



2026:AHC:170350-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRLA No. - 2307 of 2025

Yatindra Mohan
Bahuguna And Another

.....Appellant(s)

Versus

State Of U.P. And 3
Others..

.....Respondent(s)

Counsel for Appellant(s)	: Rajiv Dwivedi, Saurabh Chaturvedi
Counsel for Respondent(s)	: Dharmendra Kumar Chaubey, G.A., Pravin Kumar Tiwari

Court No. - 44

**HON'BLE SIDDHARTHA VARMA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.**

1. Heard Sri I.K. Chaturvedi, learned Senior Advocate assisted by Sri Saurabh Chaturvedi, Sri Rajeev Dwivedi, Sri Raj Vyas and Sri Navneet Pandey, learned counsel for the appellants; Sri Dharmendra Kumar Chaubey, learned counsel appearing for the complainant and Sri C.B. Dhar Dubey along with Sri Muni Raj Mehrotra, learned Additional Government Advocates for the State.

2. The instant Criminal Appeal has been filed against the judgment and order dated 11/13.02.2025 passed by the Additional District and Sessions Judge (Special Judge POCSO Act) Court No.3, Room No. 7, Varanasi, convicting the appellants under Sections 376(2)(n)(f), 376D,

323, 506 of the Indian Penal Code (*hereinafter referred to as "I.P.C."*) and under Sections 5(l)(m)(n)(g)/6 of the POCSO Act. The appellants were sentenced for life imprisonment under Sections 5(l)(m)(n)(g)/6 of the POCSO Act with a fine of Rs. 1,00,000/- each. In default of payment of fine they had to undergo 6 months of additional simple imprisonment. The appellant no. 1, Yatindra Mohan Bahuguna, was further sentenced to rigorous imprisonment for two years under Section 506 of I.P.C. A further fine of Rs. 2,000/- was imposed. In default of payment of fine he had to undergo one month of additional simple imprisonment. Under Section 323 of I.P.C. one year rigorous imprisonment with a fine of Rs. 1,000/- was ordered. In default of payment of fine he had to undergo 15 days of additional simple imprisonment.

3. Brief facts of the case are that a first information report (*hereinafter referred to as "F.I.R."*) was initially lodged by the first informant (PW-3 Dr. Dipti Pandey) on 08.06.2018 in Varanasi, under Section 323, 376 of the Indian Penal Code (*hereinafter referred to as "I.P.C."*) and under Section 7/8 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as "POCSO Act"*). It was alleged that the informant, Dr. Deepti Pandey, was the wife of Yatindra Mohan Bahuguna and that she was staying in Flat No.13 Ved Vyas Colony, B.H.U., Police Station -Lanka, Varanasi along with her father and her 7 years old daughter, XXX (to be referred in this manner throughout). She had also mentioned that she was working in the ENT Department as Senior Resident. Further, it was mentioned that on 23.03.2018 her daughter, while there were holidays in her school, was

taken by her father Dr. Yatindra Mohan Bahuguna to Haldwani, where he was a cardiologist. It was further mentioned in the F.I.R. that the husband of the first informant took the daughter, XXX, to his nursing home at Haldwani and kept her in the 5th floor and, in fact, did not take her to his residence. In the F.I.R., it was mentioned that while she was staying with her father in Haldwani, she was all the time not in her elements and used to sound very terrified and in fact she also used to weep on the phone and made requests to the informant to take her back to Varanasi. On 30.03.2018, it was mentioned in the F.I.R. that Yatindra Mohan Bahuguna, the husband of the first informant, rang up the first informant to say that the first informant may take her daughter as he was not willing to keep her any further. It was then mentioned in the F.I.R. that she bought a ticket for the 3rd of April, 2018 and thereafter brought the daughter back to Varanasi. When she met the daughter then she hugged her mother and started crying and said that the mother may take her to Varanasi as soon as possible and that she would never again stay with her father. In Varanasi also the daughter used to stay in a terrified state. When she used to remain alone in any room then she used to shout and threw tantrums and flung her hands and legs in the air. Upon seeing this behaviour of hers, the first informant was very nervous. Upon persistently asking her daughter, it was revealed by her that her father was a very dirty man. He used to sit in the room and used to keep drinking something which used to have a foul smell. He also used to beat her a lot and that with her he used to do dirty things. Upon further making inquiries, the daughter told her that her father used to behave

like a stranger with her and used to also touch her in a manner which could be called a “bad touch”. About “bad touch” she had already been made aware in her school. She knew the difference between “bad touch” and “good touch”. It was further mentioned in the F.I.R. that when the father used to go to the toilet, he used to leave the door open. On one particular Sunday when she got up in the night then she did not find her father sleeping and, therefore, she got afraid. She then went to the bathroom where her father was absolutely naked and was also calling her inside. She, however, did not go inside and therefore the father gave her a good beating. He thereafter asked her to touch his bottom i.e. from the place where he used to do potty. Thereafter, he had taken off all her clothes and left her alone in the air conditioned room. Because of this, she felt very cold and she was also coughing and as a result of which she had an asthmatic attack. Thereafter, her father had given her a dose of nebulizer. She had then mentioned in the F.I.R. that the daughter had told her that whenever her father used to come to her room, he used to take off her undergarment and used to kiss her so as to make her mouth and her body wet. She had also mentioned that he used to kiss her also on her vaginal area and used to say that in foreign countries people used to love their children in that manner. She had also mentioned that on one particular day her father had inserted his finger inside her vagina and had pinched her and that had given her a lot of pain because of which she wept. Upon this the father had also beaten her a lot and had said that nobody would marry her as such a thing had happened to her in her childhood and then it was mentioned in the F.I.R. that he had stated to

her that he would be the only one to marry her. It was further mentioned in the F.I.R. that on a particular day, the elder brother of the father and the father himself both had got drunk and her father had shown her a video in which girls were doing potty. Thereafter of course she had slept after sometime. Both the father and his elder brother were making a lot of noise in the room. In the F.I.R., it was further stated that on a particular day the father had taken off all her clothes and had said that he would do a check up of her and while she was lying on the bed, he inserted a pink coloured tube inside her anus which gave her a lot of pain and she started crying. At that particular moment, her Tau ji had come and had held her hands. However, they took out the pink coloured tube thereafter and had cleaned it and kept it elsewhere. On a particular day she had stated that when the maid had not come then her father had taken a finger inside the organ from where she did toilet and when she shouted, her father had given her a good beating. Upon this the father wanted to throw her down from the gallery. So she shouted a lot and when somebody from down below asked as to what he was doing then he brought her back to the room. In the F.I.R. it was stated that the complainant's daughter used to say that her father was a very dirty man and that the daughter would never go back to him again. In the F.I.R., it was stated that when the daughter had stated all this, then the complainant had gone into a shock and could not believe that a father could do such a thing with her daughter. The informant had stated that the daughter had also told all this to her nana, nani and she had also tried to call the accused, Yatindra Mohan Bahuguna, on phone, but he never

picked up the phone. She thereafter had messaged him i.e. had “sent an email” that he had done a very bad thing with her daughter and had spoiled her life. The message, she had sent, was annexed with the F.I.R. She had also stated that the husband Yatindra Mohan Bahuguna had warned her that if she told all this to anyone in Varanasi then he would get her killed. She had stated that constant threats were being sent to her. She had stated that the husband would do further bad things with her daughter as the daughter was not his and thereafter she had prayed that action be taken against her husband.

