



GANG010018532018

Presented on: 18.07.2018

Registered on: 20.07.2018

Decided on : 11.02.2026

Duration: Yrs. Mths. Dys.

7 6 22

**Part 'A'**

	<b>IN THE COURT OF SESSIONS JUDGE, NORTH GOA, TISWADI-MERCES.</b> <b>Present:</b> Shri Irshad Agha, Sessions Judge, North Goa, Merces.
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	[Date of the Judgment: 11.02.2026 [Sessions Case (Ors) No.45/2018] (Charge-sheet 14/2018 dated 18/07/2018	
Complainant		State (Through Women Police Station, Panaji) Name of the Investigating Officer. Ms. Sudiksha S. Naik.

		Name of the complainant. (Name withheld)
Represented by		<b>Name of the P.Ps.</b> Ms. Simoes, Ms. P. Bharne, Ms. Nita Marathe, Shri R. D'Souza, Shri L. Fernandes, Ms. A. Mendonza, Shri V. G. Costa, Ms. S. Mandrekar, Ms. A. Taulikar, Shri Roy D'Souza and Ms. A. Bhobe.
Accused		1. Shri Atanasio Teoflio Martins Monserate alias Babush Monserate, s/o. Joe Monserate, r/o. Taleigao, Panaji.  2. Ms. Rosaria @ Rosy Ferros, w/o. late Benjamin Alvaro Ferros, r/o. H.No.546, Mitra Bazar, near petrol pump, Caranzalem.
Represented by		<b>Name of the Advocate:</b> Accused no.1 represented by Advocate Shri D. Dhond and Shri S. Nasnolkar. Accused no.2 represented by Shri A. Kurtarkar.

**Part 'B'**

Date of offence	March and April 2016
Date of FIR	04.05.2016
Date of Charge-sheet	18.07.2018
Date of framing of Charges	26.09.2019
Date of commencement of evidence	21.06.2023
Date on which Judgment is	-

reserved	
Date of the Judgment	11.02.2026
Date of the Sentencing Order, if any	-

## Accused Details

Rank of the Accused	Name of the Accused	Date of arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of Section 428, Cr.P. C.
1	Shri Atanasio Teoflio Martins Monserrate alias Babush Monserrate.	05.05.2016	18.05.2016	376, 342, 506 r/w 34 IPC and Sec. 4 of POCSO Act and Sec. 67B IT Act, 2000	Acquitted	NA	13 days
2	Ms. Rosaria @ Rosy Ferros	7.5.2016	18.05.2016	376, 342, 506 r/w 34 IPC and Sec. 4 of POCSO Act and Sec. 67B	Acquitted	NA	11 days

				IT Act, 2000			
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**Part 'C'****LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
PW1	Harshad Mandrekar	Pancha witness
PW2	Suzana D'Souza	Police witness
PW3	Dr. (Mrs.) Ketan S. Sukhthankar	Medical witness
PW4	Dr. (Mrs.) Ankita Sinai Borkar (Maidan Name Dr. Ankita Joshi)	Medical witness
PW5	XXX (name withheld)	Victim/complainant
PW6	Dilip Ghadi	Pancha witness
PW7	Murlidhar Gawli	Pancha witness
PW8	Ms. Suchita Shankar	Pancha witness

	Kankonkar	
PW9	Naguesh Ravindra	Police witness
PW10	Ms. Joaquina Monteiro	Police witness
PW11	Ms. Maria Monteiro	Police witness
PW12	Ms. Ashwini Naik	Pancha witness
PW13	Sr. Celine Pinto	Police witness
PW14	Bharat Dattu Patil	Police witness
PW15	Vasu Sawant	Police witness
PW16	Nilesh Naik	Police witness
PW17	Mahendra Bhandari	Police witness
PW18	Rajesh Job	Police witness
PW19	Dr. Madhu Ghodkirekar	Medical witness
PW20	Dr. Sanjay Sardessai	Medical witness
PW21	ZZZ(name withheld)	Cousin sister of the witness
PW22	Ms. Evelyn Fernandes	Police witness
PW23	Shri Royston Braganza	Police witness
PW24	Shri Vishwesh Karpe	Investigating officer
PW25	Ms. Rashmi Rajendra Bhaidkar	Police witness
PW26	Laxi Amonkar G.	Investigating officer
PW27	Dattaguru Sawant	Police witness

PW28	P. N. Ramakrishnan	Expert witness
PW29	Sudiksha Naik	Investigating officer

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
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**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
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**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS****A Prosecution:**

Sr.No.	Exhibit Number	Description
1.	Exhibit C-79	Deposition of PW1
2.	Exhibit C-80	Deposition of PW2
3.	Exhibit C-81	Deposition of PW3
4.	Exhibit C-82	Deposition of PW4
5.	Exhibit C-83	Deposition of PW5
6.	Exhibit C-85	Deposition of PW6
7.	Exhibit C-86	Deposition of PW7
8.	Exhibit C-87	Deposition of PW8
9.	Exhibit C-88	Deposition of PW9
10.	Exhibit C-89	Deposition of PW10
11.	Exhibit C-91	Deposition of PW11
12.	Exhibit C-99	Deposition of PW12
13.	Exhibit C-100	Deposition of PW13
14.	Exhibit C-101	Deposition of PW14
15.	Exhibit C-103	Deposition of PW15
16.	Exhibit C-107	Deposition of PW16
17.	Exhibit C-109	Deposition of PW17
18.	Exhibit C-112	Deposition of PW18
19.	Exhibit C-119	Deposition of PW19
20.	Exhibit C-120	Deposition of PW20
21.	Exhibit C-124	Deposition of PW21
22.	Exhibit C-126	Deposition of PW22
23.	Exhibit C-137	Deposition of PW23
24.	Exhibit C-138	Deposition of PW24
25.	Exhibit C-139	Deposition of PW25
26.	Exhibit C-139a	Deposition of PW26
27.	Exhibit C-140	Deposition of PW27
28.	Exhibit C-142	Deposition of PW28
29.	Exhibit C-143	Deposition of PW29

**B. Defence:**

Sr.No.	Exhibit Number	Description
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**C. Court Exhibits:**

Sr.No .	Exhibit Number	Description
1.	Exhibit C-1	Charge-sheet
2.	Exhibit C-2	FIR
3.	Exhibit C-19	Charges
4.	Exhibit C-20	Plea of accused no.1.
5.	Exhibit C-21	Plea of accused no.2.
6.	Exhibit P-1/Pw1	Attachment panchanama dated 4.5.2016
7.	Exhibit P-2 colly/Pw2	Scene of offence panchanama dt.5.5.2016 and rough sketch.
8.	Exhibit P-3/Pw3	Blood group report of the victim of the victim
9.	Exhibit P-4/Pw4	Letter dated 04.05.2016 to the CMO, GMC Bambolim request for medical examination of the victim.
10.	Exhibit P-5/Pw4	Consent for medical examination of the victim.
11.	Exhibit P-6/Pw4	Report of medical examination of victim
12.	Exhibit P-7/Pw4	Carbon copy of letter addressed to the Incharge Medical Officer Blood Bank GMC, Bambolim to perform ABO and RH blood grouping of the victim.
13.	Exhibit P-8/Pw5	Handwritten statement of the victim dated 04.05.2016
14.	Exhibit P-9/Pw6	Arrest panchanama dated 05.05.2016
15.	Exhibit P-10/Pw6	Panchanama dated 10.05.2016
16.	Exhibit P-11/Pw8	Arrest panchanama dated 07.05.2016



17.	Exhibit P-12/Pw12	Panchanama dated 10.05.2016
18.	Exhibit P-13 colly/Pw12	Device data report of oxygen software along with the photographs
19.	Exhibit P-14 colly/Pw12	Device data report containing 13 pages
20.	Exhibit P-15/Pw12	Second panchanama dated 10.05.2016
21.	Exhibit P-16/Pw13	Letter dated 10.05.2016 issued by PI Women Police Station dated 10.05.2016 to the Principal Axxx High School, Caranzalem, Goa.
22.	Exhibit P-17 colly/Pw13	Letter dated 11.05.2016 of Headmistress Axxx High School addressed to the Police Inspector Women Police Station, Panaji, Goa along with leaving certificate of St. Cruz High School.
23.	Exhibit P-18 colly/Pw14	Letter dated 20.05.2016 along with certificate under Section 65B of the Evidence Act.
24.	Exhibit P-19colly/Pw14	7 photographs
25.	Exhibit P-20/Pw14	CD containing 7 photographs
26.	Exhibit P-21/Pw15	Certificate dated 11.04.2018 under Section 65B of the Indian Evidence Act
27.	Exhibit P-22 colly/Pw15	8 photographs along with CD.
28.	Exhibit P-23 colly/Pw16	Letter dated 06.05.2016 along with certificate under Section 65B of the Indian

		Evidence Act.
29.	Exhibit P-24 colly/Pw16	28 photographs.
30.	Exhibit P-25/Pw16	CD containing photographs
31.	Exhibit P-26 colly/Pw17	Letter dated 07.05.2016 along with certificate under Section 65B f the Indian Evidence Act.
32.	Exhibit P-27 colly/Pw17	CD and photographs
33.	Exhibit P-28 colly/Pw18	Two letters dated 10.05.2016 of PI Women Police Station addressed to PI Cyber Crime Police Station, Ribandar, Goa request to furnish cloning information of attached mobile and certificates under Section 65B of the Indian Evidence Act.
34.	Exhibit P-29 colly/Pw18	Letter dated 11.05.2016 alongwith examination report no.03/2016 dated 11.05.2016 and report no.04/2016 dated 11.05.2016
35.	Exhibit P-30 colly/Pw19	Request letter dated 06.05.2016, consent form for medical examination of accused no.1, examination report of accused no.1, letters to IPHB, Department of Medicine, GMC, letter to Department of Skin and VD, letter to Department of surgery, Orthopaedic department, blood bank of

		GMC and Form of forwarding Viscera.
36.	Exhibit P-31/Pw19	Letter dated 11.05.2016 addressed to the Medical Officer, Forensic Medicine Department GMC, Bambolim request for medical examination.
37.	Exhibit P-32/Pw19	Request letter for assessment of dental age of victim girl.
38.	Exhibit P-33/Pw19	Request letter for assessment of radiological age of victim girl.
39.	Exhibit P-34 colly/Pw19	Report dated 11.05.2016 of age estimation and report of medical examination for assessment of age in females
40.	Exhibit P-35/Pw19	Assessment of radiological age prepared by Dr. Sanjay Sardesai dated 12.05.2016 Annexure B
41.	Exhibit P-36/Pw19	Letter dated 10.05.2016 of PI, Women Police Station to the police surgeon Forensic Department GMC request for medical examination of the victim.
42.	Exhibit P-37/Pw19	Consent for medical examination of the victim.
43.	Exhibit P-38/Pw19	Letter dated 10.05.2016 of PI, Women Police Station to the police surgeon Forensic Department GMC request for medical examination of the accused Antanasio Monserrate and consent for medical examination of the

		accused Antanasio Monserrate.
44.	Exhibit P-39 colly/Pw19	Appendix I Forwarding note, Biological sample authentication card of victim and accused no.1
45.	Exhibit P-40/Pw22	Counseling follow up report dated 26.04.2016
46.	Exhibit P-41 (in cross)/Pw22	Photo copy of initial interaction report.
47.	Exhibit P-42 /Pw23	Panchanama dated 11.04.2018
48.	Exhibit P-43/Pw24	Attachment panchanama
49.	Exhibit P-44/Pw25	Letter of YYY (name withheld) to PI Panaji Police Station Panaji requesting to take necessary action
50.	Exhibit P-45/Pw25	Letter dated 11.04.2016 addressed to the Chairperson, Child Welfare Committee Apna Ghar, Merces Goa request for Orders to admit the victim
51.	Exhibit P-46/Pw25	Admission letter 11.04.2016 of the victim.
52.	Exhibit P-47 colly/Pw28	Covering letter and the forwarding note
53.	Exhibit P-48/Pw28	Report dated 15.02.2017
54.	Exhibit P-49/Pw28	Copy of acknowledgement letter
55.	Exhibit P-50 colly/Pw28	Covering letter and Appendix I forwarding note
56.	Exhibit P-51/Pw28	Report dated 31.07.2018

57.	Exhibit P- 52 colly/Pw29	Copy of forwarding note dated 05.05.2016 and the form
58.	Exhibit P- 53/Pw29	Letter no.PI/WPS/Pan/Cr.No.100-16/921/2016 dated 05.05.2016 request to record statement of the victim under Section 164 of Cr.P.C.
59.	Exhibit P- 54/Pw29	Panchanama dated 07.05.2016
60.	Exhibit P-29 55 colly/Pw29	Covering letter of the doctor and the medical report.
61.	Exhibit P- 56 colly/Pw29	Letter dated 10.05.2016 No.PI/WPS/PPS/CR/983/2016 with a request to forward Exhibits to CFSL Hyderabad for examination and report.
62.	Exhibit P- 57/Pw29	True copy of letter dated 10/05/2016 vide no.SP/Crime/PS/Cr.No.100-16/914/2016 by SP Crime Shri Kartik Kashyap to the Director, CFSL, Hyderabad.
63	Exhibit P- 58/Pw29	Acknowledgement of case/Exhibits dated 11.05.2016 case no.CFSL(H)/714/Bio/132/2016.
64.	Exhibit P- 59/Pw29	Letter no.PI/WPS/Cr.No.100-16/1000/2016 to the Executive Engineer requesting to depute a draftsman to draw a sketch.
65.	Exhibit P- 60/Pw29	Letter no.107/PWD/WDV(BN)/SD-

		I/2016-17/81 from the Assistant Engineer PWD requesting to contact draftsman for inspection
66.	Exhibit P- 61/Pw29	Letter no.PW/WPS/Cr. 100-16/1107/2016 to SP Crime Ribandar requesting to forward the Exhibits.
67.	Exhibit P- 62 colly/Pw29	Letter no.107/PWD/WDV/(BN)/SD-1/2016-17/110 from the Asst. Engineer PWD Panaji enclosing the sketch showing details.
68.	Exhibit P- 63/Pw29	Letter dated 04.08.2016 vide no.CJJD/PAN/VL/2016/03 forwarding the supplementary statement of the victim.
69.	Exhibit P- 64/Pw29	Letter no.PI/WPS/PAN-Cr.100/16/2958/2016 to the Superintendent of Police, Crime Ribandar requesting to provide the hard copy of SDR/CDR and CAF form of the following mobile numbers.
70.	Exhibit P- 65/Pw29	Letter addressed to Vodafone.
71.	Exhibit P- 66/Pw29	Letter addressed to Idea Cellular
72.	Exhibit P- 67/Pw29	Examination report no.CFSL(H)/714/Bio/132/2016 dated 30.12.2016 from CFSL Hyderabad.
73.	Exhibit P- 68 colly/Pw29	Details of mobile no.9822100010 along with

		subscription documents, call details and certificate under Section 65 of the Indian Evidence Act.
74.	Exhibit P-69/Pw29	Letter no.PI/WPS/Cr.100-16/2176/2018 to re-forward one sealed envelope.
75.	Exhibit P-70 colly/Pw29	CDR and SDR of 9764306138
76.	Exhibit P-71 colly/Pw29	CDR and SDR of mobile no.9823931713 for the period from 01.02.2016 to 04.05.2016.
77.	Exhibit 149	313 statement of accused no.1
78.	Exhibit 150	313 statement of accused no.2

#### **D. Material Objects:**

Sr.No.	Material Object Number	Description
1	EX.1	One sealed envelope containing one panty and marked as Exhibit-1
2	EX.2	One sealed envelope containing one short pant marked as Exhibit-2.
3	EX.3	One sealed envelope containing one short pant and marked as Exhibit-3
4	EX.4	One sealed envelope containing on top marked as Exhibit-4
5	EX.5	One sealed envelope containing one jean pant marked as Exhibit-5
6	EX.6	One sealed envelope contains on Bra marked as Exhibit-6.
7	EX.7	One sealed envelope containing

		blouse (jeans sleeveless jacket and marked as Exhibit-7
8	EX.8	One sealed envelope containing one top marked as Exhibit-8.
9	EX.9	One sealed envelope containing shoulder bag and marked as Exhibit-9.
10	A	One sealed envelope containing bed sheet and marked as Exhibit A1
11	B	One sealed envelope containing bed sheet and marked as Exhibit B-1.
12	D1	One sealed envelope contains one Samsung Galaxy S6 EDGE LTE-A mobile phone having IMEI No.359670066331171 along with battery and one Idea SIM card and marked Ex.D1
13	K1	One sealed envelope containing one digital video recorder make "Ahua" technology model no.DH-DVR3116 and marked as Ex-K1.
14	R1	One sealed envelope containing one mobile phone Samsung 4G Duos, Model-SM-J700F/DD, IMEI no.356273/07/567064/5, S.No.RZ8H10GTASV along with battery and one 4GB Micro SD card and marked as Ex-R1.
15	R2	One sealed envelope containing one mobile phone make Samsung galaxy grand 2 Duos (SM-G7102) having IMEI No.352310/06/1700760 & 352310061700768 along with battery and one Vodafone sim card marked as Ex-R2.



16	J1	One sealed envelope containing one digital video recorder make “Ahua” technology model no.DH-HCVR4116 HS-52 and marked as EX-J1
17	A	One sealed envelope containing vaginal swabs (2) and marked as Exhibit A
18	B	One sealed envelope containing vaginal smear slides (2) marked as Exhibit B
19	M	One sealed envelope containing Urethral swabs (2) Antanasio Monserrate and marked as Exhibit-M.
20	N	One sealed envelope containing Urethral smear slides (2) Antanasio Monserrate and marked as Exhibit-N.
21	O	Sealed envelope containing pubic hair (Antanasio Monserrate marked as Exhibit-O.
22	R	One sealed EDTA vial contain liquid blood of accused and marked as Exhibit-R.
23	R1	One sealed EDTA vial containing liquid blood of victim girl and marked as Exhibit R1.
24	-	One cloth lined envelope containing 1. Print out of downloaded messages between Dilip Dias & Tanya. 2. Print out of downloaded messaged between victim and Shabir Attar. 3. One calendar for year 2016 of Rajesh Roadline Pvt. Ltd. 4. One diary for year 2016 of LIC and 5. Colour

		print out of screen shot of chat messages of Dilip Dias & Tanya.
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### **J U D G M E N T**

(Delivered on this 11<sup>th</sup> day of the month of February of the year 2026)

1. The charge against accused nos.1 and 2 is that both accused nos.1 and 2 in furtherance of their common intention, accused no.2 enticed the minor complainant XXX(name withheld) by offering her costly gifts such as mobile phone, dresses etc and induced the victim/complainant XXX(name withheld) who is minor in age to send her dirty pictures/photographs to accused no.1 and threatened her that if she does not send dirty pictures/photographs to accused no.1 he would finish victim complainant's family. That due to fear of life, the victim girl sent half nude pictures/photographs to accused no.1 from her mobile phone bearing no.9764306138 which was gifted by accused no.2 to mobile number 9822100010 of accused no.1 through whatsapp. Further accused no.2 told the victim/complainant that her mother

had already sold her to accused no.1 and forced her to go to the house of accused no.1 and meet him and accused no.1 would give her flat, motorbike and if the victim/complainant does not listen, accused no.2 will upload half nude pictures/photographs of the victim/complainant on the face book. Further accused no.2 for monetary gains by putting the victim/complainant under fear made her to go to the farm house of accused no.1 at Taleigao Panaji where accused no.1 confined her in his farm house and had sexual intercourse with the minor victim girl. Hence it is alleged that both accused nos.1 and 2 have committed an offences punishable under Sections 376, 342, 506 read with 34 IPC and Section 4 of POCSO and 67B of Information and Technology Act 2000.

