

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLA No. 508 of 2025**

(In the matter of an appeal under Section 374(2) of the Code of Criminal Procedure, 1973).

Bablu Verma *Appellant (s)*
-versus-
State of Odisha *Respondent (s)*

Advocates appeared in this case through Hybrid Arrangement Mode:

For Appellant (s) : *Ms. Rita Singh, Adv.*

For Respondent(s) : *Ms. Sarita Moharana, ASC*
Mr. Kuldeep Mohanty, Adv.

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -31.03.2026

DATE OF JUDGMENT: -22.05.2026

Dr. Sanjeeb K Panigrahi, J.

1. The present appeal assails the judgment of conviction and order of sentence dated 03.04.2025 passed by the learned ADJ-cum-Special Court under the POCSO Act, Cuttack in Special G.R. Case No. 115 of 2023 arising out of Niali P.S. Case No. 246 of 2023, whereby the appellant has been convicted under Sections 452/354/354-A of the IPC and Sections 10 and 12 of the POCSO Act and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default whereof, to undergo rigorous imprisonment for one month, with the substantive sentences directed to run concurrently.



I. FACTUAL MATRIX:

2. The prosecution case is that the informant who is the mother of the victim submitted a written report before the IIC, Niali Police Station alleging therein that on 09.07.2023 at about 10:20 A.M., a grinder mechanic, who used to provide services by moving from door to door, came to the house of the elder brother-in-law of the informant. At that time, the victim and her younger sister were playing at the said house. It was alleged that the accused requested the sister-in-law of the informant to prepare tea for him and, during such time, entered the house, called the victim near him and forcibly kissed her on her cheek and lips. It was further alleged that the accused inserted his hand inside the pant of the victim and put his finger into her vagina. Thereafter, the victim allegedly escaped from the spot and hid herself, while the accused fled away. On the basis of the said allegations, the FIR came to be lodged.
3. Upon registration of Niali P.S. Case No. 246 of 2023, P.W.15 took up investigation, examined the informant and other witnesses, apprehended the accused on 09.07.2023, sent him for medical examination and got the victim medically examined by P.W.14, who stated that no external injury was found on the body of the victim. Thereafter, the statement of the victim under Section 164 Cr.P.C. was recorded.
4. Upon completion of investigation, charge-sheet was submitted against the accused under Sections 452/376(AB)/354/354-A IPC read with



Sections 6 and 12 of the POCSO Act, whereupon cognizance was taken in Special G.R. Case No.115 of 2023.

5. The learned trial court, upon appraisal of the oral and documentary evidence on record, ultimately held the appellant guilty for the offences punishable under Sections 452/354/354-A IPC read with Sections 10 and 12 of the POCSO Act.
6. Being aggrieved by the judgment dated 03.04.2025 passed by the learned ADJ-cum-Special Court under the POCSO Act, Cuttack in Special G.R. Case No.115 of 2023, the present criminal appeal has been preferred.

II. SUBMISSIONS OF THE APPELLANTS:

7. Learned counsel for the appellants made the following submissions in support of his contentions:
 - i. The appellant submitted that the impugned order of conviction passed by the learned Court below is illegal, arbitrary and, as such, the same is liable to be set aside.
 - ii. The appellant contended that the findings of the learned Court below are against the weight of the evidence available on record and, as such, the same are contrary to law and liable to be set aside.
 - iii. The appellant submitted that the learned ADJ-cum-Special Court under the POCSO Act, Cuttack failed to properly appreciate the facts of the case and that the impugned judgment is contrary to law and the weight of the materials available on record.



- iv. The appellant contended that the learned ADJ-cum-Special Court under the POCSO Act, Cuttack was swayed by the statements of the alleged witnesses, who are interested witnesses, while ignoring the surrounding circumstances, facts and factors pointing to the improbabilities in the prosecution story.
- v. The appellant further contended that based on the version of P.W.1, the FIR was lodged. It was submitted that the victim deposed before the Court that she along with her sister was playing and watching television, whereas in her statement recorded under Section 164 Cr.P.C., she stated that she and her sister were going to play on the swing. According to the appellant, such contradiction creates doubt as to whether the victim was actually present at the spot or whether the case has been projected in a misleading manner.
- vi. The appellant further contended that P.W.3, who is stated to be an independent witness, cannot be fully relied upon inasmuch as, in her examination-in-chief, she stated that after preparing tea, when she came out of the kitchen, she found that the victim was not there and thereafter she paid the repairing charges to the accused, who then left the house. However, in her cross-examination, she stated that she found neither the victim nor the accused present there. According to the appellant, her statement is self-contradictory so far as the presence of the accused is concerned. It was further submitted that P.W.3 stated that the informant narrated the incident to them and that the Investigating Officer as well as the prosecution failed to establish the presence of the accused in the house. Therefore, according to the



appellant, such findings suffer from inconsistencies and are not sustainable in the eye of law. It was further contended that while considering the evidence of P.W.3, the learned trial court failed to properly apply its judicial mind and, as such, the impugned judgment is illegal, arbitrary and contrary to law and liable to be set aside.