4. With regard to the F.I.R. which was lodged at Varanasi, an F.I.R. to the same effect was also lodged at Haldwani on 06.09.2019 under Section 5(g), 5(l), 5(m), 5(n), 5(s), 6 of the POCSO Act and Sections 323, 376, 376(2)(l), 376(2)(n), 376(2), 376-D, 506 of I.P.C. It appears that when the F.I.R. was lodged at Varanasi on 08.06.2018 under Sections 323, 376 of I.P.C. and Section 7/8 of POCSO Act, then a statement of the victim was got recorded under Section 164 of Cr.P.C. on 11.06.2018 before the Magistrate at Varanasi. In the statement under Section 164 of Cr.P.C., she had given answers to certain questions which were put and had informed that she was staying at Varanasi with her mother and maternal grandparents and that the wrong acts were done by her father and her Tau ji. She had again mentioned that she had gone with her father on 23.03.2018 when he had come to Varanasi. She had also stated that she had gone with her father of her own free will. She had also informed that she had reached Haldwani on 24.03.2018 and was staying in the 5th floor of the building where the house was and there

were also certain private wards of the hospital which was being run by her father. She had then stated that since 25th of March, 2018 all the acts which were mentioned in the F.I.R. were committed on her and that all this had continued till the 2nd of April, 2018. She had stated that then on the 3rd of April, 2018, her mother had come to Haldwani to take her to Varanasi. Upon being asked as to whether she had informed her mother about all these happenings, then she had stated that her father had blocked her mother's number and that she herself had not remembered her mobile number. She had, however, stated that the moment she sat in the train, she had informed her mother about everything. She had also stated that her father warned her that if she told anything to anyone then she would have to suffer all the consequences. On the 8th of June, 2018 itself when the F.I.R. was lodged a medical examination was done and therein it was found that no definite opinion could be given about the sexual acts. This certificate was given by one Dr. Archana Verma (PW-5). Still her vaginal smear for pathological examination was, however, sent. The police thereafter had submitted a report. Cognizance of it was taken by the Nainital Police. Thereafter, the cognizance of it was taken by the court at Haldwani and charges were also framed.

5. The trial commenced and the PW-1, Sanjeev Kumar, of the Uttarakhand Police had given a statement and had proved the F.I.R. and the chik. However, thereafter the trial was transferred to Varanasi and the trial which was earlier numbered as Session Trial No. 23 of 2020 was numbered as Special Session Trial No. 919 of 2021.

6. The offence allegedly had taken place in the month of March/April, 2018 and the statement of the PW-2 i.e. the victim was got recorded on 09.02.2022 for the first time. When the victim had appeared in the witness box she was around 10 years of age and was studying in the Class-VI. Upon ensuring that the PW-2 was in a position to get her statement recorded, she had stated that her date of birth was 03.03.2011 and that she had done her nursery education from Haldwani. Thereafter, from Class-I onwards she had studied at Varanasi. She had stated that her father and mother were doctors. Her father was a doctor in Haldwani whereas her mother was a doctor in Kachhwa Mirzapur. She had stated that she had gone to Haldwani by car driven by a driver in the month of March, 2018 alongwith her father and another uncle of hers. The mother had not gone with her. The child had stayed at Haldwani for around ten days. Thereafter, she had mentioned about all the bad things which had been done by her father and the elder brother of her father at Haldwani. She had then stated that her mother had come to Haldwani to take her. However, she had stated that her father had warned her that if she mentioned the things which had happened to her at Haldwani, she would have to face dire consequences. She had then stated that she had no memory of the statement she had given at the Magistrate's Court. She had then stated that the police had got her medically examined in the hospital. On the statement under Section 164 of Cr.P.C., there was a photograph of her alongwith her signature which she accepted to be hers.
7. In her cross-examination, she had stated that the constable aunty had asked her certain questions which she had replied to and those were

also recorded by her. She had stated that the statement under Section 164 of Cr.P.C. which was exhibited as Exhibit Ka-3 was got recorded after her statement was recorded by the constable aunty. She had thereafter stated that she had no idea why her parents were living separately. She had mentioned that Samoj Bahuguna was the elder brother of her father and he had a son called “Kanha Bhaiya”. Certain questions were put with regard to the family of the mother of the PW-2 which were answered by her and thereafter she had stated that she had full faith in her mother and she considered that whatever her mother used to tell her, was correct “मम्मी जो बतायी हैं वह सही ही बताती हैं। मम्मी जो बताती हैं मैं उसे सच मानती हूँ।” She had stated that her father, Yatindra Mohan Bahuguna, had come to her house on the 3rd of March, 2018, at Varanasi and thereafter again on 23rd of March, 2018 he had come again to Varanasi to fetch her. Upon a question being asked as to why she insisted on going along with her father to Haldwani, she had stated that for the six years of her life she had always found his behaviour very good and also because of the fact that he had stated that he would take her around the hills. She had stated that to take her to Haldwani, he had come on 23.03.2018 by road. She had then stated that from Haldwani she used to talk to her mother by the phone of her father and that she used to talk to her mother in the presence of her father or in the presence of Poonam aunty, the cook. However, she had stated that she had not informed her mother about all the incidents till such time as she had met her. She had stated that at Haldwani her father had given her a mobile, however, whether it had a camera, she did not remember. She, however, knew how to take