2. Charge-sheet was filed before the Court of Magistrate. Since the offences were triable by a Special Judge, the matter was transferred to the Sessions Court. In view of the directions issued by the Hon'ble Supreme

Court, Special Court was constituted and the proceedings were transferred to the Special Court. It was confirmed that the case papers were duly submitted to the accused persons in compliance with Section 209 of Cr.P.C. An Order was also passed to frame charge against the accused persons for the above offences. After giving fair opportunity to accused nos.1 and 2 to present their case, charge was framed and explained to the accused persons and substance of accusation came to be recorded. Both the accused persons pleaded not guilty and hence trial proceeded. Prosecution had listed around 51 witnesses and preferred to examine only 29 witnesses.

3. PW1 Harshad Mandrekar was a pancha witness to the attachment panchanama which was conducted on 04.05.2016 in the house of Joaquina whereby the clothes of the victim girl were attached. PW2 Suzan D'Souza is a pancha witness to the scene of offence panchanama which was conducted on 05.05.2016 in connection with sexual abuse case at the residence of accused no.1 at Dondrem

Taleigao in the presence of other panchas, SP Kartik Kasyap, Dy.S.P. Serafin Dias, PI Sudiksha Naik, PSI Mohini, one Jyoti from Apna Ghar who is the caretaker at Apna Ghar, other police personnel and police photographer. PW3 Dr. Mrs. Ketan S. Sukhthankar is an Assistant Lecturer, Department of pathology. The victim girl XXX (name withheld) was referred to pathology department from department of gynecology by Dr. Ankita Joshi for the purpose of blood grouping. PW3 noted identification marks of the victim girl and the blood was extracted by a technician under her supervision and the victim blood group was detected as AB Rh positive.

4. PW4 Dr. (Mrs.) Ankita Sinai Borkar was working as a Senior Resident in the department of Obstetrics and Gynaecology in GMC. She received a letter dated 04.05.2016 from the Women Police Station Panaji addressed to Chief Medical Officer (CMO) with a request for medical examination for sexual offences in respect of the victim. The victim girl was referred for the purpose of

examination at 12.35 am and she took consent for medical examination of the victim girl in the presence of Dr. Tanvi Gaonkar and at around 12.40 am she examined the victim and noted certain identification marks and gave her opinion. She opined that on physical/genital examination, there is evidence of genital penetration like that in sexual intercourse and she preserved vaginal swabs/smear slides for serological examination and referred the victim girl to blood bank for blood grouping and Rh typing.

5. PW5 is the victim girl. PW6 Dilip Ghadi along with his friend PW7 Murlidhar Gawli had gone to the lunch at around 2.00 to 2.30 pm and at that time they were requested to act as pancha witness to the arrest panchanama which was conducted on 05.05.2016 between 18.10 hours to 19.30 hours and again on 10.05.2016 both of them also acted as pancha witness to the panchanama which was conducted at Hxxx (name withheld (Heartline) Cards and Gifts shop Miramar Goa between 13.20 hours to 15.15 hours.

6. PW8 Ms. Suchita Shankar Kankonkar and PW9 Naguesh Ravindra acted as pancha witness to the panchanama conducted on 07.05.2016 wherein accused no.2 was arrested and two mobile phones with dual sim card were attached.

7. PW10 Ms. Joaquina Monteiro is the friend of the victim girl from whose house the clothes of the victim girl were attached under the panchanama. PW11 Ms. Maria Monteiro is the mother of PW10 Joaquina Monteiro. PW12 Ms. Ashwini Naik acted as pancha witness to the panchanamas conducted on 10.05.2016 for the purpose of access of the mobiles at the Cyber Forensic Laboratory Ribandar. PW13 Sr. Celine Pinto is a headmistress at Axxx (name withheld) High School Caranzalem. PW14 Bharat Dattu Patil is a police constable and a photographer attached to the Finger Print Bureau, Verna. He clicked 7 photographs of the clothes of the victim girl from the house of PW10 and PW11. PW15 Vasu Sawant is a police constable attached to Women Police Station Panaji he

clicked photographs during the panchanama which was conducted on 11.04.2018 at Crime Branch Ribandar Goa. PW16 Nilesh Naik is a police constable and was working at police photography Unit, Police Headquarters, Panaji Goa which is under Crime Branch Ribandar and at the request of the incharge of the Photography Unit Mahendra Bhandari he had clicked 28 photographs of the scene of offence in the presence of police staff, pancha witnesses, scientific team, finger print expert and the victim showing the house.

8. PW17 Mahendra Bhandari was working as PSI police photographer at the Goa Photography Unit Crime Branch Police Headquarters, Panaji, Goa and on instructions of PI Sudiksha Naik of the Women Police Station Panaji he clicked 5 photographs at Veranda Do-Mar near Goa Science Centre, Miramar. PW18 Rajesh Job was posted as an incharge of the Cyber Crime police station at Ribandar Goa in the year 2016. On 05.05.2016 at the request of PW29 he collected call data records,



subscriber data records and customer application form copy of four different mobile numbers and forwarded the same to the incharge of the Women Police Station Panaji.

9. PW19 Dr. Madhu Ghodkirekar was an Associate Professor in the Department of Forensic Medicine GMC. He conducted medical examination of accused no.1 on 06.08.2016. PW20 Dr. Sanjay Sardesai an Associate Professor in the Department of Radiology, Goa Medical College, Bambolim examined the victim girl on 12.05.2016 to ascertain her radiological age. PW21 (name withheld) is a cousin sister of the victim girl. PW22 Ms. Evelyn Fernandes was attached to the Women and Child Welfare Department and posted in Apna Ghar Mercedes. She had interaction with the victim girl at the instruction of Counselor Nithila Gawas and submitted her initial report to CWC through Deputy Director of Apna Ghar. The victim girl was interacted at the Apna Ghar. She also interacted the victim girl on 23.04.2016 and finally submitted counseling follow up report dated 26.04.2016

of the victim girl to the Deputy Director of Apna Ghar Merces Goa.

10. PW23 Shri Royston Braganza is a pancha witness to a panchanama conducted on 11.04.2018 at Crime Branch Ribandar whereby Samsung Galaxy S6 Edge mobile was attached. PW24 Shri Vishwesh Karpe was attached to Crime Branch Police Station Ribandar as PI in the year 2016 and he had conducted panchanama in shop no.8, 9 and 10 Hxxx (name withheld) Gallery Kamat Mansion, Miramar Panaji along with pancha witnesses namely Ritesh Kalangutkar and Anup Naik and attached DVR.

11. PW25 Ms. Rashmi Rajendra Bhaidkar was attached to the Panaji Police Station as LPSI and on 11.04.2016 at 18.00 hours when he was on duty a call was received from PSI Bagkar informing that a lady needs police help at Miramar and accordingly Robot IV was diverted to Miramar and at around 20.45 hours the victim girl and her mother were brought to the police station. On the

complaint of the mother of the victim girl she contacted NGO Vahida and got the victim girl admitted in Apna Ghar.

12. PW26 Laxi G. Amonkar was attached to the Crime Branch Ribandar as Police Sub Inspector and carried out part investigation and recorded statement of some witnesses. PW27 Dattaguru Sawant was attached to the Crime Branch Ribandar as a Police Inspector and on 05.05.2016 he arrested accused no.1 in the presence panchas PW6 Dilip Ghadi and PW7 Murlidhar Gawli and attached mobile phone of accused no.1. He also recorded the statement of PW11 Joaquina Monteiro on 10.04.2016 at 7.45 am and also conducted panchanama at Hxxx (name withheld) Cards and Gifts Shop at Miramar in the presence of same panchas. PW28 P. N. Ramakrishnan is an expert from CFSL Chandigarh who had examined four mobile phones and DVR and submitted his report. PW29 Sudiksha Naik is the investigating officer in the present case.

13. Submissions advanced by Ld. P.P. Shri R. D'Souza are as follows:-

(a) He took me through the Provisions of Section 3, 4 and 29 of the POCSO Act. He also pointed out the offences committed by accused no.1. He also took me through the evidence of all the material witnesses. The evidence brought on record shows that accused no.1 with the help of accused no.2 brought victim girl to his house and after offering some drink the victim girl fell asleep and he took advantage and raped her.

(b) The place where actual rape was conducted has been identified by the witnesses and the place has been clearly explained by the pancha witnesses. The bed sheet which was on the bed in the said house was attached and semen was found.

(c) The clothes of the victim girl were attached under the panchanama from the house of her friend.

The nude photographs which has been brought on record proved that the said photographs were got clicked at the instance of accused no.1 through accused no.2 and the same were forwarded to accused no.1.

(d) He relied upon the Judgment in the case of **Ashok Kumar Rout and Bhajan Paswan vs. State of Bihar 2006 CRIL J 3362** and submitted that merely because the victim girl has taken U-turn the case of the prosecution does not fall.

(e) He placed reliance on the Judgment in the case of **Baban Devji Rathod vs. The State of Maharashtra 2019 ALL MR (Cri) 2096** wherein it was held that though the victim has turned hostile, the possibility of victim been influenced can be ruled out. He contended that in

the present case the victim has been warned and influenced.

(f) He also relied upon the Judgment in the case of **Gagan Agrawal vs. The State of Madhya Pradesh decided by the Hon'ble High Court of Madhya Pradesh on 09.02.2022** wherein the victim/complainant gave different version before the Court and the Court directed police agency to conduct proper inquiry in the matter.

(g) The victim was 14 years of age and therefore she is victim under the POCSO Act. He referred to the evidence of PW13 Sr. Celine Pinto and pointed out leaving certificate showing the birth date of the victim and considered the same as on the date of commission of offence that is on 30.04.2016 the victim had just completed 14 years of age. Since there was a doubt the victim was referred to GMC and PW19 Dr. Madhu Ghodkirekar has given his

opinion in his report at Exhibit 30 colly. He also referred to the evidence of PW20 Dr. Sanjay Sardessai who is a radiologist from the Radiology Department, GMC, Goa.

(h) Arrest and attachment of phone of accused no.1 is proved by examining PW27 Dattaguru Sawant and PW6 Dilip Ghadi and PW7 Murlidhar Gawli who were the pancha witnesses to the panchanama.

(i) Accused no.2 was arrested under the panchanama and her mobile phone was attached in front of panchas namely PW8 Ms. Suchita Shankar Kankonkar and PW9 Naguesh Ravindra.

(j) Phone calls between accused no.1 and accused no.2 and the victim show that accused no.1 along with accused no.2 induced the victim and brought her to the residence of accused no.1 and who thereafter raped the victim girl. The same is proved by examining CDR and SDR of the mobile phones.

(k) The photographs of the victim were found in the phone of accused no.1 and evidence of PW12 Ms. Ashwini Naik proves this fact. Exhibit 68 colly produced by PW29 is the CDR of phone of accused no.1 and it shows the calls between accused no.1 and victim.

(l) Lastly submitted that the witness turned hostile and the victim should be punished under Section 344 of Cr.P.C and at the same time he submitted that ingredients of the offences are proved therefore accused nos.1 and 2 have to be convicted for the offences for which they have been charged.

(m) He relied upon the Judgment in the case of **V. K. Mishra & Anr vs. State of Uttarakand & Anr. decided by Hon'ble Supreme Court on 28.07.2015** and submitted that in view of paragraph no.37 of the said Judgment the word 'shown' should be read as 'proved'. That means the



prosecution has proved the charges leveled against accused nos.1 and 2.

(n) He also submitted that the accused had won over the victim girl and by placing reliance on the Judgment in the case of **Hemudan Nanbha Gadhvi vs. State of Gujarat AIR 2018 SC 4760** and referring to para 10 he submitted that it would indeed be a travesty of justice in the peculiar facts of the present case if accused persons were to be acquitted merely because of the prosecutrix witnesses turned hostile and did not depose in favour of the prosecution. On similar points he relied upon the Judgment in the case of **Rajesh Yadav & Anr. ETC. vs. State of UP 2022 LivLaw (SC) 137** and submitted that the circumstances under which the victim turned hostile should also be considered and the evidence of the victim girl cannot be discarded totally.

14. Per contra, submissions advanced by Ld. Advocate Shri D. Dhond are as under:-

(a) Accused no.1 and mother of the victim were arrested on 05.05.2016 and accused no.2 was arrested on 07.05.2016 however all three of them were released on 18.05.2016.

(b) He submitted that the victim in the present case has given different versions. Since the statements are contrary to each other, the entire statement of the victim should not be considered. To support his contention he relied upon the Judgment in the case of **Bhairath Bhaurao Kanade vs. State of Maharashtra 1997 ALL MR (Cri) 362** wherein there was two different dying declarations one contrary to each other and the benefit of doubt was given to the accused because standard of proof was that must be true and not may be true. On similar lines he placed reliance on the Judgment in the case

of **Subhash Dhondiba Pandit vs. State of Maharashtra 1997 ALL MR (Cri) 776** wherein it was held that if 50% statement of the witnesses is false it cannot be believed. In the present case there are three different versions therefore the entire case of the prosecution has to fall.

(c) Section 29 of the POCSO Act deals with the burden of proof. There is reverse burden which means the accused has to prove that he is not guilty of the offences for which he has been charged. However in order to resort the reverse burden the prosecution on its own has to first prove that the offence was prima facie committed by the accused. The basic facts should be proved by the prosecution. Unless basic facts are proved it is not possible for accused to rebut the evidence. Unless basic facts are proved, Section 29 would not be attracted. To support his contention he relied upon the Judgment in the case of **Vishnu @ Balu Namdeo**

**Dudhabwane vs. State of Maharashtra &  
Anr. 2025 ALL MR (Cri) 682 and Kailas s/o.  
Rama Dawar vs. State of Maharashtra & Anr.  
2025 ALL MR (Cri) 694.**

(d) The prosecution has failed to prove the following facts:-

- (i) Who took the victim to the house of accused no.1.
- (ii) On which date the victim went to the farm house of accused no.1.
- (iii) Who were present in the house when the victim had entered.
- (iv) Whether the victim was served with drink and snacks and after consuming the same the victim girl became unconscious.
- (v) Whether accused no.1 had sexual intercourse with victim girl.

(vi) At what time the victim girl woke up next day in morning after going unconscious.

(vii) Who dropped the victim girl from the farm house of accused no.1 and in which car.

(viii) Whether there is medical evidence to connect accused no.1 to victim girl.

(ix) Whether accused nos.1 and accused no.3 (mother of the victim) were arrested under any panchanama on 05.05.2016.

(x) Whether clothes of the victim girl were attached from the house of the Joaquina (PW10).

(xi) Whether the clothes recovered from the house of Joaquina could connect accused no.1 to the Crime.

(xii) Whether victim girl was taken by accused no.2 to the restaurant and room of accused no.1.

(xiii) Whether any attachment was done at Hxxx (name withheld) Cards and Gifts shop at Miramar.

(xiv) Whether the clothes of accused no.1 worn at that time were attached by the investigating officer.

(xv) What was the age of the victim at the time of the offence. The age of the victim is not proved. In case of margin of error, the benefit goes to the victim. If age is not proved beyond doubt and probable age is given then the accused gets benefit of two years plus and minus. To support his contention he relied upon the Judgment in the case of **Mukarrab ETC. vs. State of UP 2017 2 SCC 210** and **Ravi Anandrao Gulpude vs. State of Maharashtra 2018 2 Crimes (HC) 390**.

(xvi) To whom the victim disclosed about the incident.

(xvii) Whether the panchanama at farm house is proved by the prosecution.

(xviii) Character of accused would not show that he would commit an offence of rape.

(xix) To whom the victim disclosed the fact for the first time.

(e) Theory that the victim was unconscious cannot be believed because different versions were given by prosecution witnesses.

(f) On one breath the victim says that she woke at 11.00 am and some other breath in another statement she states that she was conscious. There is no consistency in her statement recorded under Section 164 and in additional statement recorded under Section 164.

(g) The prosecution is required to prove on record sterling quality of the evidence from the deposition of the victim girl and in this context reliance is placed in the case of **Rai Sandeep @ Deepu & Another vs. State of NCT of Delhi 2012 8 SCC 21, Mahendra Singh and Ors vs. State of M.P. 2022 LiveLaw (SC) 543, State**

**(GNCT of Delhi) vs. Vipin @ Lalla decided by Hon'ble Supreme Court on 07.01.2025, Roshan s/o Ruprao Bandre vs. State of Maharashtra decided by Hon'ble High Court of Bombay on 24.09.2025, Jaya Mala vs. Home Secretary, Government of J. and K. and Others 1982 2 SCC 538.**

(h) He also placed reliance on the Judgment in the case of **XYZ vs. The State of Maharashtra 2023 4 MhLJ (Cri) 286** wherein appeal was dismissed since the witnesses turned hostile, in the case of **Raushan Kumar vs. The State of Bihar 2024 0 Supreme (Pat) 337** it was held that there was no corroboration in evidence and it was inconsistent.

(i) Reliance was also placed in the case of **Ketan Sanjay Kokate vs. The State of Maharashtra (through officer in charge of Khadki Police Station 2021 0**



**Supreme (Bom) 520** and submitted that since age is not proved the entire prosecution case falls.

15. Ld. Advocate Shri S. Nasnolkar appearing for accused no.1 along with Ld. Advocate Shri D. Dhond argued on digital evidence and submitted as under:-

(a) Attachment of mobile was not proved and the panchas turned hostile

(b) Call details are not proved as required under Section 79 A of IT Act.

(c) Report under Section 45 A of the Indian Evidence Act will have value only when Section 79 A of IT Act is followed.

(d) PW18 Rajesh Job has not undergone training on digital evidence and whatever he has deposed is in general.

(e) The panchanama at Exhibit P-15 produced through PW12 Ms. Ashwini Naik and while

extraction of data timings do not match therefore the same should not be considered.

(f) There are glaring inconsistencies in the evidence of pancha witnesses and it creates serious doubts on the prosecution case. The panchas are stock panchas and cannot be believed.

(g) CFSL expert PW28 P. N. Ramakrishnan who deposed on digital evidence has not proved the chain of custody of the documents and not followed the manual.

(h) Manual of digital evidence requires that a form should have been filled however there is no such form.

(i) The photographs brought on record do not match with the panchanamas.

16. Submissions advanced by Ld. Advocate Shri. A. Kurtarkar are as under:-

(a) The evidence of PW5, that is, the victim herself shows that she has given different statements because she wanted to come out from the Apna Ghar.

(b) Even if PW5 has deposed differently the victim was not re-examined by the prosecution and she has given clean chit to accused nos.1 and 2

(c) When the POCSO Act is applied it is for the prosecution to prove the age of the victim and the documents do not prove that the victim was minor.

(d) Presumption under Section 94 of the Juvenile Justice Act provides proof of age through birth certificate from the school, birth certificate from the Government authority and thirdly by ossification test. In the present case there are no documents available and ossification test shows that the victim could be between the age of 17 to 18 years which

means benefit of difference of two years should go to the case of accused nos.1 and 2.

(e) Opinion of the doctor is not conclusive as far as age is concerned.

17. In re-joinder Ld. P.P. Shri R. D'Souza submitted that statement under Section 161 of Cr.P.C cannot be looked at the time of final arguments and in this context he relied upon the Judgment in the case of **V. K. Mishra and Anr.** (supra). In the same case it was also held that delay in recording testimony of the witnesses would not be fatal in such cases.

18. Following points arise for my determination. Same are discussed below followed by my findings on the same.

Sr. No.	Points	Findings
(1)	Whether accused no.1 had sexual intercourse with the victim girl without her consent	In the negative.

	and thereby committed an offence of rape?	
(2).	Whether accused no.1 had penetrative sexual assault on the victim girl who was below 16 years of age?	In the negative.
(3)	Whether accused no.1 and accused no.2 wrongfully confined the victim girl?	In the negative.
(4)	Whether accused nos.1 and 2 threatened the victim girl thereby forcing the victim girl to have sexual intercourse with accused no.1?	In the negative.
(5)	Whether accused nos.1 and accused no.2 published and transmitted nude photographs of the victim girl?	In the negative.