- vii.** The appellant further contended that the entire findings of the learned trial court are based upon the statements and evidence of the eye-witnesses, but their evidence cannot be relied upon in the absence of any corroboration from independent witnesses. As such, according to the appellant, the findings of the learned trial court are illegal, arbitrary and liable to be set aside.
- viii.** The appellant further contended that the learned Court below, being a fact-finding authority, failed to consider the case in its proper perspective and erroneously passed the order of conviction under Sections 452/354/354-A of the IPC and Sections 10 and 12 of the POCSO Act, sentencing the appellant to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default whereof, to undergo rigorous imprisonment for one month. According to the appellant, such findings are not supported by law and, therefore, this Court may re-appreciate the prosecution evidence in the present appeal.
- ix.** The appellant contended that P.W.4, namely the victim, in her statement under Section 164 Cr.P.C. never mentioned about insertion of finger by the accused into her vagina, whereas she deposed the same



before the Court during evidence. According to the appellant, the said fact has been introduced subsequently and is an afterthought.

- x. The appellant further contended that as per the statement of P.W.1, after knowing about the incident she called her husband, namely P.W.2, over phone and thereafter P.W.2 searched for the accused, whereas P.W.2 stated that after returning home, his wife informed him about the occurrence. According to the appellant, there is contradiction in the statements of P.Ws.1 and 2.
- xi. The appellant further contended that P.W.2 stated that he caught hold of the accused from Tampada and thereafter informed the police, whereas P.W.15 stated that the accused was apprehended from Nuagaon Chhak, which is highly inconsistent.
- xii. The appellant further contended that P.W.15 admitted in cross-examination that she had prior acquaintance with P.W.2, who is a journalist. According to the appellant, the entire proceeding and trial were not fairly conducted from the side of the prosecution.
- xiii. The appellant further contended that the Investigating Officer did not take any step to establish the identity of the accused by conducting a T.I. Parade by the victim. It was further contended that though there was CCTV footage regarding movement of the accused, the Investigating Officer never took any step to bring the same on record.
- xiv. The appellant contended that he has been falsely implicated in the present case and is liable to be acquitted. It was further submitted that



considering the age and family condition of the accused, kind consideration may be shown.

III. SUBMISSIONS OF THE RESPONDENTS:

8. Per contra, learned counsel for the State submitted that the learned trial court has rightly convicted the appellant for the offences punishable under Sections 452/354/354-A IPC read with Sections 10 and 12 of the POCSO Act and, considering that the offences were committed against a minor girl below the age of 12 years, the benefit of the Probation of Offenders Act, 1958 could not be extended to him. No interference with the impugned judgment is warranted.
9. The learned trial court rightly found that the testimony of the victim remained consistent with her statement recorded under Section 164 Cr.P.C. so far as the allegations relating to dragging, kissing and inserting his hand inside the pant of the victim are concerned and that such conduct clearly constituted the ingredients of sexual assault under Sections 354/354-A IPC and Sections 10 and 12 of the POCSO Act.

IV. FINDINGS OF THE LEARNED ADJ-CUM-SPECIAL COURT UNDER THE POCSO ACT, CUTTACK:

10. The learned trial court, while considering the evidence on record, held that the prosecution had successfully proved the age of the victim through the birth certificate issued by the Registrar of Birth and Death, CMC Niali, which disclosed the date of birth of the victim as 01.11.2014. Since the occurrence took place on 09.07.2023, the Court



concluded that the victim was below 12 years of age at the time of the incident.

11. On the question of identity of the accused, the trial court rejected the defence plea of misidentification. The Court observed that the victim had consistently referred to the accused as "Bablu uncle" and that PW3 had clearly deposed that the accused was known to her as a grinder mechanic who had previously visited her house on several occasions for repair work. Taking into account the evidence of the victim and PW3, the Court held that there was no scope for mistaken identity and that the accused was the same person who had come to repair the grinder at the house of PW3 on the date of occurrence.