photographs from a mobile and also could take selfies and it was correct to say that from that mobile she had taken many photographs. She had stated that while she studied in the second standard her name was entered in the school records as “XXX Bahuguna” thereafter her name was entered as “XXX Pandey”. What surname she had given to the Magistrate and also to the constable aunty, she did not remember. With regard to the tube which was inserted inside her, she had stated that it was a cylindrical tube and a thin one. The thickness of the tube, she could not exactly tell. Upon being confronted with regard to the fact that she had not stated anything with regard to kissing etc. in her statement under Section 161 of Cr.P.C., she had stated that she had given the statement about it and she did not know the reason why it was not so recorded and mentioned therein. Also, she had stated that she did not know why her statement with regard to the fact that the father would marry her, had not been recorded under Section 161 of Cr.P.C. In her cross-examination, she had stated that Yatindra Mohan Bahuguna, her father, used to go out from the house at 09:00 AM and used to come back at around 04:30 - 05:00 PM. Thereafter, in the evening he used to go for a round again and used to also take her with him. Poonam aunty, the cook, used to come to her house at 09:00 AM in the morning. If, however, Yatindra Mohan Bahuguna had to go early then she used to come a little earlier also. She had then stated that she had not remembered her mother’s mobile number. However, her father had blocked her number and, therefore, her telephone never used to come to her. She had stated that the phone Yatindra had given to her was with her

when she reached Bareilly Station. Her mother had come to fetch her at Bareilly Station and there she had handed over the telephone to Yatindra. She had stated that she did not remember if she had told the constable aunty when her statement was being recorded under Section 161 of Cr.P.C. as to whether she had asked her mother on phone to come to Haldwani to take her from there. She had thereafter very categorically stated that Yatindra himself used to dial the number of her mother and she used to talk to her mother. After he used to dial the number, she used to press the call button. In her cross-examination, further she had stated that she did not remember her mother's telephone number. She had stated that while she was staying in Haldwani she talked to her mother virtually everyday and at times even twice in a day. She used to talk to her mother almost 15 minutes everyday and that she used to talk to her mother till the time she had left for Bareilly. Since, the learned counsel for the appellants relied upon a certain portion of the statement of the PW-2, the same is being reproduced here as under:

“घटना के समय हलद्वानी में रहने के दौरान मम्मी से लगभग हर रोज मेरी बात होती थी। मम्मी से ज्यादातर हर दिन में एक बार बात होती थी परन्तु कभी-कभी दो बार बात हो जाती थी। मम्मी से लगभग 15 मिनट रोज बात होती थी। मम्मी से मेरी बातचीत मम्मी के बरेली पहुंचने के एक दिन पहले तक हुई थी।”

She had then clarified as to how she had stated before the Magistrate that her mother had come to Haldwani and had stated that she had never meant that in fact she had come till Haldwani. She, thereafter

in her cross-examination, had again stated that she was not remembering if she had told the Police and the Magistrate with regard to her clothes being taken off by Yatindra Mohan Bahuguna, her father. She had, in her cross-examination, stated that she did not remember if she had, while getting her statement recorded under Section 161 of Cr.P.C. She had also stated with regard to the fact that Yatindra used to insist her on putting her finger inside his anus and that it was wrong to say that she had been tutored to say all this before the Magistrate. She had, in her cross-examination, admitted that she knew Yatindra Mohan Bahuguna and Samoj Bahuguna were real brothers. However, she did not know where Samoj Bahuguna used to live. Kanha Bhaiya, the son of Samoj Bahuguna, used to stay in Dehradun. In Haldwani, he used to come to their flat in the day time and in the evening he used to go back. In the stay at Haldwani, Kanha Bhaiya used to come everyday but she had never told about the doings of her father and her uncle to him. She had stated that on her return journey, Yatindra had handed her over to her mother and had gone away. Half of what had happened she had mentioned in the train itself to her mother and the complete story was revealed to her mother when they reached Varanasi. Then she had stated that she had told the entire story on the way. Looking at the photograph no. 67 Kha/1 she had stated that it was hers and her father Yatindra. Of which the date exactly the photograph was, she did not remember. However, it was with regard to the same period when she had stayed in Haldwani. Looking at the photograph no. 67 kha/2, she had stated that again it was a photograph in which she and Yatindra were there. The

photograph no. 67 kha/3 was a selfie which she had stated was taken by her. The photograph no. 67 kha/4 was a photograph in which she was hugging Yatindra and it was of the same time when she had stayed at Haldwani in the month of March, 2018. The photograph no. 67 kha/5 was a photograph in which she was with Kanha Bhaiya in a park. The photograph no. 67 kha/6 was a photograph in which she was having pizza in the drawing room at Haldwani. She had then stated that all the photographs were of the period when she had stayed in Haldwani. The photograph no. 67 kha/7 was also a photograph of the drawing room and was of the same time. She had stated that it was wrong to say that she was angry with Yatindra and his family and, therefore, she was lying after being tutored by her mother and her maternal grandparents.

8. PW-3 was the mother of the victim and her name was Dipti Pandey. After having introduced herself, she continued with her examination-in-chief and reiterated the story as was given in the F.I.R. She had stated that when Yatindra Bahuguna had come on the 3rd of March, 2018, on the birthday of the victim then he had lured the child to go to Haldwani by saying that he would take the child around the hills and also make her meet with her grandfather, Kanha Bhaiya and Tau ji. The victim very much therefore wanted to go along with the father and, therefore, on the 23rd of March, 2018, she was taken by Yatindra, her husband, to Haldwani. She had categorically stated that while she was staying in Haldwani, the daughter kept talking to her on the phone. She also used to send whatsapp messages. In the period while the daughter was in Haldwani, she was also given a phone by her father. She then

narrated the story of how the victim, the PW-2, was maltreated by her husband, Yatindra Mohan Bahuguna. She had stated that on the 3rd of April, 2018, the father and the daughter travelled to Bareilly and on the 2nd of April, 2018, the incident with regard to the insertion of the tube was done. She also stated in the court that an attempt that was made by her husband to throw the child down from the 5th floor. Then she had stated that the daughter was saying that she never would now again visit her father. While the daughter was in Haldwani, she never told anything on the phone to her mother, because she was intimidated by her father. She had also stated that on the 2nd of April, 2018 while the connectivity of the phone was bad, the victim had mentioned something about some injury. She had also mentioned that it was on the 30th of March, 2018, her husband, Yatindra Mohan Bahuguna, had rung her up to say that the daughter be taken to Varanasi by the PW-3. This had necessitated her to travel up to Bareilly on the 3rd of April, 2018 to take the child and when he had made the child to talk to the mother then she had wept on the phone and had said that she be taken to Varanasi. She had also insisted that the mother may get the reservation done and the details be sent to her father and this had necessitated her to get the reservation done in extreme urgency. Thereafter, on the 4th of April, 2018, she had reached Varanasi. From Haldwani to Bareilly, the daughter had travelled by car with Yatindra and thereafter she had gone by train to Varanasi. When the child had reached Varanasi she initially told a little bit about the beating etc. which was done by her father. About it she had also told her nana and nani. On the 8th of April, 2018, while she was helping the child to do

