

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.1724 of 2025**

Arising Out of PS. Case No.-39 Year-2022 Thana- DIGHA District- Patna

XXXXXXXXXXXXXXXXXX

... .. Appellant

Versus

1. The State of Bihar
2. Jitendra Kumar @ Kunkun S/o Shivjee Rai R/o Sadilopur, Mahanar Road, Hajipur, P.s.- Jadua, Distt.- Vaishali

... .. Respondent

**Appearance :**

For the Appellant	:	Mr. Ajay Kumar, Advocate Mr. Awadhesh Kumar, Advocate
For the State	:	Mr. Ramchandra Singh, A.P.P.
For the Respondent No.2:	:	Mr. Ramji Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY  
CAV JUDGMENT**

Date : 20-01-2026

Heard learned counsel for the appellant/victim, learned Additional Public Prosecutor for the State and learned counsel for the Respondent No. 2.

2. The name of the appellant/victim has not been disclosed in the present judgment to protect her privacy, prestige and dignity.

3. The present appeal is directed against the judgment of conviction dated 20.01.2025 and order of sentence dated 24.01.2025 passed by learned Additional Sessions Judge – Vith cum Special Judge, POCSO Act, Patna in Special Sessions Trial POCSO Case No. 75 of 2022, arising out of Digha P.S. Case No. 39 of 2022 whereby and whereunder the respondent



no. 2/ Jitendra Kumar @ Kunkun has been convicted for the offences punishable under Section 363 of IPC and has been sentenced to undergo rigorous imprisonment for four years along with fine of Rs. 5,000/- under Section 363 of IPC and in case of default of payment of fine, respondent no. 2 has to further undergo simple imprisonment for two months and further with a prayer that the sentence under Section 363 of IPC may be enhanced and Section 12 of POCSO Act should be added.

4. As per prosecution case, informant (PW-2) who is mother of appellant/victim, has filed a written statement before SHO, Digha that on 19.01.2022, appellant/victim aged about 15 years left the house for coaching at around 9 AM but she did not return home. It is alleged that the respondent no. 2 is alleged to have taken away the appellant/victim who had been residing at the house of informant since two years.

5. On the basis of written statement filed by the informant, Digha P.S. Case No. 39 of 2022 was registered under Sections 363/366A of the IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet was submitted against the respondent no. 2 under Sections 363, 366(A), 366 of the



IPC. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the respondent no. 2 under Sections 363, 366(A), 366 of the IPC and Section 12 of the POCSO Act, 2022. Charges were read over and explained to the respondent no. 2 to which he pleaded not guilty and claimed to be tried.

6. In order to bring home the guilt of the accused person, prosecution has examined all together six witnesses. PW-1 appellant/victim, PW-2 mother of appellant (informant), PW-3 father of appellant, PW-4 maternal uncle of appellant, PW-5 Rajeev Ranjan Kumar (Investigating Officer) and PW-6 Dr. Abhilasha Kumari (doctor).

7. Prosecution has relied upon following documentary evidence on record:-

*Ext. P-1/PW-1- Signature of appellant/victim on statement recorded under Section 164 of Cr.P.C.*

*Ext. P-2/PW-2- Written application submitted before the police*

*Ext. P-3/PW-5- Registration of case on written application*

*Ext. P-4/PW-5- Formal FIR*

*Ext. P-5/PW-5- Memo of arrest*

*Ext. P-6/PW-5- Charge sheet*

*Ext. P-7/PW-6- Medical Report*

*Ext. P-8- Certificate of matric-*



*cum- mark sheet*  
*Ext. P-9- Statement of*  
*appellant/victim recorded under*  
*Section 164 of Cr.PC.*

8. However, the defence of the respondent no. 2 as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

9. After hearing the parties, the learned trial court convicted the respondent no. 2 and sentenced him as indicated in the opening paragraph of the judgment.

10. The following submissions have been made on behalf of learned counsel for the appellant/victim :-

11. The learned counsel for the appellant/victim submits that he is aggrieved that the sentence awarded to respondent no. 2 by the learned trial court is inadequate and the quantum of sentence should be maximized. He further submits that respondent no. 2 is neither convicted under Section 12 of the POCSO Act nor sentence has been awarded to him under the said Section. He further submits that the age of the appellant/victim has already been proved in accordance with the statutory provisions by the concerned court. It has been submitted that the age of appellant/victim is not in dispute in



present case as no objection was raised at this point on behalf of the defence counsel and the concerned court, after an elaborate discussion of the relevant statutory provisions, has given a finding that appellant/victim was found to be minor. From the perusal of statement of appellant/victim recorded under Section 164 of Cr.P.C and her statement while adducing evidence before Court, it is crystal clear that on the point of taking away the appellant/victim, the statement was quite consistent that appellant/victim was taken away by the respondent no. 2 and the appellant/victim is a minor and appellant/victim was taken without taking consent of the lawful guardian. It has been submitted that though PW-2 and 3 are guardians, they have already admitted that appellant/victim has been taken away. On the point of taking consent, PW-2 and PW-3 have already put their grievances. Informant has already admitted that she has lodged FIR against the respondent no. 2 regarding taking away of her minor child. It has been submitted that PW 3 (father of appellant/victim) has also asserted the same statement on the point of taking away the appellant/victim. The statements of PW 5 (Investigating Officer) are consistent and at last appellant/victim was recovered from Bairgania Border. In this way, there is no reason to differ from the finding of the