### **FINDINGS.**

#### **Point Nos.(1) and (2).**

19. The case of the prosecution is that accused no.1 through accused no.2 obtained nude photographs of the

victim girl and thereafter called the victim girl to the farm house late in the evening and had sexual intercourse. After he had sexual intercourse on the next day he let the victim girl go home. No any complaint was lodged by the victim girl. It so happened that one day in the evening the victim girl was sitting with her friends near four road junction at Caranzalem and at that time her mother came near the four road junction and requested the victim girl to come home. The mother of the victim girl was angry as the victim girl was not coming home. She threatened the victim girl that she would lodge a complaint. There were altercations between the mother and the victim girl. The mother of the victim girl then lodged a complaint as against the victim girl. On receiving the complaint, lady team was sent to the four road junction and the victim girl was brought to the police station. After she was brought to the police station, it was found that victim girl is a minor and she was admitted to the Apna Ghar at Mercedes. At Apna Ghar she was interacted by an intern counselor.

During interaction she disclosed that she was sexually assaulted by accused no.1 with the help of accused no.2. The intern counselor prepared two reports and ultimately complaint came to be lodged before the Women Police Station and the investigation started.

20. PW29 Ms. Sudiksha Naik was attached to the Women Police Station as PI in the year 2016. On 04.05.2016 she received the case papers of Panaji police station's Crime no. 100/2016 u/s 376, 328, 342, 370A, 109, 120B, Sec 8(2) Goa Children's Act and Sec 3 & 4 of POCSO Act, for further investigation. The SP Crime vide Order dated 04.05.2016 formed special team consisting of the officers PI Dattaguru Sawant and PSI Laxi Amonkar to conduct further investigation in the case. On 04.05.2016 PW29 obtained permission from the CWC and took the custody of the victim from Apna Ghar Mercers. The investigation was put in motion on the basis of certain disclosure made by the victim during her

interaction with victim when she was admitted in the Apna Ghar.

21. PW22 Ms. Evelyn Fernandes was posted in Apna Ghar as an intern counselor for a period of one year from 04.04.2016 and her work timings was 9.30 am to 5.30 pm. There were in total 6 interns posted in the different sections, that is, two were posted in CWC, two were posted in the institution (Apna Ghar) and two were posted in the Juvenile Justice Court. Along with PW22 one girl by name Akasha Naik was posted in the Apna Ghar and they both were intern under Nithila Gawas. On 11.04.2016 the victim was admitted in the Apna Ghar through Panaji police station and on 12.04.2016 as per the instructions of Counselor Nithila Gawas, PW22 was directed to interact with the victim and she initially interacted with the victim girl in the presence of Nithila Gawas and her initial interaction with the victim was regarding her age, educational qualification and her interests. The victim spoke about her relationship with her mother and stated



that her relationship with her mother was disturbing as the victim felt neglected and thereafter PW22 had interaction with the victim girl every day. In one of the counseling sessions the victim stated that she had three friends by name Joaquina, Raj and Ruchi and her passion was fashion designing and she wanted to be admitted to a boarding. According to PW22 initially the victim was very quiet and not mixing with others inmates of the Apna Ghar and gradually the activities which were conducted by interns, the victim starting interacting with the counselor, interns as well as other girls.

22. According to PW22 she gave her initial interaction report to the Deputy Director Apna Ghar who thereafter forwarded the same to CWC.

23. Again on 23.04.2016 PW22 interacted with the victim girl at which time she showed that her interests were not only in Arts but also in dancing, singing and other recreational activities and pursuing her education.

Prior to sending the report dated 22.04.2016 she has interacted with the victim as to what was the reason for her being admitted. To this question the victim answered that her mother filed a complaint at the Panaji police station stating that the victim was missing from home for six days, that is, 05.04.2016 to 11.04.2016. Upon inquiry with the victim as to where she was for the six days, the victim told that four days she was with her friend Joaquina and two days with her friend Ruchi. From this part of statement of the victim it is clear that during these 6 days prior to the days she was brought to Apna Ghar she could not have been taken to farm house of accused no.1.

24. In further interaction the victim told that she had a close bond with her cousin ZZZ (name withheld). The victim also stated that she and her brother were in boarding and their mother had neglected them. She also stated that her mother was into prostitution and that her mother never used to be at home for almost two to three times in a week and she also stated that her mother used

to go out in the evening and returned back home late night. The victim stated that at home she has a step father who also used to abuse her and would also touch her inappropriately. From this part of the evidence as stated by the victim girl, the possibility of her own father committing an illegal act of sexual abuse cannot be ruled out.

25. PW22 stated that when she had interaction with the victim girl on 23.04.2016 after sometime she broke down and she was in tears. Since the victim girl was uncomfortable PW22 tried to make her comfortable by giving her art drawing to distract her mind by sketching. After sometime the victim girl came down to normal state and she told PW22 that during the CCP election Panaji her mother and accused no.2 had taken her to meet accused no.1. Somewhere in the month of March 2016 she stated that her mother and accused no.2 had taken her to the farm house where girls of her age were present and the place where she was taken looked like a business

place. At the said place she was given something to drink and she does not remember what happened between 6 pm to 10 am of the next day. The victim could not name the drink but according to victim it was a juice. The victim stated that when she woke up in the morning she found herself without any clothes lying on the bed and accused no.1 was sitting on the chair by the side of the bed. The victim then drank tea and disclosed she was experiencing pain in her body and asked accused no.1 to drop her home upon which accused no.1 called a driver. The victim requested the driver not to drop her home but to drop her to her cousin ZZZ (name withheld) place. PW22 inquired with the victim as to who is Babush, that is accused, to which the victim replied that he is powerful person of Taleigao. The victim girl was using Samsung mobile at that time and the victim had given her number to PW22 however PW22 could not recollect all the digits of the number.

26. In further interaction with the victim, she told PW22 that her mother and accused no.2 sold her to accused no.1 for Rs.50,00,000/- and the victim was the property of accused no.1. When PW22 tried to inquire about the said amount the victim told that her mother will purchase property at Nepal to which accused no.2 will have a share.

27. According to PW22 on the next day, that is, 24.04.2016 she narrated the case to her guide Nithila and who also spoke to the victim and the victim narrated the same facts to Nithila which she had told PW22. Thereafter PW22 gave her confidential report to the Deputy Director of the Child Welfare Committee and the case was handed over from the Welfare Committee to the police.

28. The Counseling report is at Exhibit P-40/PW22. In the report it is stated that the victim during mid March her mother and accused no.2 forcefully took her to the house of accused no.1 at Taleigao at around 6 pm and they

dropped her outside the residence of accused no.1. First of all from this part of the report a doubt is created as to when exactly the victim girl was taken to the farm house of accused no.1. The report mentions residence of accused no.1 at Taleigao however in the charge-sheet there is reference to farm house. Secondly as per report the victim girl was dropped outside the residence of the accused no.1 and as per charge-sheet she was taken inside the house. As per the report she told the driver to take her to cousin ZZZ (name withheld) residence and she do not want to go back to her mother. As per the report the victim girl also stated that since she was residing with ZZZ (name withheld) and her friend Joaquina both of them know the entire incident which took place with the victim. However neither ZZZ (name withheld) nor Joaquina have stated anything about any incident of rape and sexual assault committed as against the victim girl.

29. In cross examination PW22 stated that between 12.04.2016 to 22.04.2016 during interaction with the

victim she did not feel that the victim girl required any in-depth interaction or any psychiatric or psychological analysis. PW22 also found that in the group activities and individual interaction the behavior of the victim girl was normal. PW22 has suggested intern counseling as the victim was disturbed on account of her mother's behavior and had expressed suicidal tendencies. However PW22 did not try to find out when she had expressed her suicidal tendency.

30. In cross examination PW22 stated that between 23.04.2016 to 26.04.2016 she was interacting with the victim both in group as well as on individual basis every day for around 30 to 35 minutes and she would prepare notes of the interactions however there is no mention of any notes in the said report and PW22 admits that the notes are not mentioned in her report.

31. PW22 in her deposition stated that the victim has narrated to her that on the next day when she got up, she

found accused no.1 sitting on the chair by the side of the bed and the victim asked him to drop her home and accused no.1 thereafter called for a driver. This part is not mentioned by PW22 in her report.

32. The case of the prosecution is that the victim was working at Hxxx (name withheld) and she was given a mobile phone by accused no.2 and accused no.2 had agreed to give her job after talking to accused no.1, that accused no.2 had given phone number of accused no.1 which victim had saved in her mobile phone. That accused no.1 had told victim to send nude photographs to him and accordingly the victim sent photographs to accused no.1. If there is any truth in such statement and the case made out by the prosecution, something would have been stated by the victim girl to intern counselor, that is, PW22. However PW22 has stated that none of the facts are stated to her by the victim and therefore the same are not reflected in the report.



33. It is also the case of the prosecution that somewhere in the month of March or April 2016 the victim refused to go along with accused no.2 and said accused no.2 threatened the victim by saying “hanv dakoita tuka” and also threatened by saying that if she does not come with her, she would viral her photographs which are with accused no.2 herself. None of this fact is stated by the victim to the intern counselor PW22.

34. According to PW22 the victim girl did not state that when she went to the house of accused no.1 at Taleigao, at that time accused no.1 was present on the ground floor of the house, that accused no.1 started talking to the victim regarding her studies, her ambitious and future plans in studies to which the victim answered that she wants to do fashion designing and thereafter accused no.1 then took her to the second floor of the said house. These are some important facts which ought to have narrated by the victim girl to the intern counselor. She also not stated that on the second floor there is bedroom cum hall and there is

big T.V attached to the hall and accused no.1 switched on the said T.V which had a Tata sky connection. The victim also did not state that accused no.1 had sex with her twice and on the next day from 11.00 am to 1 pm accused no.1 dropped her near the church. This fact was not stated by the victim to PW22 and same was also not mentioned in her report. PW22 has admitted that in the report produced at Exhibit P-40/PW22 all the digits of the phone number was not found mentioned. There are no details of the victim given in the report.

35. PW5 victim girl was examined by taking all the precaution as required to be taken under the POCSO Act. She has stated that she knew accused no.1 and her statement was recorded by the police. In the present case her statement was recorded in CWC Apna Ghar. In the year 2015 she was studying at Axxx(name withheld) Convent at Caranzalem and she failed in IX standard and as such she was not interested in studies. The victim girl stated that she reached to Apna Ghar as her mother had

filed a complaint with the police that she was missing from home and since she did not want to go back.

36. The victim knows accused no.2 as she was residing next to her house at Caranzalem. She further stated that she does not have good relationship with her family because her step father would touch her body in inappropriate manner and her mother does not show any protection to her. Since she was not feeling comfortable at home, she was staying away from home in her friend's house. She left school and started staying away from home in her friend's house. She further stated that when she was at Joaquina's house and in the evening she was sitting with her friends near four road junction circle where one road goes towards Miramar Beach, one towards Caranzalem, one road goes towards Taleigao and one towards Panaji. The victim stated that on the said day, at around 4.00 pm to 6.00 pm her mother came alongwith one lady who is their neighbor and started shouting at her and giving bad words in Nepali language

and she felt bad and insulted in front of her friends and she also started fighting with her mother and also gave bad words. She stated that her mother told her if she does not come home, her mother would call police. The victim did not expect that her mother would call police and complain before them. However the police arrived and she was taken to the police station and from there to the Apna Ghar.

37. The victim had further stated that she was working in Hxxx (name withheld) at the reception and accused no.2 had given her job. She worked there for about 15 to 20 days and she was removed from the job because she had stolen Rs.3,000/- from the counter without permission. The victim girl further stated that one day accused no.2 asked as to why she is roaming around and whether she is interested in any job and whether she could talk to accused no.1 for a job. Accused no.2 asked her that she is good looking and why she is not studying

or doing any course and on these words the victim got motivated.

38. It is further in evidence of PW5 that during the same time she was frustrated because the atmosphere in her house was not good as her parents would taunt her and compare her to her cousins. Then accused no.2 told that since she has not completed 18 years she will not get beautician course and gave her job at Hxxx (name withheld). Further she stated after she was removed from Hxxx (name withheld) accused no.2 would take with her to various places since the victim was roaming alone and accused no.2 would sometimes call the victim to her house and give food. Accused no.2 also gave the victim sim having mobile number 9764306138 which was used by the victim thereafter.

39. Further the victim girl stated that on 4<sup>th</sup> May, 5<sup>th</sup> May or 6<sup>th</sup> May she had given her statement to the police and that initially she had stated to CWC the series of

events that happened to her during the months of March-April, 2016 and she had stated to CWC how she got in contact with accused no.1 and accused no.2 and how accused no.2 had given her job after talking to accused no.1 and that accused no.2 had also given the victim phone number of accused no.1. She also stated that after accused no.2 came to know that she was removed from the Hxxx (name withheld) on the charges that the victim had stolen money from Hxxx (name withheld), accused no.2 was angry and tried to take mobile from the victim girl and stopped contacting victim girl. PW5 stated that the mobile phone which was given to her by accused no.2 was used to contact her family members, friends and even to send pictures and accused no.2 used to tell her to send good pictures of herself comprising her face. Later on accused no.2 started telling her to send pictures to accused no.1 without a shirt, bra and accused no.2 used to tell her that she will get flat, money, bike etc from accused no.1.

40. According to PW5 initially since she was in need of money and she wanted to prove her parents, she agreed to send pictures to accused no.1 and accordingly she used to send her pictures to accused no.1 from her mobile to the phone of accused no.1 and some of the pictures were without bra and some were with bra. Such photographs are produced on record by the prosecution.

41. After about two to three days after she was removed from the job, accused no.2 again came to her and called her along to go to her friend's place however the victim girl refused to go with her because it was too late and her mother would shout at her and not allow her to go out of the house. The victim stated that it was somewhere in the month of March or April 2016 which date the victim does not remember when the victim refused to go, accused no.2 threatened the victim girl by saying that "hanv dakoitam tuka" (I will show) and accused no.2 also threatened her that in case she does not come with accused no.2, she would viral her photos as accused no.2

had some of her photos with her and also told that she would convince her parents. According to PW5 then accused no.2 took her to the house of accused no.1 on her motorbike.

42. PW5 then narrates the place where she was taken. She states that she was taken to the house at Taleigao which has a big gate and that when she entered the gate there were lot of cars parked in the compound and there was one house within the compound and little further there was a garden and in that garden, there was one more house and accused no.2 took her to the said house and the colour of the said house was darkish blue and white.

43. According to PW5 the watchman who was at the main gate guided them to the said house and there was one lady who was doing some cleaning work and they entered the said house and went on the ground floor. On the ground floor there were some paintings on the wall



and there was one sofa and accused no.1 was also present on the ground floor of the said house and they sat for some time and then accused no.2 told her that she would return back and left her there and went away. Thereafter accused no.1 started talking to her regarding her studies, her ambitions and future plans in studies and victim girl told accused no.1 that she wants to do fashion designing and then the said accused no.1 took her on the second floor of the said house. While going to the second floor she could see the first floor which had a kitchen like place, some chocolates and chips and tall chairs which are normally found in cafes. As they were going to the second floor she also saw flower pots, vases, and may be an antique like mirror. The victim stated that the second floor was like a bedroom-cum-hall and there were sofas and behind the sofa there was a bed and it was a big bed and next to the bed there was wardrobe and on the other side of the bed, there was a wash room and there was also a big TV in the room attached to the wall. Accused no.1

switched on the TV for her which has a Tata Sky connection which she had also in her house. There was a clock and some show pieces on the walls. She knew how to operate the T.V as they also have Tata Sky connection at home.

44. PW5 further stated that thereafter accused no.1 told her to remove her clothes and accused no.1 also removed his clothes and accused no.1 had sex with her using protection and after having sex accused no.1 asked her whether she wants to stay with him to which she replied in the negative and then accused no.1 dropped her by his white colour car having tinted glasses near the Taleigao church on the same day. Here again Ld. Advocate Dhond submitted that different versions have been given by the victim with regards she being dropped. She further states that near the church she met her friend Mahesh who dropped to her friend's place by name Joaquina. Here again Ld. Advocate Dhond submitted that there are different statements which are come on record and it is

not clear whether she was dropped by her friend or some other person whether she was dropped from the house of the accused no.1 to her house.

45. The victim girl further stated that accused no.2 had taken her to the house of accused no.1 late in the evening and the whole night she was in the house of accused no.1 and accused no.1 had sex with her twice and on the next day, between 11.00 am to 1.00 pm accused no.1 dropped her near Taleigao Church.

46. Further she stated that when she went to Joaquina's house, she found that Joaquina was not in the house because it was a Sunday but her mother was in the house and her mother told her to wait and that Joaquina would be returning back. Joaquina was her school friend and when Joaquina came back she told her that she was not feeling comfortable and may be she was having periods and she said to Joaquina because she had seen some blood stains on her underwear. She told Joaquina that she

want to have bath and change clothes and Joaquina allowed her to have bath and provided her own clothes. At this time the victim was wearing sleeveless Denim jacket and slightly bluish in colour jean pant and she had worn a tube type black colour inner bra without the straps and she was wearing panty which may be of slight pinkish or peach in colour. The victim had bath and kept her clothes at Joaquina's house and mother of Joaquina told that she would wash her clothes and she can take the clothes thereafter. She had lunch at around 2.30 pm with Joaquina and her family members and after having lunch Joaquina dropped her to her place on bike at around 3.00 p.m.

47. PW5 stated that she has disclosed about the incident to CWC and there were some Board members whose names she does not remember and on the very next day the police came to inquire about the incident. PW5 stated that the police had come to her on two or three occasions inquiring about the same incident. During this

time she was taken to her friend's house that is of Joaquina to identify the clothes worn by her on the day of the incident.

48. She further stated that she was taken to the house of accused no.1 and there were some police men and one caretaker. She was taken to Children's Court on two occasions. She identified her mobile phone which was attached under the panchanama.

49. In cross examination the victim girl gave completely different version. Her deposition in examination in chief is itself inconsistent. Further her statements in cross examination totally destroy the case of the prosecution. She states that she does not know where she was born and she also does not know whether she was born in Nepal. She does not know her biological father. She came down to Goa during her childhood. She has never been to Nepal to meet relatives. She never visited Nepal however her step father used to go to Nepal to visit his another wife

and children who are staying in Nepal. She does not know when her mother married to her step father because she and her brother were staying in boarding. The victim was sent to boarding when she was 3 years of age and her younger brother was less than one year and she was in boarding school up to standard V. She studied in Our lady of Mxxx (name withheld) High School. She does not remember which year she joined the said Mxxx (name withheld) High School. However she studied in the said school from Standard 1<sup>st</sup>. The boarding was at St. Cruz and the school was at Merces. Her brother also went to the same school.

50. The accused is charged for the offence punishable under Section 376 and Section 4 of POCSO Act and the prosecution is required to prove that the victim girl was raped and at that relevant time she was less than the age provided under the POCSO Act. When she was questioned as what date of birth was given at the time of admission and what is the date of her birth and she stated that there

was some confusion with regards to her name and date of birth and same was caused by her mother. She has a different name in the school and different name on the date of birth. This confusion continued till the time she was admitted in St. Cruz High School and thereafter in the Axxx (name withheld) Convent. She studied in St. Cruz high school for couple of months and from there she was taken to Axxx (name withheld) Convent at Taleigao. After leaving the school Our Lady of Mxxx (name withheld) High School, she started leaving with her mother at Caranzalem and continued to stay with her mother till the time she was admitted in Apna Ghar.