12. Upon appreciation of the testimony of the victim (PW4), the Court found that her version regarding the accused dragging her, kissing her and inserting his hand inside her pant remained substantially consistent both before the Court and in her statement recorded under Section 164 Cr.P.C. However, the Court noticed that the allegation regarding insertion of finger into the vagina of the victim was absent in her statement under Section 164 Cr.P.C. and was not corroborated by medical evidence, as the doctor found no external or internal injury on examination of the victim. The Court therefore held that the allegation of fingering constituted an improvement and could not safely be accepted for establishing the ingredients of penetrative sexual assault or rape under Section 376(AB) IPC and Section 6 of the POCSO Act.



13. The trial court further held that although penetrative sexual assault was not proved, the conduct of the accused in dragging the victim, kissing her and inserting his hand inside her pant clearly amounted to “sexual assault” within the meaning of Section 7 of the POCSO Act, being an act involving physical contact with sexual intent without penetration. Having held that the acts constituted ‘sexual assault’ under Section 7 of the POCSO Act and considering the age of the victim, the trial court concluded that the offence would fall within the ambit of aggravated sexual assault punishable under Section 10 of the POCSO Act.

14. The trial court further held that the prosecution had successfully established the offence under Section 452 IPC. The Court observed that though the accused had entered the premises with permission for repairing the grinder in the verandah, he subsequently entered the room where the victim was present and committed sexual assault upon her. The Court held that such entry into the room amounted to trespass with preparation to commit an offence.

15. The Court also concluded that the acts of dragging the victim, kissing her and inserting his hand inside her pant constituted the offences punishable under Sections 354 and 354-A IPC. The conduct of the accused further amounted to sexual harassment within the meaning of Section 11 of the POCSO Act and was punishable under Section 12 thereof. Further, considering the nature of physical contact with sexual intent and the age of the victim, the Court held that the acts also constituted aggravated sexual assault punishable under Section 10 of



the POCSO Act. Accordingly, the trial court held that the prosecution had proved the offences under Sections 452/354/354-A IPC read with Sections 10 and 12 of the POCSO Act beyond reasonable doubt, while failing to establish the offences under Section 376(AB) IPC and Section 6 of the POCSO Act.

16. The trial court sentenced the convict to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for one month, for the offence punishable under Section 452 IPC. The convict was further sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for one month, for the offence punishable under Section 10 of the POCSO Act in view of Section 42 of the POCSO Act. Both the sentences were directed to run concurrently and the period undergone during trial was directed to be set off under Section 428 Cr.P.C. The trial court further directed that the fine amount, if realized, be paid to the victim as compensation under Section 357 Cr.P.C. and also awarded compensation of Rs.2,00,000/- to the victim under Section 357-A Cr.P.C. read with the Odisha Victim Compensation Scheme.

V. COURT'S ANALYSIS AND REASONING:

17. Heard learned counsel for the parties and perused the material placed on record.

18. The principal contention advanced on behalf of the appellant is that the prosecution case suffers from material contradictions and



inconsistencies and that the learned trial court failed to properly appreciate the evidence available on record. It has been contended that the evidence of the victim is inconsistent with her statement recorded under Section 164 Cr.P.C. and that the allegation relating to insertion of finger into the vagina was introduced subsequently as an improvement during trial. It has further been contended that the evidence of P.W.3 is self-contradictory and that the prosecution has failed to establish the identity and presence of the accused beyond reasonable doubt.

19. This Court has carefully examined the evidence of the victim (P.W.4), the informant (P.W.1), P.W.2, P.W.3 as well as the evidence of the Investigating Officer and the medical evidence available on record.

20. So far as the age of the victim is concerned, the learned trial court relied upon the birth certificate issued by the Registrar of Birth and Death, CMC Niali, wherein the date of birth of the victim has been reflected as 01.11.2014. The occurrence having admittedly taken place on 09.07.2023, this Court finds no infirmity in the conclusion arrived at by the learned trial court that the victim was below 12 years of age on the date of occurrence.

21. Coming to the question of identity of the accused, this Court finds that the victim consistently identified the accused as "Bablu uncle". P.W.3 has categorically stated that the accused was known to her as a grinder mechanic and had earlier visited her house on several occasions for repair work. Merely because no Test Identification Parade was conducted, the same would not by itself create doubt regarding



identity, particularly when the witnesses were already acquainted with the accused prior to the occurrence.