concerned court that the appellant/victim was minor and no consent was taken from the lawful guardian who have already adduced their evidences before the Court that appellant/victim has been taken away by the respondent no. 2. It has been submitted that appellant/victim has also asserted the same statement that she was being taken away by the respondent no. 2. Learned counsel further submits that the learned trial court has erred in not awarding the maximum punishment under Section- 363 of IPC and not convicting the respondent No. 2 under Section-12 of POCSO Act. Hence, learned counsel for the appellant/victim prays to enhance the sentence under Section-363 of IPC and convict the respondent No. 2 under Section 12 of the POCSO Act.

12. Learned counsel for the Respondent No. 2 submits that the statement of appellant/victim has been improved from the earlier statement recorded under Section 164 of the Cr.P.C. and the statement of PW-3 (father of the appellant/victim) regarding providing chips and cold drinks to the appellant/victim, and she was given intoxicated materials and appellant/victim was forced by the respondent no. 2 to commit wrongful act, is totally inconsistent with the statement of the PW-5 who is the Investigating Officer of the case. PW-3



has improved his statement from earlier statement which was recorded by the Investigating Officer (PW-5) and the same is evident from the cross-examination of Investigating Officer as to how the father of the appellant/victim has improved his earlier statement recorded under Section 161 of Cr.P.C. He further submits that PW-2, who is the informant of the case, has improved her version at the time of adducing evidence which was not recorded when she made her statement before the Investigating Officer (PW-5). He further submits that the statement of Investigating Officer is quite evident as to how the mother of the appellant/victim has changed her earlier statement at the time of adducing evidence before the court. The statement of Investigating Officer (PW-5) is quite evident as to how the statement of appellant/victim has been improved at the time of adducing evidence. He further submits as to how the statement of father of appellant/victim has been improved though it was clearly absent when the statement was recorded by Investigating Officer and the mother of appellant/victim, who is the informant of the case, as to how she has changed her earlier statement at the time of adducing evidence. In this way, their statements are full of inconsistencies, discrepancies and infirmities. Thus, learned counsel for the respondent no. 2 submits that



prosecution has failed to prove the case beyond the reasonable doubt and the concerned court has also recorded the reasoning as to how the prosecution has failed to prove the case under Section 12 of the POCSO Act. In this way, the prosecution has failed to prove the case under Section 363 of IPC and Section-12 of POCSO Act.

13. The learned counsel for the State submits that the judgment of conviction and order of sentence passed by the learned trial court are justified and legal as the same have been passed on the basis of material available on record. Hence, no interference is needed.

14. The question which arises for consideration is:-

*"Whether the sentence awarded under Section-363 of IPC requires to be enhanced and whether offence under Section 12 of POCSO Act is made out against respondent No.2 in the light of given facts and circumstances of the case or not ?"*

15. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

16. It is necessary to evaluate, analyze and



screen out the evidences of witnesses adduced before the trial court.

17. It is necessary to discuss the evidence of appellant/victim who is said to have been taken away by the respondent no. 2 and her statement is recorded under Section 164 of Cr.P.C. which is as follows:-

“On 19.01.2022 at about 9 AM, she proceeded for coaching and she has stated that Respondent No. 2 -Jitendra Kumar was working under his papa and in the way, the respondent no. 2 made an offer for tour when the appellant/victim replied regarding permission from house upon which the respondent no. 2 replied that he had taken permission from appellant/victim’s father and the appellant/victim sat on cab with respondent no. 2 by relying on the said version of respondent no. 2 and both went to Hajipur station and thereafter they went to Delhi and from Delhi to Gurgaon and finally went to Kathmandu, Nepal for touring purpose. The appellant/victim requested for returning to her house upon which Kunkun/ respondent no. 2 denied on one or another pretext. In para 6, appellant/victim has stated that she saw the facebook post of her mother and the respondent no. 2 made arrangement to communicate with appellant/victim’s mother and



appellant/victim's mother was weeping and the respondent no. 2 dropped the appellant/victim on India-Nepal border at the behest of appellant/victim and the appellant/victim's mother took her to Patna and she has stated in para 7 that respondent no. 2 has not committed any wrong with her. She has stated that she came with her parents and she desired to go with them.”

18. PW-1 (X) is the appellant/victim of the present case and her statement during the course of adducing evidence is totally different from what she has asserted in her statement under Section 164 of Cr.P.C. as in her statement under Section 164 of Cr.P.C. she has stated that when she was going to her coaching, the respondent no. 2 met her and offered her for tour, but while adducing her evidence before the Court she has improved her version and has stated that Jitendra Kumar/respondent no. 2 was present with vehicle on the way and he prevented the appellant/victim from going to the coaching and he stated that on the said date coaching was closed and her father had asked him to bring the appellant/victim back. Believing his statement, appellant/victim sat in the said cab and respondent no. 2 gave lays and Thums Up and after that she did not remember anything. When she regained consciousness, she heard the sound of train and after that when she opened her eyes