her homework and when there was a letter to write to her father then she had stated that her father was not a “dear father” but was a very dirty man and that he used to behave with her like a stranger. She had stated that the daughter was aware of a bad touch and had been a victim of it by her own father. The daughter had also told that the father used to drink while he was in the room and the drink which he used to take had a strange/foul smell. He used to do dirty things with her and thereafter used to beat her. She had then stated that when she got the information about what had been done with her daughter on 8th of April, 2018, then she had informed the police on 7th of June, 2018, by means of an F.I.R. at Thana Lanka, Varanasi. Initially, when she got the information she was absolutely shocked and because she did not want that these things be out in the public, she reported the matter a little belatedly. Another reason why she had reported the matter late was that certain family members in the house were not very well. She proved the F.I.R. which she had lodged. Upon having come to know of the incident which had happened, the mother had rung up the husband but he did not pick up her phone. Then she had stated that she had emailed him on the 9th of April, 2018 for the first time. The email which she had sent, was exhibited as Exhibit 4 Ka/53. She admitted about the document which she had sent by email to her husband.

9. In the cross-examination, she testified as to how she had met Yatindra, her husband, before marriage and how they had got married and thereafter had had a child. Upon a question being put as to why at page nos. 1, 6 and 8 of her statement she had not given the name of her

husband but had introduced herself as the daughter of her father, then she had stated that because Yatindra had committed such heinous offences against her daughter, therefore, she did not wish to keep any connections with him. In the cross-examination, she had further testified that in the month of April, 2014, along with her child and husband she had stayed at Haldwani from April, 2014 to June, 2014 in a rented accommodation. The parents of Yatindra were also staying there. In the month of June, 2014 her husband had bought a flat of his own where they all had shifted. In the house there were also staying the parents of Yatindra, his brother Samoj and his son Kanha. Yatindra's mother was very ill and was undergoing dialysis. She ultimately passed away on the 4th of July, 2014. She had also testified that nothing had happened in between 23rd March, 2018 and 3rd April, 2018, as she was staying in Varanasi whereas the offences were being committed in Haldwani. Samoj was doing his business and was also helping out Yatindra in his hospital. They were financially very sound. Till the year 2017, she had stated that, she along with her daughter had stayed at Haldwani but in March, 2017, she shifted to Varanasi. In Varanasi, she had no intention of continuing to stay there, but because her father was very ill she stayed for sometime in Varanasi. In June, 2017, she got the job of Senior Resident in B.H.U. and, therefore, she got her child admitted in Class-II in Varanasi. She then narrated about various illnesses which her father was suffering from. She denied the suggestion that on 9th of May, 2017, she and her father had made some application with the police to get back her jewellery etc. She had then stated that she had no loan in her name. She

had stated that in the year 2014 she along with Yatindra, her husband, had purchased some plot in Haldwani. She denied the fact that the hospital's land was purchased jointly by her husband and she herself. She denied the fact that after purchasing of the plot, their relationship broke down. Upon a suggestion being made that she was not happy with Yatindra as he had too much affection for his own family, she denied this fact. She had stated that the flat which Yatindra had purchased in the year 2014, she had contributed Rs. 12 lacs after taking it from her own father. The plot which Yatindra had purchased in Haldwani was used to construct the nursing home (called Subah). She denied the fact that she and her father etc. were insisting Yatindra to construct his nursing home/hospital in Sundarpur plot at Varanasi. She, however, had stated that *bhumi puja* was done jointly by herself and Yatindra in Haldwani. She had stated that Rs. 12 and a half lacs, which her father had given to her, were used by her in the purchasing of the plot. She, however, was not aware whether her father had mentioned about this gift to her in his I.T.R. returns. Upon asking whether she wanted to take divorce from Yatindra, she said that since it was not good for her daughter to stay with Yatindra she wanted to take divorce. Upon a question being asked as to whether she knew about the divorce petition which had been filed by her husband, Yatindra, she had stated that after she had written an email on 9th of April, 2018, complaining about his character, Yatindra had tried to bring her to disrepute and thereafter had filed a suit for divorce about which she came to know in the end of June, 2018. She had also admitted that she tried to get the suit for divorce transferred and for that she had

also approached the Supreme Court that the case be transferred to Varanasi. However, she had stated that she was not aware of the fact as to whether the divorce suit was still continuing or was dismissed. She denied the knowledge of having received any notice of 24.02.2022. She had not denied the fact that the husband had moved an application for a compromise. She also accepted the fact that she had denied the compromise which was being asked for. She accepted the fact that her statement was taken by the police at Varanasi once. The Haldwani Police again had taken her statement at Varanasi. She admitted the fact that in the F.I.R. she had not mentioned about the fact that Yatindra had gifted a phone to her daughter. Upon being confronted that she had not mentioned about the insertion of the tube in her statement under Section 161 of Cr.P.C., then she had stated that she had told about this fact to the police and did not know the reason why it was not mentioned by it. She also admitted the fact that in the F.I.R., no mention had been made about any private part and then she denied the fact that in the court she had mentioned about it after consultation from various lawyers. Upon being confronted with her statement-in-chief wherein she had not mentioned the fact that her daughter used to talk to her everyday but had never revealed about the father's misdeeds, she had stated in her answer that in the F.I.R. it was only mentioned that the daughter was extremely terrified. The other details which were not mentioned in the F.I.R. were also confronted to this witness but she had given only this reply that because she wanted to keep the F.I.R. brief, she had not mentioned about it all therein. Again being confronted that in the F.I.R. there was no

mention about the homework in which she was assisting her daughter on the 8th of April, 2018, then she had replied that because she wanted to keep the F.I.R. brief, she had not mentioned about it all in the F.I.R. While the cross-examination was being done and a question was put to her as to what the child had narrated to her while she wept on the phone, she had answered that she had told that her father was a dirty man and that he maltreated her and kept her like a servant. However, during the journey from Bareilly to Varanasi, she had only mentioned that her father was a bad man and was a cockroach but did not tell anything about the things which had happened with her at Haldwani. Again when a question was put that whether she had asked about the injury which might have occurred on her after coming from Haldwani, then she had answered that she had not put any question to her daughter in that regard. Upon a question being asked as to when the investigation was transferred from Varanasi to Haldwani, she had stated that for the first time the investigator from Haldwani had contacted her in the month of September, 2019 and her name was Gurvinder Kaur. No notice, however, was given by Gurvinder Kaur to her. Only at the trauma centre where she worked, she had received a letter or two. Twice or even thrice she had also met Gurvinder Kaur. She had also stated that she did not remember if she had complained against Gurvinder Kaur about questioning her at her workplace. Gurvinder Kaur had recorded her own statement but had not recorded the statement of the child. She had stated that she had never gone to the hospital of her husband, after it was constructed. She denied the fact that any operation theatre for the