51. In her examination in chief and also in her cross examination she completely deposed against her mother. She stated that the atmosphere at her residence was not pleasant because there were frequent friction between her and her mother, that her mother was abusive and not protective against her, against the amorous advances made by her step father, her mother did not like her

friendship with boys and she would gather people and would call her prostitute in the presence of the people. On account of volatile atmosphere at home her studies were affected. She could not complete her homework, assignments and therefore she failed twice in standard IX. She then requested her mother to send her to open school. However her mother was not supportive and therefore the victim girl did not go to school after she failed twice in standard IX. She further stated that her friends who were studying with her had left the school and started working. Her friend Joaquina was two years senior to her also decided to leave school and started working. When she was working at Hxxx (name withheld) one Ruchi from Vasco became her friend through social media and she named some of her school and her aged group friends namely Mahesh, Mohammed Shaikh, Velanka and Denveer.

52. She has further stated that one day when she was playing, accused no.2 called her and asked why she is not



going to school to which she stated that she had not completed 18 years of age and does not have money for going to school or for doing any course and her mother refuses to give her any money or support her. In her cross examination she stated that when she was working at Hxxx (name withheld) she would go to house of accused no.1 at Taleigao because they have to collect stock of material such as greeting cards, chocolates, soft toys etc from the house to bring to the Hxxx (name withheld) at Miramar. This statement of PW5 also destroys the case of the prosecution because it is not for the first time that she had gone the place of accused no.1. As per the evidence brought on record it is not clear as to whether the victim was taken to the residence of accused no.1 or to the farm house of accused no.1 but the fact remains that she knew accused no.1 and she used to go to his place even before the incident and at the time when she was working at Hxxx (name withheld). Thereafter she stated that it is a farm house near a ground and church. That means when

victim was taken to the house of accused no.1, the said accused no.1 was not stranger to her.

53. The mother of the victim girl knew Joaquina but she did not know her place. The mobile phone and the sim card no.9764306138 which was given by accused no.2 was taken back by her however after some days the mobile phone was returned to the victim girl. At the time when victim girl was arrested she was staying in the house of Joaquina however she did not disclose that she was staying in the house of Joaquina. She further stated she was given option by police either to go back home or Apna Ghar. However she preferred to go to the Apna Ghar. After reaching Apna Ghar she met Nithila Gawas and Evelyn Fernandes the counselors of the Apna Ghar.

54. According to the victim immediately on 12.04.2016 counseling started. Counselling would take around three to four times in a week for about two hours at a time. She was uncomfortable because the Apna Ghar would keep

them locked and was taken out only when they were to be produced before the Board. She was getting frustrated. Ld. Advocate Shri Dhond submitted incident of rape stated by the victim was under frustration because she was locked up and she was assured by the Apna Ghar Authority that in case she narrates what she stated earlier, she would be sent back to boarding. This creates a possibility of she disclosing false statement against the accused as she was assured to be taken out of the ApnaGhar.

55. In cross examination she stated that her statement was recorded by the police four times and twice before Magistrate and before NGO on three occasions. This part of the statement of the victim is contrary to her own deposition and examination in chief where she states that her statement was recorded only by the NGO. It is also stated that since her statement being recorded one after the other she was giving inconsistent versions. She admitted that when her statement was recorded before

the police and Magistrate, she did not say anything about accused no.1 having sexual intercourse with her twice in the night.

56. At an adjourned date of cross examination she stated that the complaint which she had given before the police and Magistrate about her mother selling her to accused no.1 through accused no.2 for money was false complaint.

57. In cross examination she answered one question in the affirmative by saying yes and thereby she admitted that whatever complaint she had made before the police and Magistrate were figment of imagination and there was no truth in the same. In fact on this statement case of the prosecution falls. However since the victim is stated to be minor at the time of incident I tried not to concentrate on this part of evidence solely.

58. She stated that whenever counselor used to speak to her at Apna Ghar they would tell her that they would

allow her to go out of the Apna Ghar only if she states that she is below 18 years of age. Further she was told by NGO that if she backs out from whatever has come in the newspaper people will think that she is telling lies and therefore according to her she continued saying incriminating against the accused no.1 and 2. She also states that she had anger on accused no.2 because she had taken her phone and slapped her and stopped talking to her and helping financially. This shows that a complaint may have been lodged in anger. She also stated that accused no.1 was helping her financially on account of her family situation however he also stopped giving money. All these facts she wanted to say before the CWC however they were not listening to her. She was also sent to the mental hospital and therefore she started getting more angry. She was kept in one room and not allowed to mix with other girls. She stated whatever she has stated about accused no.1 is due to frustration and depression and nothing onward had happened in the farm house.

59. PW10 Joaquina Monteiro the friend of victim girl has stated that the victim girl was her friend and she was studying in the same Axxx (name withheld) High School, Caranzalem where PW10 was studying. However, PW5 was two years junior to her. PW10 has said that her statement was recorded by police in connection with PW5. PW10 was not aware of any complaint lodged by PW5. She has stated that police had brought PW5 to her residence and they opened her cupboard and checked clothes and took away some clothes. She also stated that about four to five days prior to 11/4/2016 PW5 victim girl was in their house. PW10 asked PW5 as to why she is not going home and to which PW5 replied by saying that there is some family problem at her residence and as such she wanted to stay with PW5. Accordingly PW10 agreed and that is how PW5 stayed in the house of PW10. PW5 in her deposition did not state that PW10 had asked PW5 the reason and what answer was given by PW5 to PW10. Further PW10 stated that on 10/4/2016 she PW10 herself

and her friend had planned to go for a Drag Race at Verna for the whole day. As PW5 was in the house they took her for the said Drag Race. From the testimony of PW10 it is observed that she tried to corroborate the fact that PW5 victim was residing in her house for about 4 to 5 days. Second fact which is sought to be proved is that police personnel had come to her house/residence and they checked clothes from the cupboard. Third fact which PW10 tried to corroborate is that on 11/4/2016 she was sitting near Adarsh Colony along with her friends and PW5 victim girl. Fourthly, that PW5 was studying with her in her school. None of the fact was corroborated with detail facts. As to the fact that PW5 was staying in the house of PW11 is not proved. Nothing is produced to show that PW5 was residing with PW10 with any specific reason. Merely because mother neglected victim, victim need not have left her mother's house. PW10 has not stated anything incriminating against accused no.1 and accused no.2. During stay of PW5 in the house of PW10,

said victim girl did not narrate any incident of any sexual intercourse by accused no.1. The fact that PW10 and her friends and PW5 went for Drag Race is immaterial. The statement that PW10 was sitting near Adarsh Colony along with her other friends and victim girl, this statement may to some extent show that on 11/4/2016 PW5 was near the junction at Caranzalem. There is nothing further fact to link so as to come to the conclusion that they were sitting near Caranzalem junction. Similarly, the fact that PW5 was studying along with PW10 is also irrelevant. Infact if PW10 is close friend of PW5, the victim girl ought to have narrated all the facts of sexual intercourse to PW10. PW10 has not stated any of these facts in detail. Therefore, none of the facts narrated are relevant. Even if relevant, they have not been proved through the evidence of PW10.

60. In later part of her examination, she was found resiling from her statement. Hence, at the request of Public Prosecutor the prosecution was permitted to put



suggestions to PW10. In cross examination the facts stated under Section 161 of CRPC were brought on record.

61. PW10 in her cross examination stated that PW5 had not kept any of her clothes in the house of PW10 as PW5 used to wear clothes of PW10. However PW5 victim girl has stated that when she came to the house of PW10, she removed her clothes to go for bath and mother of PW10 had requested PW5 to keep the clothes for washing. That means, there is no full proof as to whether the clothes attached from the house/residence of Joaquina Monteiro is of PW5. If the clothes are believed to be of PW10 then the case of prosecution would fail as one does not know why PW5 victim girl has gone to the house of accused no.1 wearing the clothes of PW10 Joaquina Monteiro.

62. PW11 Ms. Maria Monteiro is the mother of PW10. She has stated that about 6 years ago Pw5 had come to their house in the morning hours. She does not remember the exact day, month and the year. PW5 had come in the

morning hours. Since Pw10 was not in the house, PW11 requested PW5 to sit inside. After some time PW10 came and told her mother PW11 that PW5 wants to stay in their house as there is some problem in her family, that is, in the family of PW5. PW5 stayed in their house for 5 days. Her daughter PW10 informed PW11 that PW5 was taken by police and at that time mother of PW5 was also present. PW10 did not tell the reason to PW11 inspite of PW11 asking the reason.

63. PW11 has further stated that on 4<sup>th</sup> May, two policemen came to her house and inquired about Pw5. After they left, about four to five police jeeps came and at that time Pw10 was not present. There is no clarity as to why on 4<sup>th</sup> May police could have come in search of PW5 when she was not in Apna Ghar at all. The issue triggered on 11<sup>th</sup> and police could not have come to the house of PW11 and inquired about PW5. Question arises as to how and why two policemen had come to the house of PW11. This raises a doubt on the panchanama. Possibility of

some clothes being mishandled in the house of PW11 cannot be ruled out. According to PW11 policeman inquired about clothes of PW5 victim and she told them that the clothes of PW5 are washed and they are in the cupboard. She also informed that clothes are of PW10. That means, the panchanama which was stated to have been conducted in the house of PW11 is meaningless.

64. No purpose is served by attachment as the clothes are of PW10 and not PW5. Nothing is brought on record to show when PW10 gave her clothes to PW5. Nothing is brought on record to show whether the clothes worn by PW5 when she came to the house of PW10 are the same clothes worn by her on the day of rape. Nothing is brought on record to show that the clothes attached from the house of PW11 were worn by the victim when she was raped. Even if she had worn the same clothes why PW11 says that the clothes are of PW10. It is not the case of prosecution that the victim girl was taken to the house of accused no.1 when she was residing in the house of PW10.

65. PW11 was not speaking as per her statement. She was permitted to be cross examined by the Public Prosecutor. She was declared hostile to the case of the prosecution. She states that when policeman and the team arrived they went inside the room and closed the door. That means, she (PW11) was kept out and clothes were attached on identification of PW5. Police did not try to find out whether the clothes were of PW10. While in cross examination by Advocate for accused no.1, PW11 stated that all 4 days when PW5 was in the house, she was also present during night time and also slept in the house during night time. Therefore, possibility of accused no.1 having any kind of sexual intercourse of PW5 is ruled out.

66. PW14 Bharat Dattu Patil is a police constable and a photographer and was attached to Finger Print Bureau, Verna. On 04.05.2016 his superior by name Sushant Naik attached to FSL, Verna informed him that there is a call from Panaji police station and they require a

photographer for the purpose of carrying out investigation and he directed PW14 to accompany them alongwith office camera. PW14 have done the photography course. As instructed he was present during the attachment panchanama conducted on the same day. He took photographs and returned back to his office and downloaded the photographs in his office computer and thereafter transferred the said photographs on the CD by using CF rider. When he transferred the photographs from his camera to the computer and then to the CD rider, the official computer of HP make was operating properly. He clicked 7 photographs during the panchanama and thereafter on 20.05.2016 he wrote to PW29 and submitted on CD and 7 photographs along with certificate under Section 65B of the Indian Evidence Act. The 7 photographs clicked by PW14 are marked as Exhibit P-19 colly/PW14 and the CD containing 7 photographs is marked as Exhibit P-20/PW14.

67. In cross examination the authority of PW14 was tested. He stated that he had undergone photography course in the year 2011. He stated that he was not sent for any specialized photography. The course undergone by him is a private course. At the relevant time there were two photographers and no any camera was allotted to any specific photographer. The other photographer is Mr. Vassudev Pednekar. There is movement register maintained by Mr. Vasudev Pednekar however on the said day PW14 himself made entry in the movement register before proceeding at the residence of PW11. If he was present he should have answered certain facts. He could not remember how many exhibits were attached during the panchanama and he also does not remember whether he had clicked photographs of all the exhibits attached, packed and sealed during the panchanama. He admitted that the make, serial number, model number and capacity of the memory card of the camera is not mentioned in the certificate under Section 65B of the Indian Evidence Act.

He does not remember the exact timings when the panchanama commenced however according to him by approximation it may be 9.30 pm. He does not remember what software was used to burn the photographs on the CD. He also does not remember whether he used licensed or unlicensed software. Although he knows that unlicensed software cannot be used by the department. He admitted that upon opening the folder the date of the seven files containing the photographs appears as 03.05.2016. It also shows that the file was created on 03.05.2016 between 21.40 hours and closed at 21.46 hours. All the 7 photographs were taken on 04.05.2016. Although he states that the photographs are clicked on 04.05.2016, his statement is contrary to the evidence brought on record. This attachment panchanama conducted in the house of PW11 appears to be faulty. Firstly because the photographs identified by PW14 shows that it was taken on 03.05.2016. Secondly PW11 also stated that before police team arrives for attachment

panchanama two police men had already come to the house on prior occasion. The printouts of photographs were removed by PW14 and handed over to PW29. The photographs were printed out on a separate printer of his office and only his printer is attached to the computer and no other printer is attached to his computer. The PC and printer was used by PW14 himself. Therefore statement of this witness creates a doubt whether he was present when attachment panchanama was conducted.

68. PW1 Harshad Mandrekar acted as pancha witness to the panchanama conducted on 4/5/2016 in the house of PW11. It was an attachment panchanama where some clothes were attached from the house of PW10 and PW11 from a cupboard. On the said day she was working as NGO and at the request of PW2 Suzana D'Souza she had acted as pancha. According to her, they were standing at the junction at Caranzalem at around 8.00 p.m. to 8.30 p.m. She was told that she has to act as pancha in attachment of clothes. When they reached, one lady, one



male and boy came out. The lady identified PW5 victim girl as friends of PW10. When policeman reached the said lady PW11 asked what panchanama was to be conducted, they replied by saying that police want to attach clothes of the victim girl. PW1 described the house and the rooms. The clothes were scattered on the bed. From the scattered clothes PW5 lifted pink colour top and identified as hers. Then PW11 told that the clothes of PW5 victim girl are washed and they are kept in the cupboard in the outside room and she took them to the cupboard. PW11 never said that the clothes are of her daughter PW10. Victim girl removed her clothes from the cupboard and kept on the bed inside. The clothes item namely pant, bra, panty, top, sleeveless jacket, pink colour shoulder bag, short pant, another short pant, white colour top were all attached and marked from MO-1 to MO-9.

69. In the panchanama it is not mentioned that PW29 Investigating Officer requested her to act as pancha witness. She directly went to Women Police Station and

met PW29 Sudiksha Naik. It is not mentioned in the panchanama that Women Police Station had made any request orally or in written to PW2 Suzana that two panchas are required. It is not mentioned in the panchanama that when they were at the junction PW29 came in police jeep alongwith one lady i.e. victim girl. PW1 was not informed by PW29 Investigating Officer as to when on which date or time incident of rape was committed.

70. PW1 was questioned whether the cupboard was locked and it was opened with key. PW1 said he did not notice whether the cupboard containing clothes of the victim girl was locked and whether it was opened with key. This fact creates a possibility of clothes being kept in the cupboard in order to falsely implicate the accused no.1 in the present case.

71. Testimony of PW1 falls flat in cross examination. He has stated that items were not attached in sequence.

Photographs clicked during this panchanama do not show any writing of panchanama. So photographs which were otherwise marked 'X' subject to proof cannot be considered.

72. PW2 Suzana D'Souza is a pancha witness to the scene of offence panchanama which was conducted on 5/5/2016 alongwith one Ms. Varsha. It was conducted at the residence of the accused no.1 at Dondrem Taleigao. The other persons present were SP Kartik Kasyap, DySP Serafin Dias, PW29, PSI Mohini, one Jyoti from Apna Ghar a caretaker at Apna Ghar, and other police personnel and Police photographer. According to her PW5 victim girl was brought with face covered with dupatta. Victim stated that she was brought by mother of Robert and she was raped in the said house. When they reached, the gate was closed and DYSP Sarafin Dias knocked the gate. One security person who was in uniform of security guard opened the gate. Security guard took them to the caretaker of the said building. There was another person

by name Sydney Barreto a Zila Panchayat Member of Taleigao who had come there to meet accused no.1. He identified that the house is of accused no.1. Inside the compound wall there are 2 buildings and the victim informed them and pointed out that white building wherein the incident occurred. Said caretaker contacted somebody and they were allowed to proceed towards the building. One Geeta Pandhey who was there opened the door of the ground floor.

73. PW2 narrated what was seen during panchanama. On the first floor there is a hall, chair and sofa, TV fixed on wall, wall clock. It was 19.30 hours on the clock. PW5 informed that she was made to sit in the said hall on a chair and was offered black colour drink and snacks. After she drank she does not remember what happened to her. When she woke up next day morning, she found herself without clothes and her blue jacket and bra was on the left side of the bed and her jean pant and pink panty were on the floor. PW5 then took them to the second floor and

there is a big bedroom with attached bathroom cum toilet, there was wardrobe of double door and single door, verandah all around the said bedroom, table, side table, sofa and chairs, round table, vases kept on the table, king size bed with six pillows.

74. PW2 says that the bed-sheet was examined and it had stains of semen. Semen test was conducted and it was found positive for semen. Bedsheet was attached and marked MO-10. From other wardrobe another bedsheet was attached as MO-11. The panchanama was written between 13.55 hours to 15.45 hours. A sketch was also drawn. Same are at exh.P-2colly. She identified the photographs which were clicked during the search panchanama.

75. PW2 was affiliated to the Childline from the year 2011 till the year 2019. She knows PW29 PI Sudiksha Naik as she has attended police station on number of occasions. According to PW2, PW29 had called her at

around 11.30 a.m. on 05.05.2016 to act as a pancha witness and with respect to the age of the victim she was questioned by PW29 whether she verified the age of the victim and she answered in the negative. PW2 does not have any personal knowledge of the medical examination being conducted of the victim girl. She did not find any farm house in the said property where the scene of offence panchanama was conducted. Right side property belongs to Michael Mendonca. The victim did not disclose the name of the mother of Robert nor their surname. The victim did not disclose that she was brought in the house also by her own mother.

76. According to PW2, SP Kartik Kasyap and Dy. S.P Serafin Dias were present till the bedsheet at MO-10 and MO-11 was packed and sealed. Thereafter they left however PW2 remained till the pachanama is drawn. If any team had accompanied the investigating agency at the time of conducting scene of offence panchanama it was incumbent upon the person present to remain there till

the entire panchnama is concluded. She also stated that the caretaker, the security guard, Sydney Barreto and the maid Geeta Pandey were not present on the second floor although they were given offer to remain present but they did not remain present on the second floor during panchanama. According to PW5 she was offered a black colour drink and snacks. However at the time of panchanama no any soft drinks or snacks were found in the building. When the police team entered for conducting panchanama caretaker Babaji called somebody and they were permitted to enter into the premises however PW29 did not try to find out whom the caretaker had called. PW2 was questioned whether as a co-ordinator she was required to know the date of offence or incident while drawing the panchanama to which she answered in the affirmative however it depends on the victim.

77. In the present case the victim is very vague in mentioning the date even by approximation. If the girl

was minor she should have been accompanied by her friend or person of her confidence at the time when panchanama was conducted. However PW2 admitted that at the time of panchanama neither parents, nor any relations nor any of her friends or person of her confidence accompanied were present. PW29 that is investigating officer did not even ask the victim girl whether she would like to be accompanied by her parents, relations, friends or any persons of her confidence.