she found herself at the lonely place at a room and the room was closed. After calling repeatedly, the respondent no. 2 came and he gave food to the appellant/victim. She always asked the respondent no. 2 to take her home but respondent no. 2 did not take her to her home. In para 3, she has stated that about after 14 days, respondent no. 2 stated to drop the appellant/victim at her house. She has stated that she had been residing with the respondent no. 2 for five months. She has stated that first of all the respondent no. 2 brought her in Delhi, thereafter, Motihari then took away to Nepal. During the said period, the respondent no. 2 gave threatening to appellant/victim that he would kill the father and brother of appellant/victim. In para 5, she has stated that respondent no. 2 has tortured the appellant/victim mentally and emotionally. In this way, the said version of the appellant/victim is inconsistent with her statement recorded under Section 164 of Cr.P.C. Further, in examination-in-chief, she has stated that respondent no. 2 touched her and did indecent behavior against her whereas in cross-examination, she has stated that respondent no. 2 did not commit any wrong act, prior to 19.01.2022. She has stated that police had got her statement recorded under Section 164 of Cr.P.C. before the learned Magistrate upon which she put her signature which is



marked as Exhibit P/1-PW1. She has stated that after many days of returning home, she told her mother about the incident. The statement of appellant/victim with regard to giving Thums up and Lays was totally inconsistent with the statement recorded under Section 164 of Cr.PC. During the course of statement recorded under Section 164 of Cr.P.C., in para 7 she has stated that respondent no. 2 has not committed anything wrong against her and she has admitted that respondent no. 2 left her at India-Nepal border at the behest of the appellant/victim but during the course of adducing evidence before the Court, appellant/victim has improved her statement that respondent no. 2 parked the vehicle in the way and he was standing there and stopped the appellant/victim and told her that her coaching was closed on that day. The said version was totally inconsistent with the version recorded by the appellant/victim under Section 164 of Cr.P.C.

19. PW-2 :- She is the mother of the appellant/victim and informant of the present case. In para 2, she has stated that her daughter (appellant/victim) had gone to coaching at 8 AM. At 1:06 PM, she received a message from the respondent no. 2 stating that he was taking the appellant/victim away and that she (PW2) should not search for them. She



further stated that the respondent no. 2 was taking the appellant/victim away from her (PW-2) and that respondent no. 2 had been in love with the appellant/victim for the past eighteen months. The statement of PW-2, who is informant of the case, is quite inconsistent with the version of Investigating Officer (PW-5). PW-2 has supported the initial version of prosecution story that the appellant/victim went to coaching in the morning but she has improved her version by stating that she received one message from respondent no. 2 that he took informant's/PW-2 daughter and it was told that respondent no. 2 was in love with informant's daughter since eighteen months. She has made effort to search her daughter and in para 9, she has stated that her daughter (appellant/victim) was found sitting under a tree near Bairgania border and she was frightened and after that she came to civil court with her daughter(appellant/victim). In para 13, PW-2 has stated that appellant/victim has stated all things to her that had happened against her. She has stated that appellant/victim has pointed out that respondent no. 2 used to assault and behaved indecently with the appellant/victim and respondent no. 2 did not provide food and keep the door closed and tried to persuade to make physical relationship. She has stated that age of appellant/victim



at the time of occurrence is 15 years and 3 months and the date birth of appellant/victim on school certificate is mentioned as 15.09.2006. During the course of cross-examination, she has stated that respondent no. 2 took away her daughter and on the point of taking away her daughter, statement of PW-2 is quite intact and there is no reason to disbelieve the statement of informant who has stated in the initial version of prosecution story that respondent no. 2 is said to have taken away her daughter and during her deposition before the Court that informant's daughter has been taken way by the respondent no. 2 and age of appellant/victim has been pointed out on the basis of certificate issued by school.

20. PW-3 is father of the appellant/victim and he has also stated that appellant/victim went to coaching and he received a call from his wife who informed him that respondent no. 2- Jitendra Kumar @ Kunkun sent a message on her mobile that respondent no. 2 had taken away appellant/victim. On the basis of message of his wife received on mobile, PW-3 has stated that he made contact with the mother and father of respondent no. 2 and both of them started abusing PW-3. Then, PW-3 went to the house of respondent no. 2 and the family members of respondent no. 2 started abusing him and stated that



respondent no. 2 would marry the appellant/victim. PW-3 returned back and the PW-3 has stated that in para 6, after about four months, the appellant/victim called her mother through unknown mobile number and told her mother that appellant/victim was at Bairgania Border, Nepal and on the basis of said information, wife of PW-3 went to Bairgania border and appellant/victim was brought to Patna and statement of appellant/victim under Section 164 of Cr.P.C. was recorded before the Magistrate. He has stated that appellant/victim was nervous and after 10 to 15 days appellant/victim told her mother regarding the incident which had happened against her. He has stated in para 8 that appellant/victim has stated to her mother that respondent no. 2 used to assault and made indecent behavior and used to administer medicine to develop the body of appellant/victim as adult so that respondent no. 2 could marry the appellant/victim. He further stated in para 9 that appellant/victim has stated that cold drink was given by the respondent no. 2 and chips were also provided and after taking the said drink and chips she became unconscious and after gaining consciousness she found herself in Delhi. He has stated that appellant/victim was in Delhi and she was placed in a room where one woman resided. He has stated that the respondent no.