purposes of ENT surgery was being constructed in the month of March, 2017. Upon a specific question being asked as to whether the hospital which was being constructed at Haldwani was so constructed after taking some loan from LIC, the PW-3 had answered that the hospital was being constructed by her husband along with his friends. With regard to the loan etc., she did not know anything. She, however, had stated that the land on which the hospital was being constructed was in the name of PW-3 and her husband Yatindra. She had denied the signatures which were on the documents with regard to the hospital. Upon a specific question being asked as to whether she had signed the documents relating to the loans which were taken from LIC, she had stated that she had not signed any loan papers. Upon a question being asked that on 28th of March, 2017 and 8th of April, 2017, she had written to Yatindra Mohan Bahuguna by email and had objected to the signatures being put on the loan papers for Rs. 3 crores and 75 lacs, she had answered that she had not signed on any loan papers and also she had not sent any communication by email on 28th of March, 2017 and 8th of April, 2017. She then had denied that any notice of LIC dated 21.05.2022 was received by her. Upon asking whether she had signed as a guarantor on account of the fact that the land was also owned by her, she had denied this fact. Upon a question being asked that she was angry with her husband on account of the fact that her name was shown as a guarantor, she had denied the fact and had stated that she had not signed anywhere or on any of the papers.

10. PW-4, Rakesh Kumar Singh, was produced to ascertain and determine the age of the victim.

11. PW-5, Dr. Archana Varma, had appeared in the witness box and had stated that on the examination of the body of the victim, no injury was found. In the internal examination of the private parts, she stated that hymen was intact and all other things were normal. There was no injury on any internal organ. There was also no bleeding etc. She had also sent two vaginal slides for pathological examination. Also, the anal smear slide was sent for pathological examination. The nails were also sent for examination. The medical report was also proved by this witness, Dr. Archana Varma, who had appeared as PW-5. The supplementary report dated 11.06.2018, had stated that there was no sperm etc. present. Upon a question being asked as to whether if any tube was inserted in the private part of a small child of seven years, then whether there would be any injury or bleeding, she had specifically stated that both injury and bleeding were possible and that since no injury was there on the private part there was no indication of insertion of any tube. She had definitely stated that no definite opinion could be given about any sexual activity having been done vis-a-vis the victim.

12. PW-6, Bharat Bhushan Tiwari, was the Investigating Officer who had conducted the investigation from the Thana Haldwani, District Nainital. He had informed about how he had proceeded with the investigation and how the arrests were made.

13. The second Investigating Officer, Ram Ashish, was examined as PW-7. He had stated that on 09.12.2018 that he had, by parcha no. 21,

recorded the statement of the complainant, Dr. Dipti Pandey. On 17.12.2018, by parcha no. 22, he had visited the site at Haldwani and had taken the statements of the maid, Punam Joshi, and also that of Smt. Palak, who was a lady worker at the hospital in Haldwani. Apart from the two ladies, the statement of Sri Dilip Kumar was also recorded. He had also prepared a site plan which was exhibited as Exhibit 4 Ka/58. He had also proved the document by which efforts were made to transfer the case from Haldwani to Varanasi. He had also been questioned as to where the site of occurrence was and he had stated that it was at Haldwani. Upon a question being asked as to whether the PW-7 had taken the statement of the victim, he had stated that he had never met the victim and even though he had made efforts to meet her, the complainant always used to say that she was unwell and thus she was never made to meet the PW-7. He had stated that on 17.12.2018 he along with Constable Subham Singh had gone to Haldwani and there they had prepared the site plan etc. on the pointing of the cook/maid, Punam Joshi. He again had reiterated that he had never met the victim. During the inspection which he had done at Haldwani, the worker Dilip Kumar and the lady employees Palak and Punam Joshi were throughout with him and their statements were recorded in his case diary. Narrating the statements which were made by the maid, Punam Joshi, he had stated that she had given a very good opinion about the doctor and had stated that she had known him since a very long time and that he was a very good person of religious nature and she had empathetically stated that he loved his daughter XXX a lot. She had wondered as to why the

complainant had lodged a false case against him. She had also stated that it appeared that because of some property dispute the wife had lodged the complaint against the husband. She, in fact, had also empathetically stated that when the daughter of the accused was going back to Varanasi she had left quite a few of her toys and had told the maids that she would again come back to play with them at her father's place. She had stated that the child was very happy when she was leaving the house at Haldwani. She had also stated that the doctor had wrongly been implicated in the case. He had also, after looking at the case diary, stated that Palak, the employee in the hospital, had stated in her statement recorded under Section 161 of the Cr.P.C. that the doctor was very happy when he had brought his daughter in the month of March, 2018 to Haldwani. She had also narrated that the daughter quite often went around the hospital along with her father. When she was leaving Haldwani for Bareilly and Varanasi, then also the victim was very happy. She had also told the Investigating Officer that the doctor was a very good person and he loved his daughter a lot and had been falsely implicated in the case. Again he narrated what Dilip Kumar, another employee of the hospital, had stated. According to Dilip Kumar when the doctor had brought his daughter in March, 2018, he and the daughter both were very happy. The daughter used to go for a round of the hospital along with her father and when she was to go back to Varanasi then also she was a very happy child. He had stated that the doctor was a very good person and had wrongly been implicated in the case. The PW-7 had stated that when he had inspected the room of the doctor then he

had found on the South-Western corner, a photograph of Yatindra, the accused, and XXX, the victim. He had stated that it could have been a possibility that the employees of the hospital were taking the side of their employer but apparently it appeared that they were not lying.

14. PW-8 was the other Investigating Officer, Sharad Gupta. He had also narrated the manner in which the investigation was done. He had stated that because the complainant and the victim were residing in Varanasi, the F.I.R. was lodged in the Thana Lanka. He had also narrated quite a few of the averments of the complainant which were not there in the statement recorded under Section 161 of Cr.P.C.