78. PW16 Nilesh Naik is a Police Constable and working at the Police Photography Unit, Police Headquarters, Panaji Goa and the said Police Photography Unit was under the Crime Branch Police Station, Ribandar. On 05.05.2016, when he was on duty he received a letter from the Women Police station, Panaji and also a phone call from PI, Women Police Station Ms. Sudiksha Naik. Upon which incharge of the Photography Unit Mahendra Bhandari directed him to report to PI Women P.S and accordingly he reported to PI Women P.S. in the evening



time along with his official Digital Camera of make Cannon 60 and from there he went to the spot along with PW29. PW16 stated that when they reached, there were pancha witnesses, Scientific Team, Finger Print Expert and the victim. He was directed by the PI Women P.S. Sudiksha Naik to click the photographs and he clicked 28 numbers of photographs on his Cannon make digital camera and the same were stored on the memory card inserted in the said digital camera. After the panchanama, he returned back to his office and downloaded the photographs on the official desktop of make Dell. He also opened a folder on the desktop and all the photographs were saved on the desktop and he named the folder as “scene of offence panchanama dated 05.05.2016” in crime number 100/2016 of Panaji Police Station.

79. According to PW16 the photographs were then burnt on the blank CD provided by his office and in order to burn the CD, he used LG burning tool software and for

writing the said CD he used super multi DVD writer model GTA0N. The CD was then sent to PW29 with the covering letter dated 06.05.2016 and the certificate u/s 65B of the Indian Evidence Act. He produced the said letter along with certificate, photographs and CD and marked at Exhibits P-23colly/PW16, P-24colly/PW16 and P-25/PW16 respectively.

80. In cross examination PW16 admitted that the course undergone by him was with regards to film rolls and not of digital in nature and he had taken photographs which are digital in nature. He has not undergone any training in digital photography and upon questioning him, he could not produce any certificate to this effect. His superior incharge Mahendra Bhandari incharge of Photography Unit had given him 15 days course in digital photography. This photography unit is for entire Goa police. If he was trained by Mahendra Bhandari, the said Mahendra Bhandari should have been trained in taking digital photographs. However PW16 could not say

anything in this respect as to whether Mahendra Bhandari had undergone any such training. He has stated that on every digital photograph clicked by him on his camera, date and time is captured in the properties of each and every photograph. He does not have any idea with regards to GPS co-ordinate being captured at the time of clicking the said photographs. There were three cameras available in the department at the relevant time. He maintained inward and outward register regarding movement of cameras. There is no mention in his certificate under Section 65-B as to how he transferred the photographs and details of the data cable. The timings shown in the photographs are in hours.

81. PW17 Mahendra Bhandari is a PSI Police Photographer at Goa police Photography Unit Crime Branch Police Headquarters, Panaji Goa. On 07.05.2016 at the instructions of PW29 PI Sudiksha Naik of Women police station, Panaji he was present during the panchanama conducted at veranda Do-Mar near Goa

Science Centre, Miramar and he clicked 5 photographs by his official digital SLR Camera of make Cannon 60D serial no.1881111304 having a flash gun of make cannon 430EX and after clicking the photos he returned back to his office and downloaded the photographs on his official desktop DELL Computer. According to PW17 all the photographs clicked by him were transferred from the memory card of make "SAN DISK ULTRA 4GB". The photographs were downloaded with the help of Window 8.1 pro software and were then burnt to a blank CD by using the same desktop computer with a supermulti DVD/CD writer model GTAoN and LG burning tool software on the same day.

82. PW17 submitted the said CD having photographs along with Certificate under section 65B of Indian Evidence Act and marked as Exhibit P-26 colly/PW17 and the photographs are marked as Exhibit P-27 colly/PW17. He works in the said department since about 2005 and somewhere in the year 2016 their department had two cameras. He maintained camera movement

register in his custody. He stated that he trained PW16. He also stated that before using the memory card he deleted all the earlier photographs and the memory card is always used by the police department. The photographs show that they were clicked in a hotel. Photograph at serial no.5 at Exhibit P-27colly/PW17 shows hotel premises. However some of the photographs are of envelopes and photographs at serial nos.6, 7 and 8 are of the phone.

83. PW15 Vasu Sawant was attached to the Women Police station Panaji as PC and on 11.04.2018 PW29 incharge of Women Police station Panaji requested him to accompany her to crime branch Ribandar for the purpose of investigation in the present crime. As per the instruction of PW29 Sudiksha Naik he clicked the photographs during the panchanama conducted on 11.10.2018 at the crime branch Ribander Goa by using mobile phone make Samsung J-7 Galaxy of the Women Police station Panaji. After clicking the photographs on

the said mobile he came to Women police station Panaji and downloaded the photographs on the desktop computer attached to Women police station. He had clicked in all 8 photographs which were transferred to the folder on the desktop and the said folder was then burnt on the CD and the desktop computer was of HCL. The blank CD was burnt by using super multi/CD writer and LG burning tool software. He issued the certificate u/s. 65(B) of Indian Evidence Act and produced the same before the Court. PW15 is a B.Com graduate and he was never sent for any forensic photographic course. Prior to joining service PW15 has never done any course in photography. He does not have any professional knowledge about photography. He does not know what is the mega pixel of the camera of the mobile handset and its zoom AFX effect of the mobile handset used by him. He does not know what was the serial number, country of origin, memory capacity of the said mobile handset used by him to click the photographs. He admits that the

handset used by him had two memories, one internal and one external. He does not know what was the memory capacity of the internal inbuilt memory of the mobile used and of the memory card. He does not know where the photograph were installed at the time when he clicked the photographs. He did not verify as to where the photographs were stored in the said mobile. He does not know what type of cable was used by him to transfer the data from the mobile on to the desktop which was commonly used.

84. There were around 3 to 4 desktops at the Women police station. He does not remember whether there were any other photographs on the handset of the mobile on the date on which he had clicked the photographs. He transferred the photo from mobile handset on to the desktop by creating a folder. He does not remember as to what was the name of the folder which was created on the desktop. He copied the said photographs from the mobile and pasted the same on the said desktop folder. He

prepared the certificate u/s. 65-B of Evidence Act on the basis of the format available on the same desktop. He did not mention in the certificate in respect to the model, serial number, memory details, keyboard used, mouse used and also the serial number of the LG burning software. He does not remember the make of the CD writer used and whether the software used was a licenced or unlicenced software. He used blank CDs and had obtained oral permission from the Police Inspector.

85. PW15 had done course in basic computer at Mandrem somewhere in the year 2006 and the police department never sent him for any course in computers after he joined the department. These photographs were clicked within a fraction of half minute. He does not remember whether the mobile was in discharged condition at the time when it was removed from the envelope. The mobile had a password. He does not remember whether photographs were clicked from the official mobile phone of PI Sudiksha or her private mobile



phone. He was transferred and posted to Pernem police station and the said folder containing the photograph were in the same computer. According to the prosecution this witness was present at the time when mobile was attached. This witness merely clicks photographs wherein mobile phone is duly attached and packed. Besides these photographs, this witness cannot be relied for any other purpose.

86. PW21 ZZZ (name withheld) is the cousin sister of the victim girl. Somewhere in the month of May 2016 while she was travelling to Nepal, she received a phone call from Panaji police station stating that they want her presence in respect of one complaint and asked what is her location and that they want to inquire something with her and requested her to come to the police station. She stated that she is travelling to Nepal and would be returning to Goa on 26<sup>th</sup> May 2016. At the relevant time her aunty was staying at Caranzalem along with her husband and victim. After she came back to Goa she went

to the Panaji police station and one lady police officer was present and she narrated the incident which had occurred to which PW21 answered by stating that she is not aware of anything and that she was not in contact with the victim. PW21 stated that before she going to Nepal she received continuous calls from her aunty stating that the victim has not come home for the last 4 days and that her aunty is going to the police station to lodge a complaint and in this context she wanted help of PW21 and since her aunty requested her to accompany to the police station, she informed her mother and her mother permitted her to accompany her aunty to the police station. According to PW21 when she and her aunty went to the police station they found the victim at the police station, but she was not talking to them. PW21 continuously tried asking her what was wrong and even told her to come back home but the victim refused to come back home. PW21 waited at the police station for some time and tried to call her back home however the victim refused to come home and

preferred to go anywhere else but not come home and after sometime PW21 left from the police station.

87. Although PW21 is the cousin sister of the victim, she has not stated anything against accused nos.1 and 2. PW21 stated that before recording her statement, some months back victim girl's mother met her on the road and told her that victim has got bad friends circle. PW21 was not in contact with the victim girl and she could not say where the victim girl was staying and whether victim left the school long back. She has stated that she has seen accused no.1 and the accused no.1 is the MLA and appears on TV. Identification of accused no.1 is not in dispute. Summary of PW21 is that she did not state anything as against the accused persons but on the contrary the fact that the victim does not maintain a good behavior is come on record.

88. Accused no.1 is charged for the offence punishable for having raped the victim who was less than 18 years of age. In this context PW19 and PW20 becomes relevant.

89. PW20 Dr. Sanjay Sardessai stated that on 12.5.2016 he was working as Associate Professor in the Department of Radiology, Goa Medical College, Bambolim. The victim girl was referred to his department at the request of Department of Forensic medicine, Goa Medical College, Bambolim for the age determination of the victim.

90. The Associate Professor, Department of Forensic Medicine, Goa Medical College, Bambolim vide his letter dated 11.05.2016 asked him to ascertain the radiological age and issue the report at the earliest alongwith the X-rays (1) shoulder right side AP view; (2) elbow right side AP view; (3) wrist with palm right side AP view; (4) pelvis right side AP view; and (5) knee right side AP view. The victim girl had visited his Department and X-rays were taken by the Technician and the X-rays were submitted to

him and based upon which he had given his report dated 12.05.2016. According to PW20 different parameters were taken to base his opinion in respect of age determination which he had mentioned in his report dated 12.05.2016 and after considering all the parameters in his opinion the radiological age of the victim girl was 17 to 18 years.

91. PW20 stated that medical board for the determination of the age was constituted in the year 2016 and based upon his report and the report of oral medicine and forensic medicine they have given a joint report which is at Exhibit P-34/PW20.

92. PW20 did not discuss with the victim any facts related to the present case. He stated that Radiology department does not maintain any inward or outward Register but they maintain the register before taking a X-ray of the patient. He stated that epiphysis fusion (ends of the bones) depends on the diet you take, geographical factors and hereditary factors. He did not ask the

investigating officer or the victim as to when the present incident had occurred. The police did not produce any birth certificate, Aadhaar Card or any school certificate to show the birth date of the victim before him and he also did not ask to produce the same.

93. PW20 could not say anything to the suggestion that from 14 to 20 years dental age estimation is based upon the stage of the development of the 3<sup>rd</sup> molar and there is much variation in these, and the accuracy of the dental age estimation during this period varies by about plus/minus three years. He could not name the Technician who has taken the X-rays of the victim girl as they have many Technicians to do the said work. He was not present when the Technician took the X-rays of the victim.

94. PW20 admitted that he examined the X-rays of the victim and that Dr. Dinkar and Dr. Madhu Godkirekar

were not present with him and when they examined the victim and PW20 was not present alongwith them.

95. He admitted that in radiological examination alone the margin of range could be around 2 years and he has given report stating that the radiological age of the victim was 17 to 18 years there could be margin of one year and the age of the victim girl could be 19 years.

96. PW19 Dr. Madhu Ghodkirekar was working as an Associate Professor in the Department of Forensic Medicine, GMC. On 06.08.2016, he had conducted medical examination of accused no.1 on the request PW29. Before examination he obtained the consent of the accused no.1 in the presence of Machindra Jalmi, Lab Technician in their Department and on the same day he examined accused no.1 and recorded findings in his report. Accused no.1 was examined in the presence of Machindra Jalmi, Lab Technician and he was brought by PI Vishves Karpe. PW19 noted his identification marks.

There were no recent injuries present and there were multiple healed scars over the front of chest of various sizes and in oblique directions. The clothes of accused no.1 were not preserved as clothes were changed at the police station. There were no injuries on genital and pubic hair sample urethral swab and smear slides of accused no.1 were preserved for serological examination. On the basis of physical and genital examination and his opinion, there is nothing to suggest that accused no.1 was incapable of performing sexual intercourse.

97. According to PW19 accused no.1 was referred to consultant of Skin and VD for detection of STD and HIV, referred to IPHB for psychological condition leading to impotency. Accused no.1 was also referred to consultant of medicine, surgery and orthopaedic Departments for detection of any medical, surgical or orthopaedic condition known to cause temporary or permanent impotency and he was also referred to GMC Blood Bank for blood grouping. Urethral swabs, smear slides and



pubic hair collected from accused person was preserved for onward transmission to Forensic Science Laboratory.

98. PW19 stated that in the same case, five days later, i.e. on 11.05.2016, he received request letter from PW29 for assessment of age victim girl with the information that original birth certificate of the girl was not available with her mother and different birth dates were noticed on the copy of her birth certificate and on Aadhaar card and accordingly, the assessment of age was done by a panel of doctors consisting of PW19, as Associate Professor in Forensic Medicines in GMC, Dr. Sanjay Sardesai, Associate Professor of Department of Radiology, GMC and Dr. Ajit Dinkar, Professor HOD of Department of Oral Medicines, Diagnosis and Radiology, Goa Dental College and this panel of doctors was a part of standing circular of GMC for assessment of age under JJBA Act and cases under POCSO.

99. PW19 stated that the victim girl was brought by PSI Mohini Naik and she was examined in presence of Deepal Tawadkar, caretaker from Apna Ghar. PW19 conducted physical examination after noting down identification marks on her which are mentioned in report. PW19 also noted down history given by victim with regards to menarche (first period) which was three years back, i.e. when the victim was in 8<sup>th</sup> standard and her last period was 17<sup>th</sup> April, 2016. The height of the victim was 152 cms and weight was 53 kilos and her physical development related to adolescence was of Tanner stage of IV.

100. After completion of physical examination, PW19 referred the victim for x-ray examination and for dental assessment of age to the Goa Dental College. According to PW19, since it was a panel of doctors examination, next day evening, all of them, that is, PW19, Dr. Sanjay Sardessai and Dr. Ajit Dinkar had a panel meeting wherein Dr. Ajit Dinkar presented Dental Assessment Report and Dr. Sanjay Sardessai presented assessment of

radiological age which was attached to the final report. Based on physical examination findings, assessment of radiological and dental age, in their opinion, age of the girl was between 17 and 18 years.

101. PW19 had not discussed anything with the victim related to the sexual assault or sexual violence as the victim was referred to him for assessment of age. PW19 did not confirm from the victim girl the facts mentioned by the police in the letter dt. 11.5.2016. PW19 examined the victim girl almost after period of 2 months from the date of the offence as mentioned in the letter. This fact is actually very fatal to the case of the prosecution. In all cases, it may not be fatal to the case of the prosecution because each case differs from each other. In the present case delay in examination of victim girl becomes more important because actual date of incident is not known.

102. As to the examination of accused no.1, PW19 could not give the age of the scars on the chest of accused no. 1

as they were old, healed multiple scars and therefore age cannot be determined. The specific suggestion was put to the witness whether epiphysis fusion (ends of the bones) depends on the diet you take, geographical factors and hereditary factors and the suggestion which was put in the form of question is admitted by the witness and he further states that, that is why the age of fusion is given in range and not as a fixed value.

103. PW19 admitted that the investigation officer though mentioned the month as March, but has not mentioned the year in which the incident took place. He did not try to inquire about the age of a person and also did not try to inquire with the I.O. as to what stupefying substances were given to the victim girl as to how long the victim was unconscious because such type of incidents does not affect age of the person. He did not ask the victim girl as to whether her birth was registered in Nepal. He also did not ask the investigation officer to produce the copy of birth certificate or Aadhar card of the victim girl as they

conduct medical age depending on medical findings. He also did not verify since what age the victim girl was in Goa.

104. According to PW19, his personal examination of the victim girl was physical examination part in nature. PW19 further stated that when Dr. Dinkar examined the victim girl, he was not present and similarly when Dr. Sardesai of Radiology Department examined the victim for radiological age, he was also not present there and vice versa. The victim girl stated she had menarche (1<sup>st</sup> period ) i.e. 3 years back, while she was in standard VIII but PW19 did not try to inquire with the victim girl as to in which year she was in standard VIII of school. The investigation officer did not produce before PW19 any school certificate of the victim girl having passed from 1<sup>st</sup> standard to VIII standard.

105. PW19 admits that in radiological examination alone, the margin of range is around two years. He also

admits that in ossification test alone, the margin of age of the victim girl would be minus two i.e. 15 years to plus two years that would be 20 years and that the range of age in radiological findings can range from 1 year to 4 years but it depends on which quarter of age of the person assessment is done. He also submitted that the gap of age is minimum as adolescent age i.e. 14 to 22 years. Therefore from this entire evidence, the age of the victim is not known. Considering the radiological examination report and ossification test, there is a doubt whether the victim was 17 or 18 years of age at the time when the accident took place.

106. PW13 Sr. Celine Pinto is a Headmistress at Axxx (name withheld) High School Caranzalem Goa since 2011. On 11.05.2016 she received a letter from PI Woman Police station Panaji requesting to furnish certain information in respect of the victim girl who was schooling and dropout of their school and also requested to furnish the copy of birth certificate produced by the parents at the time of

admission in the school. In response, PW13 replied vide letter dated 11.05.2016 and informed PW29 that they have no student by name (name withheld) and that they have a student by name (name withheld) registered in std IX for the academic year 2015-2016 and that the said student had joined Std.V wherein no birth certificate was submitted by their parent/guardian at the time of admission and that the admission as made based upon the certificate of the last school attended. PW13 enclosed the 1<sup>st</sup> school leaving certificate based upon which the birth of the said student was registered at the time of her admission.

107. It is also in evidence of PW13 that she had no opportunity of seeing the birth certificate of the victim girl who was admitted in their school. PW13 stated that somewhere in the month of August 2009 when the victim girl took admission in their school at that relevant time she was not working in the school and therefore she does not know who was the parent/guardian who had come to

the school alongwith the victim girl for getting admission. PW13 does not know on what basis St. Cruz High School had put the date of birth of the victim girl as 16.03.1999 when they issued leaving certificate dated 31.03.1099. PW13 does not know whether there is any record in their school showing the name of the parents of the victim girl. PW13 stated that the place of birth is mentioned as Panjim and nationality as Indian. As per the evidence brought on record the victim girl was a Nepali National. PW13 admits that the victim girl is a Nepali National therefore the details submitted by the school along with the leaving certificate of the victim girl at exhibit P-16/PW13 cannot be considered.

108. PW12 Ms. Ashwini Naik acted as a pancha witness at the request of PI Rajesh Job who was attached to Cyber Crime Police Station. Panchanama was to be conducted to open a parcel containing one mobile. PI Rajesh Job who was present was having an envelope which was packed during investigation in the present case. It contained one



mobile phone. The envelope was opened and it contained Samsung make phone. All present at the time saw the mobile phone. The mobile phone was then opened and it contained one sim card and battery. The phone was put in an on condition and it was connected to the machine having software oxygen. Upon putting the software on, the data was extracted. It contained about 13000 pages. Printout of the said data was taken and then the mobile was repacked. He showed them the extracted report from the said mobile. Report also contained photographs at Exhibit P-13/PW12.

109. On the same day Rajesh Job conducted another panchanama in respect of extraction of records of another two mobiles in the same case. He opened an envelope and removed one black colour mobile phone Samsung make. Same procedure as above was followed and records were extracted. He then removed another white and silver colour mobile phone. He followed the same procedure and extracted the records.

110. PW12 has acted as pancha in 5 to 6 cases and as a witness in about 500 cases since he started working for Scan India. Panchanama dated 10/5/2016 and report was generated on 11/05/2016 at 15:22:20 hrs. and he admits that the report was not generated in his presence. There is every possibility that both the panchanamas at Exhibit P-12/PW12 and Exhibit P-15/PW12 were fabricated subsequently.