2 took away the appellant/victim from Delhi to Nepal and he has stated that respondent no. 2 had made some indecent behavior and used to feed intoxicated medicine. In para 4 of the examination in chief of PW-3, PW-3 has stated that he went to the house of respondent no. 2 where all the family members of the respondent no. 2 started abusing him and all the family members told P.W-3 that the accused would marry the appellant/victim but the IO (PW-5) during the course of cross-examination, in para 20, has stated that PW-3 had not stated before him that when PW-3 went to the house of respondent no. 2, all the family members started abusing and made indecent behavior with PW-3 but the said version of PW-3 is quite inconsistent with the version of PW-5 who is the Investigating Officer (PW-5) as mentioned in para 20. The statement regarding providing the cold drinks and chips to the appellant/victim was not stated before the Investigating Officer by PW-3. The statement of taking appellant/victim from Delhi to Nepal was also not stated by this witness to Investigating Officer (PW-5). PW-3 who has stated in para 11 that respondent no. 2 used to talk his brother, father, mother, brother-in-law and cousin through phone and internet but the appellant/victim was not allowed to talk to anyone but during the course of cross-



examination of PW-5 (Investigating Officer), it has been clarified in para 27 that PW-3 had not made any statement before him as he had stated in para 11 while adducing evidence during the course of examination in chief.

21. From the deposition of father of appellant/victim (PW-3), it is evident that despite being embellishment and improvisation in the version of PW-3, it is clear that respondent no. 2 has taken away the appellant/victim without consent of the father of the appellant/victim (PW-3) and the said statement is quite intact with the statements of other prosecution witness, appellant/victim as well as appellant/victim's mother (PW-2).

22. PW-4 is the maternal uncle of the appellant/victim. He has stated that appellant/victim's mother (PW 2) is informant of the case, is also his sister, called him around 2 PM that respondent no. 2 had fled with the appellant/victim. He further stated that he went to appellant/victim's home and his sister told him that respondent no. 2 had taken him away. In para 3, he has stated that the appellant/victim's mother went to thana for lodging the FIR. In para 4, he has stated that on 22.05.2022, appellant/victim's mother called and informed him that the appellant/victim had



been found and was at the Nepal border. He further stated that he went to appellant/victim's house and then, went to the Nepal border with the appellant/victim's mother. In para 6, he has stated that he did not know about as to how many days appellant/victim lived with the respondent no. 2. In para 7, PW-4 has stated that appellant/victim did not tell about the incident to him. He further stated that appellant/victim told her mother about the incident. During the course of cross-examination, in para 26 he has stated that appellant/victim has not stated anything regarding the occurrence till today.

23. PW- 5 (Rajeev Ranjan Kumar) is the investigating officer of the present case and he got the charge of investigation of Digha P.S. Case No. 39 of 2022. In para 4, he has stated that after getting charge of investigation, he recorded the statement of informant and inspected the place of occurrence which is the house of informant situated in Ramjichak Mohalla under Digha Police Station. In para 7, PW-5 has stated that he has also recorded the statement of father of appellant/victim and maternal uncle of the appellant/victim. In para 9, he has stated that on 20.01.2022, he verified the age of appellant/victim and her date of birth, according to her school certificate, was found to be 15.09.2006. During the course of cross-examination,



in para 19, PW-5 has stated that PW-3 has not stated before him that PW-3 had made a phone call to the mother of respondent no. 2 to inform her about the incident, then, mother of respondent no. 2 told that her son was not of such a nature who could take away the appellant/victim. In para 20, PW-5 has stated that PW-3 has not stated before him that when PW-3 had gone to the house of respondent no. 2, the entire family of respondent no. 2 began abusing PW-3 and they claimed that the accused would marry the daughter of PW-3. Thereafter, PW-3 left. In para 21, PW-5 has stated that PW-3 has not stated before him that PW-3 repeatedly visited police station to report the incident. It is also not pointed out before PW-5 that during that period, the respondent no. 2 had changed thirty mobile SIM cards and four email IDs. In para 22, PW-5 has stated that PW-3 has not stated before him that after about four months, the appellant/victim called her mother through an unknown mobile number and told her mother that she was at the Bargania border in Nepal and upon this information, wife of PW-3 went to the Bargania border to get the appellant/victim back and brought her to Patna. It is also not pointed out before PW-5 that after arriving Patna, appellant/victim was brought to the Civil Court, Patna and the Investigating Officer of the Digha Police Station



was informed about the appellant/victim. In para 23, PW-5 has stated that PW-3 has not stated before him that the appellant/victim was very nervous and thereafter about ten to fifteen days later, the appellant/victim gradually told her mother (PW-2) everything about the incident. In para 24, PW-5 has stated that PW-3 has not stated before him that the appellant/victim told her mother that the respondent no. 2 had repeatedly beaten her and sexually assaulted her and the respondent no. 2 had also confined the appellant/victim to a room and administered a medicine to develop the body of appellant/victim as adult so that the respondent no. 2 could marry the appellant/victim. In para 25, PW-5 has stated that PW-3 has not stated before him that the appellant/victim told PW-3 that respondent no. 2 had provided her cold drink and chips in Patna, after which she had become unconscious. It is also not pointed out before PW-5 that when appellant/victim regained consciousness, she was in Delhi and in Delhi, a woman also lived in the room where the appellant/victim was kept. It is not stated before PW-5 that before arriving the said place, accused had sent money to the woman's bank account, of which appellant/victim had proof. In para 26, PW-5 has stated that PW-3 has not stated before him that the respondent no. 2 took the