15. PW-9 was the Head Constable, Brijesh Kumar Singh. He had proved the chik.

16. PW-10 was the Sub-Inspector, Gurvindar Kaur. She was the Investigating Officer since 08.09.2019 and was posted at Haldwani, Nainital. She had stated that on 10.09.2019, as per the parcha no. 27, she had contacted the father of the complainant. On 02.09.2019, she had tried to contact the complainant. Again, on 13.09.2019, she tried to contact the complainant and thereafter also issued notices to her. On 07.10.2019, the complainant had informed her about the application which had been filed at Allahabad High Court for the transfer of the case to Varanasi.

17. If the entire evidence is perused, we find that throughout it had been stated that after the statement of the father of the victim was recorded, there was absolutely no definite statement got recorded by the complainant and the victim. Referring to parcha nos. 47, 48 and 52, PW-

10 had stated that the victim had not cooperated in the investigation. She had also brought on record the direction of the Coordinator Legal Cell where she was working that Dr. Dipti Pandey could not be contacted during the official hours and she be contacted through the Chief Proctor of B.H.U. and ultimately in the court she had mentioned that the complainant had not cooperated in the investigation at all and she had not allowed PW-10 to even meet the victim.

18. PW-11 was the lady Constable Priyanka Kushwaha, who had proved the fact that she had recorded the statement of the victim under Section 161 of Cr.P.C.

19. PW-12, Sanjeev Kumar Mishra, had stated the he had never met either the victim or the complainant.

20. Thereafter, the statements of the accused under Section 313 of Cr.P.C. were recorded in a question-answer format wherein the accused persons Yatindra Mohan Bahuguna and Samoj Bahuguna had throughout denied the offence and had also wondered as to how the charge-sheet had been submitted by the police.

21. The F.I.R. initially was lodged in the case on 08.06.2018 at Thana Lanka Varanasi and thereafter because the incident allegedly was of Haldwani, Nainital, the investigation was transferred to Uttarakhand. However, the Supreme Court by its order dated 04.08.2021 had transferred the Trial No. 23 of 2020 to Varanasi which was tried as the Special Session Trial No. 919 of 2021. When the trial was completed and the accused Yatindra Mohan Bahuguna in Session Trial No. 919 of 2021 (Case Crime No. 339 of 2019 in Case Crime No. 562 of 2018) under

Sections 323, 376(2)(n)(f), 376-D, 506 of I.P.C. read with Sections 5(g), 5(l), 5(m), 5(n), 6 of the POCSO Act was convicted along with his brother Samoj Bahuguna, co-accused, then the instant appeal was filed. It may be noted that the accused Samoj Bahuguna was convicted under Sections 376-D of I.P.C. read with section 5(g), 5(m), 5(n), 6 of the POCSO Act. Yatindra Mohan Bahuguna was acquitted under Section 376AB of I.P.C. Similarly, Samoj Bahuguna was also acquitted under Section 376AB of I.P.C. They were thereafter also sentenced to undergo life imprisonment under Sections 5(g), 5(l), 5(m), 5(n), 6 of the POCSO Act. The accused Yatindra Mohan Bahuguna under Section 323 of I.P.C. was also sentenced for one year rigorous imprisonment along with a fine of Rs. 1,000/- and under Section 506 of I.P.C. he was punished for two years of rigorous imprisonment with the fine of Rs. 2,000/-. Under Sections 5(g), 5(l), 5(m), 5(n), 6 of the POCSO Act, both the accused were punished for life imprisonment along with fines of Rs. 1,00,000/-. Aggrieved by the judgment and order dated 13.02.2025 passed by the learned Additional District and Session Judge/ Special Judge (POCSO Act) Court No. 3, Room No. 7, Varanasi, the instant appeal was filed by both the accused Yatindra Mohan Bahuguna and Samoj Bahuguna.

22. Before commencing with the rival submissions advanced by the learned counsel for the parties, it would be appropriate that a certain timeline which emerges from the reading of the entire evidence be delineated. On 03.03.2018, it was the victim's birthday and her father i.e. the appellant no. 1 visited Varanasi to celebrate it and on that very date he went back too. It may be noted that the victim along with her mother

namely Dr. Dipti Pandey was staying at Varanasi while the accused Yatindra Mohan Bahuguna, appellant no. 1, was staying at Haldwani. Thereafter, he had returned to Haldwani where he was living separately from his wife and daughter. After some time passed on 23rd of March, 2018, he again came back to Varanasi to fetch his daughter. This he had done because when he had come for the birthday on 03.03.2018, the daughter had insisted that she be taken to Haldwani. As per the statement of the PW-2, victim, it was evident that the accused had not taken the victim simply because he had wanted to take her but it was chiefly because the daughter had insisted on going to Haldwani. Upon reaching Haldwani on the 24th of March, 2018, the victim kept the contact with her mother through the phone. This phone was of the appellant no. 1, as per the PW-2 herself. She had categorically stated in her statement before the court that she used to talk to her mother in the presence of the maid, Punam aunty, or in the presence of Yatindra Bahuguna, the appellant no. 1. She had also mentioned that Yatindra Bahuguna had given her a mobile while she was at Haldwani. She had also stated that from that mobile she had taken many photographs. To make the record straight, we find that the F.I.R. had stated that on the 30th of March, 2018, Yatindra phoned up the complainant that she may take away her daughter and on 03.04.2018, the complainant, to fetch her daughter, started from Varanasi and reached Bareilly, till which place the appellant no. 1 had brought the daughter. She had stated in her statement-in-chief that in Haldwani she probably had stayed for ten days and in one of those days Yatindra Bahuguna, appellant no. 1, had come to her room

while she was sleeping and he undressed the lower portion of her body because of which she felt very cold and thereafter she also wept while sleeping. In the morning when she woke up, she was alone and she was wearing the clothes which had been taken off. On the next day of the incident which had happened, the appellant again came to her room and undressed her totally. She had stated in her statement-in-chief that in her vagina and anus, he had inserted his finger and he had asked her also to do the same with him. He also kissed her and had stated that this was the way in which the children were loved in foreign countries. She had stated in her statement-in-chief, that on a few days he had also called Samoj Bahuguna, appellant no. 2, and both of them had undressed her. Samoj used to hold her hands and Yatindra used to sit on her legs and thereafter on a particular day Yatindra had inserted a pink coloured tube in her vagina and he again put his finger inside the anus. When she started weeping he scolded her and asked her to remain quiet. Thereafter, he had also tried to throw her down from the room. On the next day the mother had come to fetch her. In the cross-examination, however, she had stated that her first cousin i.e. the son of Samoj Bahuguna known by the name of Kanha used to come to her house in the day-time and in the evening he used to go away and this used to happen almost everyday. However, she had not told him about anything that her father and her uncle i.e. Tau ji had done with her. She had categorically mentioned about the photographs which were numbered as 67 kha/2, 67 kha/3, 67 kha/4, 67 kha/5 and 67 kha/6. These were the intimate photographs of the father and the daughter where the father was always affectionately