22.The contention of the appellant regarding contradictions in the evidence of the victim also does not persuade this Court to discard her testimony in its entirety. The discrepancy pointed out by the defence, namely that in her evidence before the Court the victim stated that she and her younger sister were watching television whereas in her statement under Section 164 Cr.P.C. she stated that they were going to play on the swing, is, in the opinion of this Court, a minor discrepancy not touching the core of the prosecution case. Such variations are natural in the testimony of a child witness and do not go to the root of the allegations levelled by the prosecution.

23.This Court further finds that the learned trial court rightly noticed that the allegation regarding insertion of finger into the vagina of the victim was absent in her statement recorded under Section 164 Cr.P.C. and was also not corroborated by the medical evidence of P.W.14, who found no external or internal injury on the person of the victim. The learned trial court was, therefore, justified in extending benefit of doubt to the appellant in respect of the offences punishable under Section 376(AB) IPC and Section 6 of the POCSO Act. However, merely because the allegation relating to penetrative sexual assault was not established, the consistent testimony of the victim regarding dragging, kissing and inserting his hand inside her pant cannot be discarded, particularly when the same remained substantially consistent throughout.



24. In the present case, the victim has consistently stated both before the Court and in her statement under Section 164 Cr.P.C. that the accused dragged her, kissed her and inserted his hand inside her pant. The said version also finds support from the evidence of P.W.1 and P.W.2, before whom the victim disclosed the occurrence immediately thereafter. Though P.W.1 and P.W.2 are hearsay witnesses with regard to the actual occurrence, their evidence assumes relevance as regards the immediate disclosure made by the victim soon after the incident.

25. Similarly, the evidence of P.W.3 also establishes that the accused had come to her house for repairing the grinder and that at the relevant point of time she had gone to the kitchen for preparing tea while the victim and her younger sister remained inside the house. Minor inconsistencies in her testimony regarding whether the accused was present when she returned from the kitchen do not render the prosecution case unreliable, as her evidence regarding the presence of the accused at the spot has remained consistent throughout.

26. This Court further finds that the conduct of the accused, namely dragging the victim, kissing her and inserting his hand inside her pant, clearly constitutes physical contact with sexual intent and squarely falls within the ambit of "sexual assault" as defined under Section 7 of the POCSO Act. Considering the age of the victim, this Court finds no infirmity in the conclusion arrived at by the learned trial court in holding the appellant guilty for the offence punishable under Section 10 of the POCSO Act.



27. Similarly, the evidence on record also establishes the ingredients of the offences punishable under Sections 354 and 354-A IPC. The acts attributed to the accused were clearly intended to outrage the modesty of the child victim and involved unwelcome physical contact and sexual overtures.
28. So far as the offence under Section 452 IPC is concerned, the evidence on record establishes that although the accused initially entered the premises for the purpose of repairing the grinder in the verandah, he thereafter entered the room where the victim was present and committed sexual assault upon her. Such unauthorized entry into the room with intent to commit sexual assault constituted house-trespass punishable under Section 452 IPC and the finding recorded by the learned trial court in that regard warrants no interference.
29. The contention advanced on behalf of the appellant that the investigation was unfair on account of prior acquaintance between P.W.2 and the Investigating Officer also does not persuade this Court to discard the prosecution case. The conviction is primarily based upon the consistent testimony of the victim, which inspires confidence and stands substantially corroborated by the surrounding circumstances.
30. Upon overall appreciation of the evidence available on record, this Court finds that the learned trial court has properly appreciated the oral and documentary evidence and has rightly held that the prosecution failed to establish the offences punishable under Section 376(AB) IPC and Section 6 of the POCSO Act, while successfully



proving the offences punishable under Sections 452/354/354-A IPC read with Sections 10 and 12 of the POCSO Act beyond reasonable doubt.

31. So far as the sentence imposed by the learned trial court is concerned, considering the nature of allegations proved against the appellant and the age of the victim, this Court does not find the sentence imposed to be excessive or disproportionate so as to warrant interference in exercise of appellate jurisdiction.

VI. CONCLUSION:

32. In view of the aforesaid analysis, this Court finds no infirmity in the impugned judgment of conviction and order of sentence passed by the learned trial court warranting interference in the present appeal.
33. Accordingly, the criminal appeal being devoid of merit stands **dismissed**. The judgment of conviction and order of sentence dated 03.04.2025 passed by the learned ADJ-cum-Special Court under the POCSO Act, Cuttack in Special G.R. Case No.115 of 2023 are hereby affirmed.
34. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 22nd May, 2026 /