111. PW18 Rajesh Job was posted as incharge of Cyber Crime Police Station at Ribandar Goa. On 05/05/2016, he received a request from PW29 to provide call data records (CDR), subscriber data records (SDR) and customer application form copy of four different Mobile nos.9822100010 of accused no.1, 9823066183 of accused no.1, 9764306138 of the victim girl and 9823931713 of accused no.2. On the same day he issued notice to the Nodal Officer of Vodafone mobile company calling for above details. On 7/5/2016 he received another request from PW29 calling for CDR, SDR and CAF of Mobile

No.8411913059. On the same day, he wrote to the Nodal Officer of Vodafone to furnish the details. Again on 09/05/2016, request was made by PW29 to furnish CDR, SDR and CAF of Mobile nos.9552876578, 9422634866, 9370306578, 8605417226, 9527038790 and 9762323109. On 10/05/2016, he received request for forensic examination of the mobile phones and another letter on 10/05/2016 with two sealed envelopes in the presence of Nitin Dhond and Mrs. Ashwini Naik at Cyber Forensic Laboratory of Cyber Crime Police Station, Ribandar.

112. On 10/5/2016 PW18 received reply from Nodal Officer with CDR and SDR of mobile no. 9552876578. On 11/5/2016 after forensic examination of mobile phones, he prepared examination report and copied the contents in the form of report on to a blank DVD as the data was voluminous and forwarded the same to Police Inspector i.e. PW29 along with certificate under section 65-B of the Indian Evidence Act . He received details of the phone nos.9527038790 and 8605417226 on 11/5/2016, and

details of phone nos.9762323109 and 9370306578 on 12/5/2016, and details of phone nos.9764684443, 9075668201, 9673349961, 9049611491 and 7030363060 on 20/5/2016.

113. PW18 submitted the DVD of Forensic Examination report running in 5142 pages. For extraction and forensic analysis and report generation he used Oxygen forensic tool software having version 8.3.1.105 over Forensic Recovery of Evidence Device (FRED) workstation following all cardinal rules of mobile forensics. He calculated the hash value of both the forensic extraction report of both the mobile phones.

114. PW18 had used Oxygen software. However, it was unlicensed. He did not produce licence number and he does not remember licence number. He admitted that licence for software has to be procured by proper formalities. PW18 said that the user ID and the password were created at the time of the installation of the software.

Software forming part of Cyber Forensic Lab was setup by C-DAC (Centre for Development of Advance Computing) Thiruvantapuram, Kerala. But he does not have anything to show that C-DAC has authorised him to operate the said software. However, he stated that they have issued the Lab Setup in Commission Certificate and upon the instructions of his superiors and as the incharge of the Cyber Crime Police Station he was using all the softwares.

115. PW18 does not remember the release date of the Oxygen Forensic Software version used by him. He does not remember whether the same version was installed by C-DAC at the time of setting up of the Lab. However he stated that the software gets automatically updated. He does not remember when software was updated last. In his report he has not mentioned how much disc space was occupied in both the reports pertaining to both the mobiles.

116. PW18 stated that the report was generated at the time of panchanama. Device data report shows date and time of generation as on 11/5/2016 at 15.22.20 hours and second report shows date and time as 11/05/2016 at 15.11.14 hours. He could not say whether the images found in the report are forwarded, received or clicked.

117. PW28 P. N. Ramakrishnan is an expert from the Central Forensic Science Laboratory, Chandigarh. In the year 2016, he was working as an Assistant Director in the Physics Division at CFSL, Hyderabad. On 02/06/2016, 5 sealed envelopes were received by CFSL Hyderabad in the present crime which were referred by then SP Shri Kartik Kashyap vide his letter dated 27.05.2016 with the seal of the Women Police Station, Panaji along with forwarding note dated 04.05.2016 having five parcels. Parcel contains one Samsung mobile phone, parcel no.2 contains Samsung 4G Duos mobile, parcel no.3 contains Samsung mobile phone, parcel no.4 contains AHUA digital video

recorder and parcel no.5 contains AHUA digital video recorder.

118. PW28 completed the examination on 15/02/2017. According to PW28 the Hard disks, Sim Cards, Memory Cards and Mobile phones were analyzed using EnCase version 5.05a Software, CDAC SIMXTRACTOR, MOBILEEDIT, LITE Software in Windows XP Operative System and also as per the cardinal rules of Computer Forensics/Working Procedure Manual adopted by their Directorate. On thorough and careful computer forensic analysis, a logical data retrieved from the mobile phone marked Ex-R2 was provided in a separate folder and data retrieved from the sim card marked as Ex-R2S was provided in a separate folder. One of the mobile phones was non-compatible with the available mobile forensic tools of the laboratory, hence, Data cannot be retrieved. The mobile phone marked as Ex-D1 was found in pin pattern locked by using finger print pattern. The memory card marked as Ex-R2M was found not working with the

hardware tools for retrieval of the data. The DVR hard disks marked as Ex-K1H and Ex-J1H could not be retrieved by using the forensic hard disk analyses tools available in the laboratory.

119. On 11/07/2018 PW28 received another envelope along with forwarding note for the purpose of examination. The nature of examination required was to furnish the deleted as well as existing all available details/data from phone, to retrieve deleted as well as available data of the hard disk and DVD along with opinion. PW28 has described the parcel. One of the DVDs contained 37 images and out of which 36 images were of victim girl. One of the DVDs had suffered cracks and therefore could not play and the witness PW28 could not produce another copy of DVD as he was transferred to Chandigarh.

120. In cross examination, PW28 was not in a position to state from which mobile phone pornographic images were



sent. PW28 stated that they followed working procedure manual for the purpose of examination however he does not know the volume number and date of release of the working procedure manual and the date of its publication. He admitted that the basic purpose of examination is that there is no contamination of digital forensic data. He also admitted that all items submitted for forensic examination should be received for integrity of their packing and if there is any deficiency found it should be documented and it is the duty of the investigating officer to see that the devices that are attached are not opened or examined for any other digital evidence after seizure or before sending to the laboratory.

121. PW28 stated that no hash value was sent to him by the IO along with the exhibits. According to PW28 the investigating officer knew that the hash value of the said device have to be sent along with the device. It is also the duty of the investigating officer to see that devices are not opened for any other digital evidence after is seizure and

before sending it to the laboratory. PW28 admitted that forensic examination of the digital devices having 256 GB hard drive takes around 3 hours but he says that its analysis will take one or two days. During his investigation he did not find out the date from which the said devices were put to use. He admits that as per the manual they have to participate in proficiency testing programme but he does not know when he had participated in proficiency since prior to 2017 before analyzing the digital forensics.

122. PW3 Dr. (Mrs.) Ketan S. Sukhthankar was working at GMC as an Assistant Lecturer, Department of Pathology and on 05.05.2016 the victim was referred from the Department of Gynecology by Dr. Ankita Joshi for the purpose of blood grouping and when the patient was brought certain identification marks were noted. PW3 stated that blood of the victim girl was extracted and examined by a technician under her supervision and the blood group of the victim was detected as AB Rh positive.

PW3 prepared a report and the report was sent to the Gynecology Department for further management. The name of the technician is not mentioned in the report and there is also no mention of what chemical was used for the test for blood grouping.

123. PW4 Dr. (Mrs.) Ankita Sinai Borkar (Maidan name Dr. Ankita Joshi) was working as a Senior Resident in the department of Obstetrics and Gynaecology in GMC and on 05.05.2016 she received a letter dated 04.05.2016 from Women Police Station Panaji addressed to Chief Medical Officer (CMO) with a request for medical examination for sexual offences in respect of the victim girl and along with the letter the victim was sent in her department. On the same day at 12.35 a.m., after obtaining consent from the victim girl in the presence of Dr. Tanvi Gaonkar, she medically examined the victim at around 12.40 a.m in the presence of above person and noted certain identification marks. The identification marks and genital examination are as follows:-

1) A pinhead size naevus on the right cheek 3 cms anterior to the right tragus and

2) A pinhead size naevus on the abdomen 7 cms below the umbilicus and 2 cms to the left of midline.

General development of the body: Good for age.

Condition of the clothes: Changed,

LMP (last menstrual period): 27<sup>th</sup> of April, 2016.

Urine Pregnancy Test: Negative

Injuries on the body: Nil

Gait: Normal

Height: 152 cms

Weight: 53 Kgs.

Genital Examination:

1. Development : Good for age.

2. Condition of pubic hair: shaved

3. Injuries on the inner aspects of thighs: Nil

4. Presence of bruises or abrasions on genitals: Nil

Labia Majora and Minora: Well opposed.

Pigmentation noted, anterior and posterior commissure appear normal. Fossa navicularis reduced. Hymen appears fleshy, distensible with a tear (old healed) at 7 o' clock position. No bleeding noted. Vaginal wall rugosities seen through hymenal opening.

124. PW4 had also taken vaginal swabs taken and smear slides and her opinion is as under:-

1. On physical/genital examination, there is evidence of genital penetration like that in sexual intercourse.
2. Materials (vaginal swabs/smear slides) preserved for serological examination.
3. Referred to blood bank for blood grouping and Rh typing.

125. PW4 did not make record by asking the victim girl about her parents or any other person in whom the child reposes trust or confidence at the time of her examination. PW4 did not make any record that the parents of the victim girl or any other person of the victim was not available and no woman was nominated by the head of medical institution for examination of the victim girl. In her medical report she does not mention at what time the examination of the victim girl ended. She also did not ask the victim girl or the police who accompanied the victim girl to produce her identity card to verify

whether she was the same person. PW4 was basically examined to find out whether the victim was raped. She stated that if there is a hymenal tear, it may sometimes not bleed and sometimes it may bleed between 24 hours to 48 hours if the tear is big. She has not mentioned the size of the hymenal tear in her report. PW4 stated that once the hymenal tear is healed, one cannot determine the age of the injury. She could not say how many times the victim girl was involved in sexual intercourse. PW4 stated that after she touched the hymenal tear of the victim it was not bleeding. She also admits that hymenal tear can occur if there is fingering, oral sex, penetration, masturbation, insertion of tampon, exercising, normal day to day activities and such tear can happen without even knowing it and it may not even have pain. Her opinion that there is evidence of genital penetration like that in a sexual intercourse is tentative opinion because hymenal tear can also happen due to the above factors. PW4 stated that before carrying out medical examination,

the consent for medical examination is required to be obtained and such consent is obtained in a printed form issued by the Government Printing Press at Goa. She admitted that such consent can be refused by any victim girl. In the present case the victim had given consent and therefore PW4 did not inform her that she has a right to refuse to go for medical examination. Therefore from her deposition it is not clear that she was immediately raped before she was being examined. The exact date of sexual intercourse has not come on record. Under this fact, it would be wrong to rely upon the evidence of PW4.

126. PW25 Ms. Rashmi Rajendra Bhaidkar was attached to Panaji police station as LPSI in the year 2016. On 11/04/2016 at 18.00 hours when she was on duty she received a phone call from PSI Bagkar from PCR Panaji informing that one lady needs police help at Miramar and at around 20.45 hours staff and lady police constable came along with 2 ladies i.e. victim and her mother who are residing near Rosary Church Caranzalem. The girl

was 16 years of age and she refused to go back to her mothers house and her mother requested that her daughter be sent to Apna Ghar. Immediately police contacted NGO Vahida who came at the police station however the victim girl refused to give her statement and she was sent along with lady police constable to produce her in front of CWC member Harsha Naik at her residence and thereafter referred her to Apna Ghar. On 04/05/2016 a phone call was received from CWC to record statement of the victim girl, and accordingly on the same day at 13.00 hours, PW25 went to Apna Ghar along with NGO Audrey Pinto and recorded statement of the victim girl in the presence of CWC members Ranjita Kirlekar and Harsha Naik. Thereafter she spoke to her superiors and upon instructions of Superintendent of Police North, offence was registered.

127. When PW25 recorded statement of the victim girl on 4/5/2016 she was in the custody of Apna Ghar. According to PW25 she was in Apna Ghar for almost 25



days. PW25 did not take any certificate from the Doctor or from the Counselor to find out whether the victim girl was in a fit state of mind to give her statement. The recording of statement commenced at 14.00 hours and it concluded at about 17.30 hours. While statement was being recorded of the victim girl, PW25 asked the date and the week of the month of March when she was taken to the house of accused no.1. The victim girl did not reply as she did not remember. PW25 did not try to find out as to which house the victim girl was taken to Taleigao. According to PW25 though the victim girl mentioned that she was taken to the hotel of accused no.1 at Miramar, she could not tell when she visited the hotel but she said that it is after few days. Even after recording the statement of victim girl PW25 cannot say whether the incident was in the month of March or in the month of April. She inquired with the victim girl about the room number of the said hotel, but she could not give the same. The victim girl has stated that there were some girls and boys in the house of

accused no.1. PW25 did not ask the victim girl the description or the features of the girls and the boys who were present in the house of accused no.1 when she visited his house. The victim girl said she did not get menstrual period during the said period. The victim girl was unable to give the features of the driver who dropped her to the house of accused no.1 or the registration number or the make of the car used for dropping her. PW25 did not ask the victim girl what clothes were worn by her on the day of the incident. It was very much relevant and PW25 accepts that the same question ought to have been asked to the victim girl. She did not ask in which bag the clothes were kept in the house of Joaquina. She did not ask for the description of the two wheeler of Joaquina. She did not take any documents from the victim girl to prove her age, however, she inquired with the mother of the victim girl, the mother of the victim girl was not having any document to determine the age of the victim girl.

128. PW26 Laxi G. Amonkar was attached to the Crime Branch as Police Sub Inspector and on 08/05/2016 he had received Order u/s 157 of Cr.P.C. from PW29 directing him to conduct part investigation in the said crime. Accordingly he recorded statements of some witnesses. The persons whose statements were recorded by him are not examined. The evidence of PW26 is not very much relevant.

129. PW27 Dattaguru Sawant was attached to Crime Branch Ribandar as a Police Inspector and on 05/05/2016 while he was on duty at Crime Branch Police Station he got instructions to arrest the accused in the present case. On account of personal reasons the investigating officer was not available and hence PW27 was instructed to arrest the accused in the present case in the presence of 2 individuals namely Murlidhar Gawli and Dilip Ghadi. Accused no.1 was arrested and the grounds of arrest and the right to bail were explained to accused no.1. Intimation of his arrest was given to his wife. Some

injuries were found on the body of accused no.1. He then conducted personal search of accused no.1 and he was found carrying mobile phone having sim card no. 9822100010 and the phone was having bluish and silver colour body with silver colour strip in between and having inbuilt battery.

130. The mother of the victim was also brought alongwith accused no.1. Some identification marks were noted by PW27 and with the assistance of lady police constable she was personally searched but nothing incriminating was found. The Samsung Galaxy Mobile phone along with SIM Card which was found on the person of the accused was attached under the Panchanama which commenced at 18.10 hours and concluded at 19.30 hours. The panchanama is at Exhibit P-9 which was produced through PW6. Contradictions marked while recording evidence of PW6 who is the arrest pancha are confirmed.

131. PW27 also recorded statement of PW11 Joaquina Monteiro and whatever confrontation marked in the statement from point A to A are proved. He also recorded statement of Maria Monteiro and confrontation marked in the statement are proved. PW27 had also conducted panchanama at Hxxx (name withheld) Cards and Gift Shop at Miramar on 10/05/2016 in the presence of panch witnesses Murlidhar Gawli and Deelip Ghadi which commenced at 13.30 hours and concluded at 15.15 hours. The contradictions marked through the evidence of concerned witnesses which were put to PW27 and they are proved.

132. PW24 Vishwesh Karpe was attached to Crime Branch police station at Ribandar as a Police Inspector stated that on 5/5/2016 upon directions of PW29 he visited shop no. 8, 9 and 10 of Hxxx (name withheld) Gallery, Miramar along with two pancha witnesses Ritesh Kalangutkar and Anup Naik and conducted attachment panchanama. They were introduced to one Manager/sales

girl Shabira Attar, who works in the said shop. She was requested to hand over the digital video recording box for the purpose of investigation in the present crime. The sales girl handed over the said digital recorder after disconnecting the cords and the description of the said DVR was noted and attached under the panchanama and signature of pancha witnesses and Shabira Attar was obtained. After attaching the DVR, he recorded statements of some of the witnesses. On 6.5.2018 he escorted accused no.1 to GMC Bambolim for medical examination at the request of PW29 and who was examined by PW14 Dr. Madhu Ghodkirekar. The contents of the panchanama are not proved. Therefore, the evidence of PW24 is not of any importance.

133. PW23 Royston Braganza was attached to child line as one of the member. At the request of PW29 he acted as pancha witness in the present case which was conducted at Crime branch Ribandar Goa in the presence of himself, his colleague Vinita, PW29 and some other police staff

and black colour mobile phone of accused no.1 was attached, one more phone Samsung Galaxy S6 Edge was also attached from accused no.1.

134. PW6 and PW7 acted as pancha witnesses to the arrest panchanama of accused no.1. PW6 Dilip Ghadi was working in the hotel at Ribandar. He works in the hotel at Panaji Market as a Supervisor at Cookies Food Corner and at around 2.00 to 2.30 p.m. they had gone to have lunch. After their lunch at Ribandar Hotel, a policeman approached them and requested to come to his office and the policeman requested to sign on some papers. This witness has turned hostile and nothing is brought after examining this witness except for putting some suggestions.

135. PW7 Murlidhar Gawli was also pancha witness to the arrest panchanama. He has also turned hostile and nothing is brought on record through his cross examination.

136. PW8 Suchita Shankar Kankonkar had accompanied her mother who was called by the police to sign some papers at Ribandar police station. Her mother was not literate and therefore they requested PW8 to sign some papers. One more person by name Naguesh PW9 had also signed on the said document. She does not remember the date, month and the year when she signed such papers. Even by approximation she could not mention the period. She knows PW9 Naguesh because he was knowing the mother of PW8 and works as driver of the tempo. When she signed papers PW9 was outside. After she signed, PW9 was also asked to sign. Statement is made in cross examination that arrest panchanama was conducted on 7/5/2016 at crime branch police station Ribandar in her presence. She further stated that on the day of the panchanama she was not called by PW29. PW29 did not introduce them to one female person nor informed them that the female person is the accused in the present crime. In cross examination she states that when she signed the



two envelopes, the envelopes were blank and nothing was written on the said envelope. She did not read the said papers which she signed nor the same were explained to her by the police.

137. PW9 Naguesh Ravindra is another pancha witness. According to him after signature of PW8 was taken he was called inside the office and made to sign on some envelope. Some contents were written and some were blank. He was also not wearing specks. He does not remember the date, month and year in which he signed on the said papers. Before he signed the papers somebody else had signed. He does not know who had signed the papers. Nothing incriminating is come from this witness and he also turned hostile.

138. PW29 Sudiksha Naik is the investigating officer in the present case who was attached to Womens Police Station in the year 2016. On 4/5/2016 she received case papers. A special team was constituted consisting of PI

Dattaguru Sawant and PSI Laxi Amonkar. On 04/05/2016 she took the custody of the victim from Apna Ghar Mercedes and thereafter she visited the house of Joaquina Fernandes and conducted attachment panchanama and recovered MO property which are stated to be clothes of the victim girl. According to PW29 all the clothes were identified by the victim as belonging to her. Some were thereafter packed and sealed during the panchanama which commenced from 21.45 hrs to 22.30 hrs. Photographs were also clicked during this panchanama. Thereafter the victim girl was referred for medical examination. After obtaining consent of the victim girl, she was examined by the doctor. On 5/5/2016 she also recorded supplementary statement of the victim in the presence of Victim Assistance Unit Audrey Pinto. Thereafter she alongwith the victim visited the place of offence which is the house of accused no.1 and conducted the scene of offence panchanama in the presence of Varsha Bhuiambar and Suzana D'souza and other

witnesses. She also secured presence of Forensic team consisting of Scientific Officer Sushant Naik, the items such as bedsheet were attached under the panchanama. This panchanama commenced at 13.55 hrs and concluded at 15.45 hrs.