hugging the daughter. One photograph i.e. photograph no. 67 kha/6 was of the drawing room in Haldwani where the victim was having pizza. The PW-3 i.e. the mother of the victim namely Dr. Dipti Pandey had also appeared in the court and in her statement-in-chief had corroborated what the PW-2 had stated i.e. the mother and the daughter were talking on the phone and that the father had also gifted the daughter one more phone. She had also stated about the doings of the appellant no. 1 vis-a-vis the victim. With regard to the insertion of the pink coloured tube, specific date was given by the mother i.e. the 2nd of April, 2018. Admittedly, everything had happened between 23rd of March, 2018 and 3rd of April, 2018. With regard to how the mother had come to know of what had happened with her child, the mother had stated in her statement before the court that when on 3rd of April, 2018 she had gone to Bareilly to fetch her child, the child had told her of the happenings of the previous night i.e. of the 2nd of April, 2018 and that was that how the father had taken off all her clothes, the uncle had held her hand and the father had inserted a pink coloured tube inside her vagina and thereafter had taken it out. She had also narrated in the court that the daughter had told her that her father had put his finger inside her anus and that had pained. The victim had also narrated to her mother that her father had intended to throw her from the 5th floor, but because someone had seen him, he did not do so. She had, however, stated in the court that because the father had intimidated the daughter, she had not told her anything on the telephone. In the court, in her statement-in-chief, she had also stated that on 30th of March, 2018 the appellant no. 1 had rung her up that she

may take her daughter. The child had also wept on the phone and had requested that she may be taken to Varanasi. She had stated in her statement-in-chief that the child throughout on the way from Bareilly to Banaras had stated that Yatindra had beaten her throughout on her stay at Haldwani and had misbehaved with her. About the beating, she had also told her nana and nani. On 8th of April, 2018 while the mother was helping the child (victim) with her homework then she was required to write a letter to her father. When she had written “dear father” then she had stated that her father was a very bad man and that he had behaved like a stranger. The victim also stated that he used to indulge in bad touch and while she was in the room along with her father he used to drink something which had a bad smell and thereafter used to do dirty things with her. He also used to beat her. In her statement-in-chief, she had stated that upon coming to know of the happening at Haldwani on 8th of April, 2018, she lodged the first information report on 7th of June, 2018. This she had stated was done as she chiefly had to save the reputation of the family and also because a certain member of the family was unwell. She had stated that upon having come to know what had happened with the child, she had tried to ring up the appellant no.1 Yatindra and when the phone was not picked up, she had emailed him on 9th of April, 2018. She had, upon a question being asked that Yatindra had instituted a suit for divorce, replied that after she had written the letter on 9th of April, 2018 to her husband, he had threatened her with ignominy and disgrace and had also threatened her with dire consequences. She, however, denied the fact that she knew about the

divorce petition which was filed before the F.I.R. was lodged and that information about the divorce petition was received by her through someone in the end of June.

23. To challenge the judgment and order of the trial court dated 13.02.2025, Sri I.K. Chaturvedi, learned Senior Advocate assisted by Sri Saurabh Chaturvedi, Sri Rajeev Dwivedi, Sri Raj Vyas and Sri Navneet Pandey, learned counsel for the appellants made the following submissions:

(i) Admittedly a bad touch as is envisaged under Section 7 of the POCSO Act was punishable under Section 8 of the POCSO Act. He also submits that whoever commits penetrative sexual assault on a child below 12 years of age, was punishable under Section 6 of the POCSO Act. He also submits that if the penetrative sexual assault was more than once then also it was punishable under Section 6 of the POCSO Act. If there were more than one person indulging in penetrative sexual assault on a child even if the perpetrator of the crime was a relative of the child then the punishment under Section 6 of the POCSO Act had to be awarded to the perpetrator of the crime. He, therefore, submits that the case of the prosecution could be falsified only and only if it was proved to the hilt that the prosecution had cooked up the case either for taking some kind of revenge from the accused persons or for maligning the reputation of the accused. He submitted that the POCSO Act is such an act which under Section 7 of it makes even a sexual intention punishable. He submits that the object of

enacting the POCSO Act was to protect children from sexual abuse. He therefore submits that the key to the offence was the intention. He further submits that a sexual assault could be made out even if there was no skin to skin contact. In the instant case, learned counsel for the appellants submitted that admittedly the complainant who was the mother of the victim was staying separately from the accused Yatindra Mohan Bahuguna who himself was staying in Haldwani. The victim who was a child was staying with the mother. The victim, a girl child, was sent by the mother along with the father with her own free consent. Learned counsel for the appellants submits that the child was taken by her father to Haldwani on the 23rd of March, 2018. The child thereafter was returned to her mother on the 3rd of April, 2018. It had therefore to be determined whether any offence was committed in between 23rd of March, 2018 and 3rd of April, 2018. He submits that admittedly there is no injury on the body of the victim. The victim after having been dropped at Bareilly, had proceeded for Varanasi. There was absolutely no complaint made by her. If the statement of the victim in the court is seen, it would be evident that while she was travelling from Bareilly to Banaras with her mother, PW-3, she had not mentioned about any assault on her. Learned counsel for the appellants, however, has stated that she on the 2nd of April, 2018 had mentioned on the phone about some injuries which she had sustained and thereafter the phone had got disconnected. Also on the 30th of March, 2018, on

the phone she had wept and had requested her mother to take her back to Varanasi. On that date also the phone had got cut, but this had persuaded the mother to get the reservation done by Bareilly Express. At Varanasi, learned counsel for the appellants states, as per the statement of the PW-3, that since Yatindra had done some beating and had misbehaved with the daughter. Also the victim had narrated about the beating to her nana and nani also.