appellant/victim from Delhi to Nepal and respondent no. 2 kept the appellant/victim in a room in an unknown house in Motihari for approximately 14-15 days, where appellant/victim was subjected to sexual misconduct and administered intoxicated medicines. In para 27, PW-5 has stated that PW-3 has not stated before him that the respondent no. 2 spoke daily with his brother, father, mother, brother-in-law and cousin through phone and internet and the respondent no. 2 did not allow the appellant/victim to speak to anyone. In para 28, he has stated that PW-3 has not stated before him that when the appellant/victim used to ask for the mobile phone from the respondent no. 2, the respondent no. 2 did not give the mobile phone to her and used to assault the appellant/victim. During the course of cross-examination in para 32, PW-5 has stated that appellant/victim has not stated before him that respondent no. 2 used to threaten the appellant/victim to kill her father and brother. During the course of cross-examination in para 33, PW-5 has stated that appellant/victim has not stated before him as to what happened with her and appellant/victim has also not stated as to how many places the respondent no. 2 had taken her and appellant/victim has also not pointed out regarding the treatment meted out to her by the respondent no. 2. appellant/victim has



also not pointed out before PW-5 as to how the respondent no. 2 kept her and she has also not pointed out that she was threatened. In para 34, PW-5 has stated that informant (PW-2) has not stated before him that informant's daughter was being taken away to distant place from her. It is also not pointed out before PW-5 that respondent no. 2 was in love with the informant's daughter for eighteen months and respondent no. 2 would never return informant's daughter. In para 35, PW-5 has stated that informant of the case has not stated before him that when informant read the message, she made phone call to respondent no. 2's mother to which respondent no. 2's mother did not give any direct reply and started making excuses. In para 36, PW-5 has stated that informant of the case has not stated before him that she made phone call to father, brother and brother-in-law of respondent no. 2 but no one gave satisfactory reply. In para 37, PW-5 has stated that informant of the case has not stated before him that she continuously searched her daughter and she went to the house of respondent no. 2 but family members of respondent no. 2 replied that appellant/victim was not of good nature and she went away with the respondent no. 2 due to love affair. In para 39, PW-5 further stated that informant (PW-2) has not stated before him that



informant proceeded for Bairgania border where she found her daughter under a tree who was frightened and was weeping. In para 40, PW-5 further stated that informant has not stated before him that the appellant/victim was not feeling well and it took her fifteen days to recover from illness. In para 41, PW-5 has stated that informant of the case has not stated before him that respondent no. 2 used to assault the appellant/victim and used to make indecent behavior with her and respondent no. 2 did not provide food and put her behind the closed room and asked her to establish physical relationship. It is also not pointed out before PW-5 by the informant (PW-2) that respondent no. 2 used to talk with his father, brother, brother-in-law but did not allow the appellant/victim to talk with anyone. In para 43, PW-5 has stated that neither the mother of appellant/victim nor the appellant/victim gave any statement before him after fifteen days of the appellant/victim's recovery. In para 53, PW-5 has stated that appellant/victim did not give any statement before him that she was not fit mentally and physically so that her statement could be recorded.

24. During the course of cross-examination of Investigating Officer (PW-5), it is clarified by him that the statement of father of appellant/victim i.e. from paragraph 19 to



28, is not corroborated on the point of nervousness of the appellant/victim, visiting the house of respondent no. 2, providing cold drinks and feeding chips, administering intoxicated medicines, taking away the appellant/victim from Delhi to Nepal, talking of respondent no. 2 to his father, mother, brother and brother-in-law through internet and on the point of assaulting the appellant/victim. In this way, statement of PW-3 is of no significance in the light of the improved statements as adduced during the trial.

25. During the course of cross-examination of PW-5, it is also found that statement of mother of appellant/victim (PW-2) is quite contradictory on the point of manner of occurrence, nervousness of the appellant/victim, visiting the house of respondent no. 2, talking of respondent no. 2 to his father, mother, brother and brother-in-law through internet, assaulting the appellant/victim, recovery of appellant/victim and on the point of the treatment meted out to the appellant/victim. In this way, statement of PW-2 is also of no significance in the light of the improved statements as adduced during the trial.

26. During the course of cross-examination of PW-5, it is also found that statement of appellant/victim (PW-1)



is quite contradictory on the point of the threatening the appellant/victim to kill her father and brother and on the point of treatment meted out to the appellant/victim by the respondent no. 2. In this way, statement of PW-1 is also of no significance in the light of the improved statements as adduced during the trial.