139. Photographs were also clicked at the time of recording scene of offence panchanama. On 5/5/2016 she referred the victim girl to JMFC Panaji to record the statement of the victim girl u/s 164 of Cr. P.C. Being superior she issued directions on 05/05/2016 to PW27 Dattaguru Sawant for conducting part investigation and PW24 for conducting part investigation. She also called for CDR and SDR of four mobiles numbers. She received photographs of scene of offence panchanama on 6/5/2016. On the same day i.e. 6/5/2016 accused no.1 was referred for medical examination. On 7/5/2016 she arrested accused no.2 under panchanama and grounds of arrest was given to her younger son Randel Ferros over his mobile number. She was carrying two mobile phones

which were attached under the panchanama. She directed the lady police constable to check accused no.2 and accused no.2 was found having a Tatoo of cross on her right hand, old injuries were also seen on her left hand, old injuries scar marks were also seen on her left leg, one small black mole was seen on the left side of the neck. The panchanama commenced at 14.30 hrs and concluded at 15.00 hrs. She took custody of the victim on 7/5/2016 and conducted panchanama at the hotel Varanda Do Mar, Miramar in the presence of panch witnesses Tara Kerkar and Andreia Pereira. The said hotel Varanda Do Mar is situated near Goa Science Centre at Miramar. The receptionist at the counter secured the presence of the General Manager Nirmal Biswas and he disclosed that the hotel is run by Amit and Rohit Monserrate who are the sons of accused no.1. This panchanama commenced at 17:25 hrs and concluded at 18:45 hrs.

140. On 8/5/2016 she instructed PW26 Laxi Amonkar to conduct part investigation. On 9/5/2016 at the request of Forensic Doctor, accused no.1 was referred to IPHB for medical examination which report is dated 10/5/2016. On 10/05/2016 the victim was referred for blood sample for DNA profiling. On the same day accused was also referred for blood sample for DNA profiling. On 9/5/2016 she had written a letter to S.P. North for CDR, SDR and CAF of various phone numbers. Various phones were also attached under the panchanama. On 10/5/2016 she wrote a letter to PI Cyber cell and sent exhibits/mobiles for forensic examination. On the same day she also requested the Principal of Axxx (name withheld) High School, Caranzalem to furnish the information about the victim girl who was student of the said school. On the next day i.e. 11/5/2016 the Principal of Axxx (name withheld) High School furnished whatever information that was with them. She received the information on 11/5/2016. She also received the examination report from PI Cyber Cell.

She secured the custody of the victim girl from CWC and sent her for medical examination to ascertain the age of the victim girl. The victim girl was examined by a panel of doctors in the presence of the caretaker of Apna Ghar. The report of medical examination for assessment of age is at exhibit P-34 copy produced by PW19. She also recorded statement of Counselor of Apna Ghar Evelyn Fernandes on 11/05/2016 and requested the Executive Engineer Executive Engineer, PWD to depute a draftsman to conduct panchanama and drawing sketch. On 13/5/2016 Assistant Engineer PWD deputed Rajesh Naik for inspection to be carried out at 10.30 am. The draftsman was sent by her to the spot on 19/05/2016 at 11:50 am to 1:00 pm. On 20/5/2016 she received 7 photographs clicked during the attachment panchanama. She recorded statements of Rajesh Ravindran on 17/5/2016. She also states that accused nos. 1 and 2 were in custody and were released on 18/5/2016. On 22/5/2016 she wrote a letter to SP Crime Branch Ribandar to forward the exhibits to

CFSL Hyderabad. On 25/05/2016 she took the custody of the victim from CWC and recorded her part supplementary statement and thereafter on 27/5/2016 she only recorded statement of ZZZ (name withheld). The sketch which was drawn during the scene of offence panchanama was sent to her by Assistant Engineer, PWD on 1/6/2016. On 10/6/2016 she wrote a letter to the Magistrate to record statement of the victim u/s 164 of CRPC. On 8/8/2016 she received the statement recorded u/s 164 of CRPC from the Magistrate. On 28/11/2016 she had written to Superintendent of Police, Crime Ribandar, requesting to provide the hard copy of SDR/CDR and CAF form of the mobile numbers. On 20/12/2016 SP Crime Shri Karthik Kashyap wrote to the General Manager Vodafone, Pune, requesting to furnish the necessary details of the SDR, CDR and CAF of the mobile numbers. In January 2017 she received report dated 30/12/2016 from CFSL Hyderabad. On 23/01/2017 she received a letter from Idea Cellular Service provider in respect of one

mobile phone. In February 2017 she received CFSL report dated 15/2/2017. On 11/04/2018 she secured the presence of two panch witnesses Vinita Gadekar and Royston Braganza and conducted panchanama whereby mobile phone of accused no.1 was attached. By letter dated 08/06/2018, SP Crime forwarded sealed envelope containing exhibits to CFSL Hyderabad for examination. She received examination report of CFSL in August 2018.

141. Her investigation reveals that Samsung Galaxy phone was used by accused no.1 and mobile no. 9764306138 was used by the victim and there were exchanges of SMS between accused no.1 and the victim between February and March 2016. On 12/02/2016 at 15.53.44 hrs. SMS was sent from accused no.1 to the victim 'Send me ur pic'. This picture of the victim shows open breast of the victim girl. She was shown the CDR and SDR of various phones and she stated that the phones were used by accused no.1 and the victim girl and accused no.2 and there were calls between the three of them. On



11/2/2016 accused had called. Her investigation reveals that the mobile bearing no. 9823931713 was used by accused no. 2 and there were calls exchanged between accused no. 1 and 2 also. After completion of the investigation she filed charge sheet.

142. PW29 the Investigating Officer Sudiksha Naik had conducted scene of offence panchanama. The seal was used for the purpose of packing, sealing the items from the house of accused no.1. In cross examination she stated that the police station maintains seal movement register and they have only one seal to their cell but it does not have any number. She did not verify to find out whether entry of taking out the seal is still available or not. She states that the records of the police station are destroyed as per the manual. She admits that as per the manual the records cannot be destroyed till the final disposal of the case. She also states that she did not mention the seal number in the panchanama drawn by her. Therefore as far as the seal is concerned, a doubt is created as it looses

enough scope for packing the material thereafter. Further PW29 states that the photographs at exhibit P-19 collated produced by PW14 do not show attachment, packing and sealing and recording of the panchanama. Even if the photographs were captured, the issue of sealing would not have gained much importance. From both these angles, the panchanama of scene raises a doubt. She was then asked a question whether she tried to investigate as to who were the persons who served the drink to the victim girl. Her answer is that she had investigated but she could not identify the lady who offered the black colour drink and the snacks to the victim girl. According to PW29 as per the statement given by PW5 the victim girl the incident had occurred in the month of March 2016. At the time of taking the victim for panchanama, she should have been accompanied by her best friend, parent, relation or any other lady person with whom she could be comfortable. The victim girl was in the custody of CWC and hence for the protection and safety of the victim girl,

the caretaker of the Apna Ghar was deputed for panchanama alongwith the victim girl. She admits that whenever there is overwriting, correction made on the panchanama and other documents, it has to be initialed by the signatory. She admits that the victim girl had made false statements that she was served with a black colour drink, cake and patties by one lady and other persons. She also states that initially the victim girl made false statement that after she was served with the soft drink she became unconscious after taking the same and woke up in the morning at 11 am. She also admits that in later part of the investigation she does not say that she had even become unconscious. Her investigation reveals that investigation had occurred after mid March but she could not say in which week or the month. PW29 also stated that as per the initial statement of the victim girl, driver of the accused no.1 dropped her near the Chapel and at a later point of time she stated that there was no driver who dropped her near the Chapel. During panchanama all the

cars which were found in the compound wall of the said house were shown to the victim girl, however, the victim girl could not identify in which car she was dropped to the Chapel.

143. The case of the prosecution is that mother of the victim girl sold the victim girl to accused nos.1 and 2 for a certain amount. Nothing tangible is come on record and PW29 admits that accused no.1 never paid an amount of Rs.50 lakhs to the mother of the victim girl and since nothing was paid PW29 could not recover any amount.

144. She admits that her statement which was later converted into a complaint of victim girl was recorded by lady PSI Rashmi in the presence of Audrey Pinto Victim Assistant Unit (VA Unit) Harsha Naik and Ranjeeta Kinlekar both CWC members. It is also the case of the prosecution that the victim girl was working for Hxxx (name withheld) Galary from 1/12/2015 to 4/3/2016. However, PW29 in her examination has stated that the

victim girl did not work for Hxxx (name withheld) for 94 days approximately but she only worked for the month of February 2016 only for a period of 15 days commencing from 6/2/2016 till 17/3/2016. Even if this statement is considered it cannot be 15 days which means the investigating officer is not consistent. According to the prosecution PW2 had given mobile phone to the victim girl however PW29 admits that the victim girl had made false statement that her mother had given her the mobile phone Samsung J7 after her first salary. Interestingly, at the later point of time the victim girl says that the mobile was given by accused no.2 to her. PW29 admits that the victim girl had gone to the hotel at Miramar of accused no.1 on 6/3/2016 alongwith her mother and accused no.2. However, she had gone there only with accused no.2 but the exact date is not known. She admits that the victim girl initially stated that she had gone to the hotel of the accused no.1 on the fourth floor and later on she stated that she never visited the restaurant of the hotel on the

fourth floor. PW29 could not find out any person who had seen the victim girl with any of the accused persons visiting the restaurant.

145. Accused no.2 could not have dropped the victim to the house of accused no.1 because PW29 has stated that accused no.2 does not drive a four wheeler. If the investigation was carried out immediately, the clothes of the accused ought to have been attached. No any clothes of accused no.1 were attached. Except for the bedsheet from the house of the accused no.1 as it contains stain stating to be seamen stain. However, nothing is proved out of it. It is not connected to the incident of any rape. Even logically the accused persons of the status of accused no.1 would not have kept the same bedsheet for so many days. PW29 further states that the later part of the investigation victim girl stated that she woke up at 11 am and reached the house of Joaquina later on. The victim girl had stated to PW29 that she had narrated the incident to her cousin sister PW21 ZZZ (name withheld), However,

PW21 has denied that the victim girl told her anything about the incident on her mobile phone or personally. PW29 could not say for how many days the victim girl stayed in the house of Joaquina. It is found that the number of days differs from what is stated by the mother of Joaquina, Joaquina herself and PW29. When investigation was conducted on 25/5/2016 and victim girl was interrogated she stated that whatever date given by her earlier are not correct. Therefore she interrogated the victim girl again, but again the victim girl could not give the correct dates. At one time the victim girl also stated that accused no.1 came to the house of accused no.2 where victim girl was present and from there the victim girl was taken to the farm house. She admits that this statement is not correct. Her statement recorded under section 164 CRPC shows that accused no.2 had taken her to the farmhouse of accused no.1. Therefore, there is no consistency as to who exactly took her to the house of accused no.1. during her investigation conducted on

25/5/2016 the victim girl disclosed she was never unconscious when she went to the farmhouse of accused no.1. In view of the reading of the development of the photographs PW29 stated that she does not remember whether photographs clicked in the present case show relevant timings.

146. Accused no.1 is charged for the offence of rape and since the victim is less than 16 years of age, Section 4 of the POCSO Act is invoked. The said offence is alleged to have been committed by accused no.1 with the support and assistance of accused no.2. Accused no.2 instigated and provoked the victim girl to send nude photographs to accused no.1. One day she was taken to the farm house of accused no.1 sometime in the evening where she was offered soft drink and snacks and after having the same she fell unconscious and woke up in the next day and she found her clothes lying on the side of the bed and the accused no.1 was sitting on the chair next to the bed. Thereafter she was dropped near the church and from



there she went to the house of her friend Joaquina and there she had lunch and thereafter she went home.

147. The offence of rape is punishable under Section 376 of the Indian Penal Code. The offence of rape is defined under Section 375 of the Indian Penal Code. Ingredients of rape are as follows:-

(1) Accused committed one or more of the following acts:

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

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

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of

such woman or makes her to do so with him or any other person; or

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

(2) The accused did the said act falling under any of the following seven descriptions:—

(First.)— Against her will.

(Secondly.) — Without her consent.

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

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

(Fifthly.) — With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through

another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

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

(Seventhly.) — When she is unable to communicate consent.

148. Section 376 of the IPC provides punishment for rape whoever commits rape shall be punished with rigorous imprisonment of either description for a term which shall not less than 10 years but which may extend to imprisonment for life and shall also be liable to fine.

149. Burden of proof is on the prosecution to establish all the elements of offence. Medical evidence is very much important and it is well known in medical science that smegma loses all its importance after 24 hours of sexual intercourse. In the present case the victim is stated to be below 16 years of age therefore Section 4 of the POCSO Act has been invoked.

150. Section 4 of POCSO Act is Punishment for penetrative sexual assault. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine. The fine imposed shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.

151. Penetrative sexual assault is defined under Section 3 of the Act. Section 29 provides for presumption as to certain offences where here a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the

Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Section 29 raises a presumption of guilt as against a person prosecuted for commission of offences. Thus it would be presumed that if a person is prosecuted for the offence. The presumption shall be held and will prevail unless the contrary is proved by the defence. A presumption may be defined to be an inference as to the existence of one fact from the existence of some other fact founded upon a previous experience of the connection. Presumption may be of two kinds, rebuttable and irrebuttable presumption where there operates a presumption, the court has to pre-decided notion in mind, as against the accused, which is not proved otherwise, shall remain the same. The use of word 'shall presume' makes it clear that the court is bound to draw a certain presumption under the given circumstances and the court has to presume the same without any option given unless the defence proves the

presumption to be wrong. Section 29 also makes it clear that the presumption so raised is neither conclusive proof of the fact presumed nor it is an unrebuttable presumption. In case of this rebuttable presumption, the onus to rebut the presumption lies upon the accused and against whom the case has been drawn.

152. Along with the charge it is necessary for the prosecution to prove the basic facts.

153. In order to prove the offence of rape under the Special Act, i.e. under Section 4 of the POCSO Act, the prosecution has to prove certain facts and circumstances. Although there is a presumption in favour of the prosecution, certain facts which were required to be proved by the prosecution are absolutely missing. Since the following facts are not proved by the prosecution, and since there is no any clarity on the following facts, and since some of the following facts are not proved, the case of the prosecution is deemed to have been rebutted.

154. **Firstly, to whom the victim girl disclosed the facts for the first time.** She was admitted in Apna Ghar on 11.04.2016. For the first time she disclosed the fact of rape to PW22/Ms. Evelyn Fernandes who was posted at Apna Ghar as intern Counselor during the said period. The said Counselor had interaction with the victim girl and she prepared a report dated 22.04.2016 which is at Exhibit P-41. This report is the initial interaction report of the victim girl. Nowhere in this report there is any mention of any statement or narration by the victim girl against accused no.1 and accused no.2. After further interaction with the interaction with the victim girl, certain new and contrary facts came to light. On the basis of the further interaction, report dated 26.04.2026 at Exhibit P-40 was prepared and forwarded to the Deputy Director of Apna Ghar.

155. As per this report, the victim stated that during mid-March, her mother and accused no.2 forcibly took her to the house of accused no.1 at his residence at Taleigao.

From her own statement, no any incident had taken place in the month of April. During interaction, she further stated that she was dropped outside the residence of accused no.1, which means that she was not taken inside the house. It is also in the report that as per her interaction with the victim girl, she was dropped at around 6.00 p.m. Since there is no mention of any particular time, one cannot make out what is meant by “around 6.00 p.m.” The victim also states that she does not remember what happened to her between 7.00 p.m. to 8.00 p.m. of the next day. If the victim girl had woken up at 10.00 a.m., she could not have gone to the house of her friend Joaquina at 7.00 p.m. on the next day. As per this report, the victim girl found herself topless and she was having pain in her body, however, nothing is stated against accused no.1. Further, as per the statement, on the next day, the driver dropped her to her cousin ZZZ (name withheld) residence. This report also goes against the case of the prosecution because there is inconsistency as to



who dropped the victim girl to ZZZ (name withheld) house. In one breadth she says that accused no.1 dropped her and in another breadth she states that the driver dropped her. She has also stated that she was dropped at the Church near Taleigao, and in the report at Exhibit P-40/PW22, it is stated that she was taken to her cousin ZZZ (name withheld) residence. One more thing to be noted is that, if she was taken to the house of ZZZ (name withheld), who is her cousin, she could not have gone to the house of Joaquina.

156. As against the statement of the victim girl and report of PW22, the cousin sister/PW21/ ZZZ (name withheld), she was not in contact with the victim girl. On the other hand, PW5/victim girl has stated that she was very close to her cousin sister. As per the report, ZZZ (name withheld) and Joaquina were knowing each other, however, PW10/Joaquina and PW21 have not stated that they were knowing each other. According to PW22 and as per her report, the victim girl became unconscious when

she was taken to the house of accused no.1 and according to PW5/victim girl, she got up on the next day at about 11.00 a.m. However, the timing of her waking up is also not certain. The statement of PW5/victim girl was recorded under Section 164 of Cr.P.C. on 05.05.2016 wherein she has stated that she was in an unconscious state when she was taken to the house of accused no.1 by her mother and accused no.2. She also stated that there were 04 girls and 03 boys and cold drink was offered to her. If the victim girl could give so many facts when she was in the house of accused no.1, it goes to show that she was not unconscious. Thereafter, additional statement of the victim girl under Section 164 of Cr.P.C. was recorded on 04.08.2016 wherein she has stated that accused no.2 took her to the house of accused no.1. She avoids mentioning anything about her mother. She also stated that there was a watchman near the gate of the residence of accused no.1, but there is nothing to show that there was a watchman at the said spot. The prosecution has

failed to prove that there was any watchman near the gate of the house of accused no.1. Further, the victim girl states that accused no.1 gave her chocolate and cola to drink and at this time, accused no.2 went away. In this additional statement under Section 164 of Cr.P.C. recorded on 04.08.2016, she states that she was conscious. Thus, in one breadth the victim states that she was conscious and in another breadth she states that she was unconscious. From this part of the evidence, it is found that the victim girl gave inconsistent statements one after another.

157. **The second fact which was required to be proved by the prosecution is, who took the victim girl to the house of accused no.1.** In the initial statement of the victim girl recorded on 04.05.2016, she has stated that her mother and accused no.2 took her to the house of accused no.1 and that they went away by saying that they would return back. When PW5/victim girl was examined, she stated that accused no.2 took her to the house of accused no.1. PW29, the Investigating

Officer in the present case, has admitted that her investigation reveals that as per the statement of the victim girl recorded under section 164 of Cr.P.C. on 04.08.2016, accused no.2 took her to the house of accused no.1, and that they together did not take her to the house of accused no.1. This is an important fact which was required to be proved by the prosecution. Leave aside making allegations against accused no.1, the victim girl has stated that nothing had happened to her. The specific words are “nothing untoward had happened to me in the farmhouse”. PW29/Investigating Officer sets out a new case that accused no.1 came to the house of accused no.2, where the victim girl was there and they brought the victim girl to the farmhouse. PW29 admits that this statement is not correct. Therefore, the theory of the prosecution that the victim girl was unconscious, is ruled out.

