt that the

victim — in fact — was a minor at the time when the offence was committed. Therefore, even if proved that the sexual acts between the victim and the appellant were consensual in nature, the provisions of the POCSO Act of 2012, do not permit any concession or relaxation. As rightly held by the Hon'ble Judge (Bhaskar Raj Pradhan, J.), the consent of a minor is no consent at all and as such, there is no scope for this Court to extend any benefit of doubt to the convict.

20. The judgment and order of conviction rendered by the learned Trial Court is therefore upheld, considering the facts and circumstances of the instant case. However, in view of the contents of the two affidavits — as reflected in this Court's earlier order dated 28th May, 2025 — it will be open to the parties to take necessary steps in accordance with law, notwithstanding the final decision rendered by this Court in the instant matter.

(Biswanath Somadder)
Chief Justice

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