27. PW-6 is Dr. Abhilasha Kumari. She stated that on 22.05.2022 she was posted at Sub Divisional Hospital, Danapur as medical officer and on the same day she examined the appellant/victim (PW-1) and made following observations:-

*External Examination:-*

*No sign of external injury all over the body and private part.*

*Abdomen was found soft non-tender within normal limit.*

4. *Per Vaginal Examination- No injury over vulva vagina and monspubis, hymen not intact, no any bleeding or semen discharge around vagina, U.P.T. not done. No undergarments with appellant/victim, no signs of blood over cloth, High vaginal soft taken, slides taken to P.M.C.H. for determination of spermatozoa. Patient sent to P.M.C.H. Patna for U.S.G. lower abdomen for internal injury.*

5. *Received report from P.M.C.H. Report of P.M.C.H.-High Vaginal swab no. 68 dated 26.05.2020, reference no. 744 al 25.05.2022 and reference no. 105 dated 26.05.2022 and*



*it shows spermatozoa not found.*

6. Report of P.M.C.H.-  
Lower U.S.G. Abdomen- U.S. 22 dated  
26.05.2022 showed normal size uterus  
and measure 7.2x2.8 cm. No evidence of  
gestational sac, no free fluid in P.O.D.  
According to U.S.G. No evidence of  
pregnancy.

7- Report of P.M.C.H.  
Radiology- X-ray of both elbow A.P. view  
complete fusion of epiphyses of the  
medial epichondyle of humerus.  
Complete fusion of epiphyses of head of  
radius on both sides. In females  
epiphyses of the medial epichondyle of  
humerus and epiphyses of head of radius  
on both sides fuses at the age of 14 years.

8- X-ray both wrist (A.P.  
view)- Incomplete fusion of distal ulnar  
epiphyses on both sides. Incomplete  
fusion of distal radial epiphyses on both  
sides. In females the distal ulnar  
epiphyses fuse at the age of 17 years.  
Female distal radial epiphyses fuses at  
the age of 16.5 years.

9- X-ray Pelvis (A.P.  
view) Non fusion of the epiphyses of the  
iliac crest on both sides. In females the  
iliac crest epiphyses appear at the age of  
14 years fuses at the age of 17-19 years.

10. X-ray :- There is non  
fusion of the medial and ephysises of the  
clavicle on both sides. In females, the  
ephysises of the medical end of clavicle  
appears at the age of 14-16 years and  
fuse at the age of 20 years.

Conclusion:-

Age of  
appellant/victim :- 14-16 years.



*As there is no sign of external or internal injury all over the body or private part. No spermatozoa found in High Vaginal Swab slide. It is difficult to say whether rape has occurred or not.*

28. On the basis of medical evidence, it is crystal clear that no sexual offence has been committed by the respondent no. 2 against the appellant/victim.

29. The date of occurrence in the present case is 19.01.2022. It is pertinent to note that Act of 2007 has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, ('The Act of 2015' for short). Section 94 of the Act of 2015 lays down the procedure for determining juvenility. Relevant part of sub-section (2) of Section 94, which provides substantially similar procedure as was prescribed under 2007 Rules, reads as under:-

*“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*

*(ii) the birth certificate given by a corporation or a municipal authority or a*



*panchayat;*

*(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:*

*Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.”*

30. In the present case, in para 14 of the examination in chief, PW-2 has specifically pointed out that the age of appellant/victim at the time of occurrence is 15 years and 3 months and she has also disclosed that the date of birth of appellant/victim i.e. 15.09.2006 has been recorded on the basis of school certificate. PW-3 (father of appellant/victim) has also pointed out in para 13 that the date of birth of appellant/victim is 15.09.2006 and he has also stated that the age of appellant/victim is 15 years and 3 months at the time of occurrence and the same was verified by PW-5 (Investigating Officer).



31. Apparently, nothing was disputed by the defence regarding the Exhibit P-8 and the learned trial court while determining the age of appellant/victim, had discussed the statutory provisions and it has been determined as 15 years 4 months and 4 days and the appellant/victim was found to be minor.

32. From the perusal of statements of all the prosecution witnesses, it is crystal clear that appellant/victim has been taken away by the respondent no. 2 and appellant/victim is minor and there is no reason to disbelieve the said fact but other allegations which were added and the statements that have been improved by all the other prosecution witness cannot be taken into account as the Investigating Officer (PW-5) of the case has clearly stated that during the course of cross-examination neither the appellant/victim nor PWs-2 and 3 have made such statements before the Investigating Officer which was first time made before the Court.

33. In order to attract the offence committed under Section 363 of IPC, following are the essential ingredients that must be satisfied:-

- (i) taking or enticing a minor
- (ii) from the lawful guardianship of appellant/victim parents or guardians;



(iii) without their consent.

34. The statement of appellant/victim is that respondent no. 2 persuaded her to sit on cab without permission of lawful guardian, in that situation, at the very juncture, the respondent no. 2 committed the offence under Section 363 of IPC as there is nothing on record to show that respondent no. 2 has taken permission from lawful guardian and without having permission from guardian, the appellant/victim was being deprived from lawful guardian. At that juncture, the respondent no. 2 has committed the offence under Section 363 of IPC. The very statement of regaining consciousness was not found in the early statement regarding under Section 164 of Cr.P.C. From the version of appellant/victim, it is crystal clear that respondent no. 2 and appellant/victim both left house and respondent no. 2 being major without consent of lawful guardian took away the appellant/victim and appellant/victim is minor.

35. The statement of appellant/victim cannot be disbelieved but in order to constitute the offence under Section 363 of IPC the appellant/victim must be minor and she must be taken away without consent of guardian.