158. The third point which was required to be proved by the prosecution is that on which date the victim girl was

taken to the farmhouse. As per the initial report at Exhibit P-41, she was taken in mid-March, however, PW5/victim girl has stated that she was taken to the house of accused no.1 in March or April. Out of the 60 days, she could not give the exact date. In cross-examination PW5/victim girl admitted that she has changed the dates and when suggestion was put, she states that she does not remember. Interestingly, PW29 who is the Investigating Officer in the present case, has stated that the victim girl had not mentioned the date of the incident. Therefore, we do not know the date of the incident. The Investigating Officer could not find out the exact date of incident as there is no evidence and no any witness who could give the exact date.

159. **The fourth point which was required to be proved by the prosecution is who were present in the house when the victim girl entered.** As per the complaint at Exhibit P-8, there was one watchman and one lady in the house. These two persons were vital

witnesses, however their statements have not been recorded. The case of the prosecution is that the victim girl was served with a drink. There is no clarity as to who served the drink. At some place it is mentioned that somebody from the house served her the drink, but that person has not been traced. The victim girl has referred to one watchman and one lady who was cleaning the house, only because she was going to the house of accused no.1, because it is the case of the prosecution that when the victim girl was working in Hxxx (name withheld), she used to go to the house of accused no.1, and that is how she has named the said watchman and the said lady who was cleaning the house.

160. **The fifth point which was required to be proved by the prosecution is whether the victim girl was given the drink, and whether after consuming the said drink, she fell unconscious.** It is come on record that the drink was given to everybody. There is no clarity as to who else was present alongwith

the victim. According to the prosecution, after having the drink and after consuming the snacks, she fell unconscious. It is the consistent case of PW29/Investigating Officer that when she was taken to the house of accused no.1, she was not unconscious and she never became unconscious. Therefore, the prosecution has failed to prove who actually offered the drink and snacks to the victim. At some point of time, the victim girl has stated that she was served soft drink and snacks, and at another point she has stated that was given black cold drink. According to the prosecution, after consuming the drink she fell unconscious. PW29/Investigating Officer was questioned with regard to the drug wherein she has stated that she orally inquired with the doctor, whose name she could not remember, as to what type of drug must have been given to the victim girl to make her unconscious. It was an oral inquiry. She also did not know if the said fact is noted in the case diary.

Therefore, one does not know what type of drug was administered to the victim girl.

161. The most important fact which was required to be proved by the prosecution is whether the accused no.1 had sexual intercourse with the victim girl. In one breadth PW5/victim girl has stated that accused no.1 had sexual intercourse with her twice during the intervening night, and suddenly, she has changed her version. The statement of PW5/victim girl was admittedly recorded 04 times by the police and twice before the Magistrate and the NGO had recorded her statement 03 times prior to recording her statement before the police. Her statements were recorded one after the other. At one time she also stated that accused no.1 removed his clothes and told her to remove her clothes and had sex with her. The victim girl admits that she has given inconsistent versions. Thereafter she has taken a summersault that she has not stated nor told anyone that accused no.1 had sexual intercourse with her twice in the night. She admits that



the complaints which she had given to the police as well as to the Magistrate about her mother selling her to the accused no.1 and accused no.2, were false complaints. She has also given reason as to why she filed false complaints. According to her, she was told by the NGO that all that had happened, had appeared on the newspaper and if she backs out, everybody will think that she is a liar. She states that nothing had happened to her and she had made up a false story. She further states that she had filed complaint against accused no.1 out of frustration and depression as she was kept in Apna Ghar where she was feeling mentally tortured. She has stated that nothing untoward happened to her. She has also stated that her statement before the police is not correct. According to the PW29/Investigating Officer, the security guard by name Babaji phoned someone and allowed them to enter, but PW29 did not try to find out whom he had called. The maid servant of the house/Geeta was not examined, nor her statement was recorded by the investigating agency.

There is also no consistency as to for how many days the victim girl was in the house of PW10/Joaquina. There is inconsistency with regard to her stay.

162. The 7<sup>th</sup> fact which is required to be proved by the prosecution is that at what time the victim girl woke up next day in the morning after gaining consciousness. The victim girl has stated that she got up at 11.00 am and between 11.00 am to 1.00 pm accused no.1 dropped her near the church however exact time is not given. Whereas PW5 had stated to PW29 that she woke up at 7.30 am on the next day. PW11 Ms. Maria Monteiro the mother of Joaquina stated that the victim girl came to their house in the morning. PW10 Joaquina has stated that she had seen the victim at 10.00 am therefore the case of the prosecution that the victim woke up at 11.00 am is false.

163. Point no.8 which was required to be proved by the prosecution is that who dropped the victim girl from the house of accused no.1 and in which car. The victim girl

has stated that he was dropped between 11 am to 1 pm by accused no.1 in white colour car. At other breadth she stated that driver dropped her. The investigating officer says that initially victim told that she was dropped by driver and thereafter she states that no any driver has dropped her therefore this fact is not proved.

164. 9<sup>th</sup> point required to be proved by the prosecution is whether there is any medical evidence to connect accused no.1 to the victim girl. PW4 Dr. Ankita Sinai Borkar (maidan name Dr. Ankita Joshi states that she examined the victim girl at 12.40 am and further she states that there was hymenal tear however she has not mentioned the size of the hymenal tear in the report. Mentioning the size is very much important. Further PW4 states that a printed form was used to take consent before examination. There is no any scope for refusal because there is no mention of any refusal in the printed form. Further victim girl states that NGO people had told her not to back out from the statement. She also states that

nothing had happened and it is her voluntary statement. Evidence of PW4 is discussed in detail above. Thus medical evidence does not support the case of the prosecution.

165. Next point which is required to be proved by the prosecution is whether any arrest panchama was conducted on 05.05.2016 while arresting accused nos.1 and 2 and whether mobiles were attached in accordance with law. PW7 Murlidhar Gawli who is one of the pancha witness has turned hostile. He was not shown any mobile phones therefore he could not identify any mobile phone. PW6 Dilip Ghadi has also turned hostile. Therefore packing and sealing of the articles is in doubt and there is scope of tampering. Since both the witness failed the attachment which is very much important is not proved.

166. Next point which is required to be proved is whether any clothes were attached in the house of PW10 Joaquina. Panchanama of attachment at Exhibit P-1/PW1 is not

proved. The clothes which were attached during panchanama are stated to be of Joaquina by mother of PW10. The victim says that clothes are of her. There is nothing incriminating against accused no.1 and 2.

167. Seal becomes more important at the time of attachment. According to PW29 investigating officer, the seal did not have any number nor there is any record of seal movement. Photographs do not show the act of sealing therefore the attachment of clothes from the house of Joaquina is in doubt.

168. The next point which is required to be proved is whether accused no.2 was arrested under any panchanama and whether her mobile was attached under panchanama on 07.05.2016. PW9 Naguesh Ravindra who was one of the pancha witness to the panchanama has turned hostile. According to him accused no.2 was not there and he had not seen accused no.2 and he could remember anything as on that day he was not wearing

spectacles. So attachment of mobile phone is question mark.

169. The aspect which is required to be proved is that the victim had gone to the restaurant and on the first floor of the hotel she was stated to be working at Hxxx (name withheld). Panchanama was conducted at Hxxx (name withheld) however nothing incriminating is attached.

170. The next point which was required to be proved is to whom did the victim disclosed about the incident. According to PW22 she first time narrated the incident to PW22. There is not corroboration to this fact the initial report and the final report is totally different. PW22 who is intern counselor tried to improve and narrated number of facts which are not mentioned in the report. In cross examination she had admitted this fact.

171. The most vital fact which was required to be proved by the prosecution is the age of the victim at the time when offence was committed. The PW19 Dr. Madhu

Godkirekar has admitted that age of fusion is given in range and not as a fixed value. He did not ask for any birth certificate and copy of the Aadhar card from IO because the conduct medical examination and determine age on medical findings. No any school certificate was produced before him. He admits that in radiological examination alone the margin of range is around 2 years.

172. PW20 Dr. Sanjay Sardessai has stated that the police did not produce any birth certificate, Aadhar card or school certificate to prove her age. He could not say anything to the suggestion that from 14 to 20 years dental age determination is based on stage of development of third molar and there is much variation in this, and accuracy of the dental age estimation during this period there is plus/minus three years. He admits that in radiological examination alone the margin of range could be around two years. In his report he has mentioned radiological age of victim as 17 to 18 years and there could be margin of one year.

173. Section 4 of the POCSO Act covers sexual offences committed against any child between the ages of 16 to 18 years. In the State of Goa, special Court is constituted known as 'Children's Court' having jurisdiction to deal with the sexual offences committed against child less than 16 years, which means if sexual offence is committed and if the child is below 16 years the case goes to the Children's Court. Besides this offence Children's Court also deals with other cases committed against children wherein the age of the victim is below 18 years.

174. The case of the prosecution is that the victim has just completed 14 years of age. As discussed above the age is not proved. According to PW19 Dr. Madhu Ghodkirekar based on his physical examination findings, assessment on radiological and dental age, in his opinion the age of the victim was between 17 and 18 years. Same is the opinion of PW20 Dr. Sanjay Sardessai. PW20 has stated that age of the victim could be 19 years. The age was determined by panel of doctors consisting PW19, PW20



and Dr. Ajit Dinkar who has expired. If the age of the victim turns to be more than 18 years, the accused comes out of Section 4 of the POCSO Act. As far as Section 376 is concerned the ingredients are not proved by prosecution.

175. In the case of **Mukarrab ETC.** (supra) the Hon'ble Court held that in case of medical examination for determination of age by ossification test, the examination leaves a margin of about 2 years on either side. Even if ossification test of multiple joint is conducted, the Hon'ble Court further held that in case of determination of age hyper technical view should not be taken. When two views are possible, the one leaning towards accused should be taken. Standard of proof for age determination is degree of probability and not proof beyond reasonable doubt.

176. In the case **Ravi Anandrao Gulpude** (supra) the Hon'ble Court held that prosecution is under bounded duty to prove age of prosecutrix to show that at the time

of incident, the prosecutrix was child within the meaning of provisions of Act. In the said case prosecution utterly failed to prove that prosecutrix was 'child' on the date of incident within the provisions of the POCSO Act. From birth to 14 years of age, the degree of formation of root and crown structure, the stage of eruption and the intermixture of temporary and permanent teeth are useful in age determination. It is generally accepted that in the child estimation of age the teeth gives better result than skeleton. Dental Xray show the development status of unerupted teeth and degree of root completion in erupted teeth. From 14 to 20 years dental age estimation is based upon the state of development of the third molar. There is much variation in this and the accuracy in dental age estimation during this period where is about plus/minus three years. In view of above, the prosecution has failed to prove the age of the victim. Considering the ratio laid down in the above judgments benefit of doubt has to go to the accused.

177. Prosecution had to prove that the panchanama is conducted in the farm house of accused no.1. PW2 is the pancha witness. A bed sheet was attached from the house and it contained stain of semen. Upon testing it was found to be positive for semen. However it is not proved that the stain of semen is of accused no.1. Procedure of attachment and sending it for examination is not proved by prosecution.

178. The quality of the evidence which is required to be adduced should be of sterling quality. In the case of **Rai Sandeep @ Deepu & Another** (supra) the Hon'ble Supreme Court found that semen sample did not match with the accused and it created a serious doubt in the case of the prosecution. The Hon'ble Court held that evidence should be of sterling quality. A sterling witness should be of high quality and caliber whose version should be trustworthy and unimpeachable. To test the quality of

statement of the witness would be immaterial and what would be relevant is the truthfulness of the witness.

179. In the case of **Mahendra Singh and Ors.** the Hon'ble Supreme Court held that there are three types of witnesses they are wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable. No conviction can be based on a witness who is wholly unreliable. The evidence has to be wholly reliable.

180. In the case of State (**GNCT of Delhi**) (supra) the the Hon'ble Supreme Court held that in case of rape conviction can be based on sole testimony of prosecutrix as her testimony is given high value. A person can even be convicted on sole testimony on single witness. Testimony of such witness should inspire confidence.

181. In the case of **Roshan s/o. Ruprao Bhandre** (supra) the Hon'ble High of Bombay held that in order to substantiate charges under Section 4 of the POCSO Act it

is incumbent upon the prosecution to establish date of birth of the victim. The victim in the said case had accompanied the accused. The age of the victim was not determined. In the absence of credible evidence to prove that the victim was below 18 years of age in the said case and in view of serious doubts surrounding lack of consent the essential ingredient of the offence under Section 376 of IPC are not proved beyond reasonable doubt and hence benefit was given to the accused.

182. In the case of **XYZ** (supra) decided by the Hon'ble Supreme Court on 6.3.2023, in the said case the victim turned hostile and did not support prosecution case and no substantial evidence was brought on record to constitute offence under Section 376 (2) of IPC and Section 4 of POCSO Act and the accused was acquitted.

183. In the case of **Subhash Dhondiba Pandit** (supra) the High of Bombay held that if 50% testimony of witness is unreliable, the entire evince has to be discarded.

184. In the case of **Vishnu @ Balu Namdeo Dudhabawani** (supra) the High Court of Bombay held that presumption under 29 of the POCSO Act is not attracted in the absence of fundamental fact.

185. In the case of **Kailas s/o Rama Dawar** (supra) the Hon'ble High Court of Bombay held that the presumption invoked in the said case under Section 29 of POCSO Act was not in accordance with law. As far as Section 29 is concerned, the presumption under Section 29 is not an absolute presumption. It is a rebuttable presumption. The presumption gets triggered only when foundations facts are established by the prosecution beyond reasonable doubt. The evidence on record must be sufficient to believe the case of the prosecution and thereby support the very foundation of the case of the prosecution.

186. In the case of **Ketan Sanjay Kokate** (supra) the Hon'ble Supreme Court held that the accused cannot be

held guilty of offences under Section 376 of IPC or Section 4 of POCSO Act if the sexual relationship between victim and the accused consensual. In the said case the prosecution had failed to prove that the victim was below 16 years of age on the date of the incident.

187. In the case of **Kailas** (supra) the Hon'ble High Court of Bombay held that the prosecution must provide credible evidence to establish the victim age under the POCSO Act.

188. In the case of **Akash Dilip More** (supra) the Hon'ble High of Bombay held that presumption under Section 29 of the POCSO cannot be invoked without establishing foundational facts.

189. In the case of **Amol s/o Madan Kaste** (supra) the Hon'ble Court held that the prosecution must prove its case beyond reasonable doubt. The ratio which is more applicable to the present case is that the Hon'ble Court emphasis that soliditory evidence of prosecutrix must

inspire confidence and be of sterling quality to hold an accused guilty of rape.

190. In the case of **Raushan Kumar** (supra) the Hon'ble High Court of Patna held that lack of corroborative evidence and inconsistencies in the victim statement led to the conclusion that the prosecution failed to meet its burden of proof.

191. The prosecution in the present case has failed to prove that accused no.1 had sexual intercourse with victim girl and that the age of the victim girl was below 16 year. Prosecution has failed to prove the age of the victim. In view of the evidence discussed and case laws mentioned above the benefit of two years minus and plus would come in favour of accused no.1.

192. For the reasons mentioned above, point nos.(1) and (2) answered in the negative.

**Point no.(3).**



193. The case of the prosecution is that accused no.1 and 2 wrongfully restrained the victim girl. This wrongful restrain would mean that the victim girl was taken to the farm house of accused no.1 and she was not allowed to move out. By administering intoxicated cold drink she was made to have soft drink and after which she fell unconscious. Prosecution has failed to prove who took the victim girl to the house and who administered the said drink. There is also a doubt whether the victim fell unconscious.

194. To prove the offence of wrongful confinement the prosecution has to prove the accused lawfully restrained the victim and prevented her from proceeding out of the farm house and that she had the right to go out of the farm house. The first two ingredients are not proved and no offence of wrongful restrain is made out.

195. For reasons mentioned above point no.(3) is answered in the negative.

**Point no.(4).**

196. The case of the prosecution is that accused no.2 threatened the victim girl of dire consequences and threatened to come to the house of accused no.1. According to prosecution, accused no.2 had certain nude photographs which she had taken from the victim girl. When the victim girl did not listen to accused no.2, the said accused no.2 threatened her saying that she would viral the photographs.

197. The evidence which is come on record lacks confidence. The nude photographs showing open breast does not show the face of the person. Rest of the photographs cannot be considered as nude photograph. PW5 the victim girl has herself stated that she had not send any photographs to the accused no.2. Therefore the

question of accused no.2 threatening victim girl at the instance of accused no.1 does not arise.

198. For the reasons mentioned above, point no.(4) is answered in the negative.

**Point no.(5).**

199. The case of the prosecution is that accused nos.1 and 2 transmitted the nude photographs of the victim girl.. Point no.4 is answered in the negative. According to prosecution accused no.2 forced the victim girl to send her photographs including nude photographs to herself and upon receiving the photographs she forwarded the photographs to accused no.1. Section 79 A of Information and Technology Act requires that Central Government should notify the examiner of electronic evidence. Mobile phones of accused no.1 and 2 were attached and the panchas were turned hostile. The attachment of the mobile phone of accused no.1 and 2 is itself in doubt. PW6

and PW7 who are panchas to attachment to mobile phone of accused nos.1 and 2 turned hostile. PW8 and 9 who were panchas while attachment of mobile phone from accused no.2 also turned hostile. Section 45 A of the Indian Evidence Act states that report will have value only when Section 79A of IT Act is followed. Explanation to Section 79A says that examiner should be an expert. PW18 was examined as an expert however he had not undergone detail training. Whatever training he has taken is general. In his cross examination it has come on record that he does not know whether the software was updated and when for the last time software was updated.

200. PW12 is pancha witness before whom data was extracted. The timings of extraction defers and the report should have been generated on the day of the panchanama itself however in the present case data was generated thereafter. PW12 wrongly stated that the data

was prepared on the same day. There are glaring inconsistencies in the evidence of PW18 itself. One does not know how presence of PW12 was secured. PW12 has acted as pancha witness in number of cases. Even if he is not considered as stock witness he can definitely be not relied in the present case.

201. PW18 does not know what is hash value. Hash value is the unique digital finger print of electronic data used in forensic investigation to prove that evidence has remained authentic and unaltered from the time of seizure in presentation in Court. Hash value play critical role in digital forensic investigation as they provide a scientifically reliable method to verify the integrity and authenticity of electronic evidence. When a device is seized, investigators generate a hash value of the original data. This hash value serves as a unique digital fingerprint. A bit-by-bit forensic image is then created and the hash value of the image is compared with the original. Matching hash values confirm that the copy is an

exact and unaltered replica. Throughout the investigation, hash values are recorded in the chain of custody to ensure that no tampering or modification has occurred at any stage. Since any minor change, results in a completely different hash, courts rely has value, as hash values establish that the evidence presented is genuine, reliable and admissible.

202. PW28 is an expert on digital evidence. The chain of custody documents shows that it was open on 10.05.2016 and thereafter sent to CFSL they should have made clone copy. Manual for forensic says any clone image has to be tested and not original because main image should remain unaltered same has to be done to match with original. Report of PW28 gives report only on mobile of accused no.2. He does not give report of accused no.1 as it was already opened.

203. For the reasons mentioned above, point no.(5) is answered in the negative.

204. I, therefore pass the following Order:-

**O R D E R**

Accused nos.1 and 2 are acquitted for the offences punishable under Sections 376, 342 and 506 read with Section 34 of IPC.

Accused nos.1 and 2 are acquitted for the offence punishable under Section 4 of POCSO Act.

Accused nos.1 and 2 are acquitted for the offence punishable under Section 67B of the Information and Technology Act.

The accused nos.1 and 2 to furnish bail bonds of Rs.25,000/- each with one surety in the like amount and to remain in force for a period of 6 months from today.

MO property nos.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 are to be destroyed after the appeal period is over.

Place: Merces.

Date:11.02.2026

Sd/  
**(Irshad Agha)**  
Sessions Judge, Merces.

Cc/sf\*