36. The learned trial court while deciding the age of appellant/victim on the basis of Marks Statement cum Certificate, Secondary School Examination, 2021 issued by



Central Board of Secondary Education which is marked as Ext-P/8 where the date of birth is indicated as 15-09-2006, has given the finding on the basis of statutory requirement and the learned trial court has recorded in para 19 of the impugned judgment that the appellant/victim was minor on the alleged date of occurrence on the basis of certificate issued by Central Board of Secondary Education on the alleged date of occurrence which is exhibited as Exhibit P-8. Hence, there is no reason to differ from the finding given by the concerned court.

37. A careful scrutiny of the evidence of PW-1 (appellant/victim), PW-2 (informant-mother) and PW-3 (father), when tested against the testimony of PW-5, the Investigating Officer, reveals that several material facts deposed for the first time before the Court were never stated to the Investigating Officer under Section 161 Cr.P.C. These omissions are not minor but strike at the root of credibility, as they relate to the manner of occurrence, alleged intoxication, sexual misconduct, threats, confinement, recovery and subsequent conduct of the accused.

38. The Investigating Officer has categorically stated during cross-examination that none of the following allegations were disclosed to him:



(i) That the appellant/victim was forcibly stopped on the way, misled by a false assertion that coaching was closed, or induced by stating that permission had been obtained from her father.

(ii) That the appellant/victim was administered cold drinks, chips or any intoxicating substance, resulting in loss of consciousness.

(iii) That the appellant/victim was subjected to sexual assault, indecent behaviour, confinement, or forced physical relations, or that medicines were administered to make her "adult".

(iv) That the appellant/victim was threatened with harm to her father or brother.

(v) That the appellant/victim was taken to multiple places including Delhi, Motihari and Nepal, or confined at any particular place for a prolonged duration.

(vi) That the respondent no. 2 restricted the appellant/victim's communication while respondent no. 2 freely communicating with his family members.

(vii) That the family members of respondent no. 2 abused PW-3, claimed that the respondent no. 2 would marry the appellant/victim, or obstructed recovery.



(viii) That the appellant/victim was recovered in a frightened or ill condition, required prolonged recovery, or was mentally unfit to make a statement immediately.

(ix) That repeated visits were made to the police station or that extensive search efforts were undertaken beyond the initial complaint.

39. PW-5 has consistently deposed that none of these allegations were stated either by the appellant/victim or by PW-2 and PW-3 at the stage of investigation, and that these assertions surfaced for the first time during deposition before the Court.

40. Such omissions amount to material contradictions and improvements, rather than mere elaborations, particularly as they introduce new incriminating circumstances which were wholly absent from the earliest version of the prosecution case. The medical evidence further fails to support allegations of assault or intoxication.

41. Accordingly, while the core fact of the appellant/victim being taken away stands established, the subsequent narrative relating to intoxication, sexual misconduct, threats, confinement and recovery is clearly an afterthought, unsupported by contemporaneous statements and contradicted



by the Investigating Officer.

42. From the perusal of statement recorded under 164 of Cr.P.C of PW-1 (appellant/victim), it is clear that the respondent no. 2 has taken away appellant/victim and appellant/victim is minor and the informant has already stated that her daughter was taken away by the respondent no. 2, as per the version of prosecution story. On the core aspect of prosecution story, in order to constitute the offence under Section 363 of IPC, it is quite evident that appellant/victim is minor and the statement of appellant/victim is quite consistent that respondent no. 2 is said to have taken away her without permission of her lawful guardians. The statement of appellant/victim recorded under Section 164 of Cr.P.C. as well as evidence adduced by appellant/victim in court, one thing is quite clear that no consent was taken and appellant/victim was being deprived of her legal guardianship and on the basis of said aspect, the statements of appellant/victim/PW-1 as well as other prosecution witnesses (PW-2 and PW-3) are quite consistent. But on the point of administering intoxicated medicine to appellant/victim and wrong act committed with the appellant/victim and that she was assaulted by respondent no. 2, on all the said aspects, her statement is totally negated by PW-5



(Investigating Officer). On the point of fainted condition of appellant/victim as stated by appellant/victim's father, appellant/victim was provided cold drinks and intoxicated materials and the said statements were not stated by appellant/victim's father before the Investigating Officer (PW-5) and the said statements are denied by Investigating Officer (PW-5). In the cross-examination of PW-5, even appellant/victim's mother has not stated in clear terms that the respondent no. 2 committed sexual assault with the appellant/victim and in statement recorded under Section 164 of Cr.P.C., appellant/victim herself stated that no wrong act was committed by the respondent no. 2 against her. In this way, the allegation that respondent no. 2 has committed any wrong act against the appellant/victim was not proved.

43. The learned trial court has well discussed the reasoning as to why POCSO Act is not attracted against the respondent no. 2. From the statement of appellant/victim recorded under Section 164 of Cr.P.C., it is crystal clear that respondent no. 2 has not committed any wrong against the appellant/victim but the said statement has been improved during the course of adducing the evidence before the Court. The appellant/victim has stated in the statement recorded under



Section 164 that the respondent no. 2 met the appellant/victim in the way and offered for tour and appellant/victim has made query regarding the permission of her father. From the perusal of the statement of appellant/victim recorded under Section 164 of Cr.P.C. as well as her statement while adducing evidence before Court, it is crystal clear that she has been taken away by the respondent no. 2 without permission of her guardian and the same is supported by initial version of prosecution story and coupled with material available on record, the respondent no. 2 is said to have taken away the appellant/victim without permission and to that extent the concerned court has also recorded the finding and the respondent no. 2 has been held guilty under Section 363 of IPC and there is no reason to differ from the finding of the concerned court. There was no material for proving the accusation under Section 12 of the POCSO Act as appellant/victim has already denied under Section 164 of Cr.P.C. that any wrong act was committed against the appellant/victim (PW-1) by the respondent no. 2. It is further stated by the appellant/victim that no intoxicated material was administered to her and she had not lost her consciousness at any point of time and the statement of PW-2 and PW-3 have been improved which was earlier not stated by them before the



Investigating Officer and it is crystal clear from the statement of Investigating Officer (PW-5) that on the point of other accusations there was no material except taking away of the appellant/victim by the respondent no. 2.

44. It is relevant to quote Section 372 of Cr.P.C. which reads as under:-

"372. No appeal to lie unless otherwise provided.

- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

45. A reading of the proviso makes it clear that so far as the victim's right of the appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity



to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377 Cr.PC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence.

46. In view of the above, the submission of learned counsel for the appellant/victim that the sentence awarded under Section-363 of I.P.C. should be maximized is not maintainable as it has already been decided by the Hon'ble Supreme Court in catena of judgments including in the case of *National Commission for Women Vs. State of Delhi & Anr.* reported in *(2010) 12 SCC 599*. Another contention of the appellant/victim's counsel is that Section 12 of the POCSO should be added for the purpose of conviction and sentence and he has submitted that the prosecution has proved the case under Section 12 of the POCSO Act, but, in view of the discussion made above, so far as the evidence of Investigating Officer is concerned, it has been clearly negated that any wrong act was



committed against the appellant/victim by the respondent No. 2.

47. Upon an overall appreciation of the evidence on record, the testimony of PW-1 (appellant/victim), PW-2 (informant-mother) and PW-3 (father), to the extent it relates to the core occurrence, inspires confidence and remains unshaken by cross-examination. The following aspects of their evidence are consistent, corroborative and legally reliable:

(i) All three witnesses are *ad idem* that on 19.01.2022, the appellant/victim, a minor girl, left her parental home in the morning for the purpose of attending coaching classes and did not return thereafter.

(ii) The evidence of PW-1 clearly establishes that she accompanied the respondent no. 2 and remained away from her parents for a considerable period. PW-2 and PW-3 have consistently asserted that their minor daughter was taken away by the respondent no. 2, and this fact forms the gravamen of the FIR and the earliest version of the prosecution case.

(iii) PW-2 and PW-3 have unequivocally deposed that no consent was ever given to the respondent no. 2 to take their minor daughter away from their lawful guardianship. This assertion has remained intact throughout the trial and has not been contradicted by the Investigating Officer.



(iv) The minority of the appellant/victim on the date of occurrence stands conclusively proved through the school certificate (Ext. P-8), corroborated by the oral testimony of PW-2 and PW-3 and verified by PW-5. The age of the appellant/victim was not disputed by the defence at any stage.

(v) The factum of recovery and return of the appellant/victim to her parents is admitted by PW-1, PW-2 and PW-3 and is duly supported by the investigation. There is no dispute with regard to the identity of the appellant/victim or her eventual restoration to parental custody.

(vi) The prompt lodging of the FIR by PW-2 alleging the taking away of a minor girl lends credence to the prosecution version and rules out any possibility of false implication or subsequent fabrication on the core aspect of the case.

48. To the aforesaid extent, the testimonies of PW-1, PW-2 and PW-3 are natural, probable and mutually corroborative, and are further supported by documentary and investigative evidence. These aspects collectively satisfy the essential ingredients of Section 363 IPC, namely, that a minor was taken away from the lawful guardianship of her parents without their consent.



49. On all counts, from the aforesaid analysis, I find that while passing the order of sentence awarded by the concerned court, it is found that there is no criminal antecedent of the respondent no. 2 and he is not habitual offender as there is nothing on record that he is a criminal offender. While passing the order of sentence, the concerned court has awarded four years rigorous imprisonment under Section 363 of IPC and under other Sections accused/respondent No.2 has been acquitted and the reason as assigned by the learned trial court is quite relevant with the facts and circumstances of the case and on the basis of material available on record.

50. Accordingly, I find no reason to differ with the findings given by the learned trial court. Accordingly, the impugned judgment of conviction and order of sentence passed by the learned trial court is hereby affirmed.

51. In the result, the present appeal stands dismissed at the stage of admission itself.

52. Pending Interlocutory Application(s), if any, shall stand disposed of.

53. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.



54. The records of this case be also returned to  
the concerned trial court forthwith.

**(Alok Kumar Pandey, J)**

alok/-

<b>AFR/NAFR</b>	AFR
<b>CAV DATE</b>	27.11.2025
<b>Uploading Date</b>	20.01.2026
<b>Transmission Date</b>	20.01.2026