Learned counsel for the appellants stated that this was a case where no one had seen anything actually happening. The child was six years of age at the time when the incident had occurred and when she appeared in the witness box to get her statement recorded, she was almost ten years of age. He submits that there was every possibility of the child witness getting tutored. Learned counsel for the appellants states that if the chronology of events is seen, then it would be evident that on 3rd of April, 2018 the child was handed over to the mother and thereafter on 8th of April, 2018, while the mother was helping her out with the homework and a letter had to be written to the father, the child had refused to address her father as “dear father” and then upon questioning she had stated that this was because of the fact that she had been sexually abused while she was in Haldwani. Learned counsel for the appellants submits that thereafter on the 9th of April, 2018, the mother, complainant, had also emailed to her husband. Learned counsel for the appellants took the court through that email also which had mentioned about some

molestation being done with the victim. She had in the email written that the victim had known about a bad touch and that she knew that her father was a bad man. She had also stated that her father henceforth was stranger for her. The mother had also written in the mail that the victim had been maltreated with the help of the brother of the accused, Samoj Bahuguna (another accused). Thereafter, learned counsel for the appellants has stated that she had spilled venom with regard to the husband and how after him having become a rich person, the child was not loving her. In the email she had mentioned that her husband had converted the house at Haldwani into a den of drunkars and rapists. She had thereafter expressed her concern as to how he had disregarded his own mother Usha Bahuguna. Learned counsel for the appellants stated that in the entire email there was no mention of the insertion of the test tube into the private part of her daughter (victim). Learned counsel for the appellants states that thereafter upon the passage of almost two months, the F.I.R. was lodged in which again there was mention of the offences committed vis-a-vis the victim. How the complainant came to know of the incidents which occurred in Haldwani, was not narrated in the F.I.R. and this fact learned counsel for the appellants states was of some importance. The F.I.R. had only stated that after the victim had reached Varanasi, she was in an intimidated state and while she was alone she used to shout and throw her hands and legs. Thereafter, upon inquiry she had stated that her father was a bad

man and had indulged in bad touch. The other incidents which had happened in the bedroom and the bathroom of Haldwani house were also narrated in the F.I.R. The insertion of the test tube on the pretext of the check up was also narrated in the F.I.R. Learned counsel for the appellants thus states that the email at the first instance was full of frustration and the bitterness in the heart of the mother of the victim and thereafter when a divorce petition was filed on 06.05.2018, the pent up frustration in the heart of the mother could be seen in the F.I.R. However, he submits that in the F.I.R. certain important facts with regard to how actually at the time of the writing of the letter which was a part of the homework, the child had expressed her feelings about her father had not been mentioned and such facts which were not there in the email, were mentioned in the F.I.R. Learned counsel for the appellants states that the F.I.R. itself was a belated F.I.R. having been lodged after almost two months and six days of the actual incidents. Learned counsel for the appellants states that even the investigation which had been done, showed that the mother was by means of the lodging of the F.I.R. taking some kind of revenge. Throughout in the statements given by PW-2 and PW-3, it had been mentioned that the child had access to a telephone and that she had talked to her mother almost everyday. The child was also given a telephone separately for herself with which she had taken photographs which were filed in the court and were subsequently also exhibited. The photographs were numbered as 67 kha/1, 67 kha/2,

67 kha/3, 67 kha/4, 67 kha/5, 67 kha/6 and 67 kha/7. All these photographs, he submitted, had shown extreme love between the father and the daughter. The daughter had at no point of time on the telephone ever stated anything against her father and her uncle, the two accused persons in the case. The mother also could not bring on record any evidence which would have shown that the child was in any kind of distress while staying at Haldwani.

(ii) Learned counsel for the appellants thereafter turned to the medical evidence and he submitted that the incidents which had been placed before the court by means of oral evidence by the PW-2 and PW-3, were absolutely refuted by the medical evidence which was brought on record by the PW-5, Dr. Archana Varma. The doctor had categorically stated that there was absolutely no evidence of any insertion of any tube in the private part of the body of the victim. If the insertion had taken place there would have been some bleeding and the child would have suffered immensely. Learned counsel for the appellants further states that the PW-3 was herself a doctor and upon having come to know of the indecencies which had been committed vis-a-vis her daughter, then she herself could have looked into the case, without waiting for a definite medical examination. What is more, learned counsel for the appellants states that it seems highly inappropriate that the medical examination was got done only on 11.06.2018 after the lodging of the F.I.R.

(iii) Learned counsel for the appellants further has submitted that even if the evidence of the various investigating officers is seen, it would become evident that the PW-3 had spoken up only when the investigating officer of Varanasi was investigating the case. After the case was transferred to Uttarakhand and investigation was being done by the investigating officers of Uttarakhand, she had absolutely refused to cooperate in the investigation. This is evident from the statements of the Investigating Officers i.e. the PW-6, Bharat Bhushan Tiwari, and the PW-10, Gurvindar Kaur. Learned counsel for the appellants states that the investigation which had taken place at Haldwani, involved the recording of the statements of the servants and they had all given statements in favour of the accused persons. In the end, learned counsel for the appellants further submitted that the entire case was there on account of the fact that a land at Haldwani had belonged to both husband and wife and the wife was made a guarantor to the loan which the husband had taken from LIC and this had piqued the complainant to an extent that she had indulged in the lodging of the case which had resulted in a virtual separation.

(iv) Learned counsel for the appellants further states that if the appellant no. 1 has been such a paedophile, then there would have been other instances also about which there would have been complaints lodged in the police station at Haldwani, but no other

victim had ever come forward with any such allegation against the appellants.

(v) Learned counsel for the appellants has submitted that the child victim, at the time when the F.I.R. was lodged, was six years of age. She had testified before the court as PW-2 after the court had taken cognizance for the first time on the 09.02.2022. By that time as per her own testimony she was in VIth standard and ten years of age. Learned counsel for the appellants states that from a very tender age, the victim had been staying with her mother and her maternal grandparents. The latter had never appeared in the witness box. The victim had every opportunity to get tutored in a big way. She must have seen her mother grumble against the doings of her father and she must have had all sympathies for her mother. Learned counsel for the appellants states that the mother was a single lady staying with her parents and when she was on a daily basis trying to bring home to the child that she was a sufferer, then all sympathies of the child victim must have gone to the mother. Learned counsel for the appellants states that it would be very cogent to believe that even wrong things which the child witness must have known were actually wrong, were made to come through the testimony of the child witness in the court. This was chiefly because she wanted to help her mother. Learned counsel for the appellants states that normally what a child states has to be believed but when circumstances are such when the child begins to believe that the mother had been wronged and

when the mother teaches her to testify in a particular manner then there is very little scope for the child to speak against the mother. In the instant case, learned counsel for the appellants states that the mother had, of her own free will, given her consent for the child to go on 23rd of March, 2018 with her father. The child from Haldwani had on a daily basis talked to her mother but she had never even whispered about any wrong deed of the father. In fact, learned counsel for the appellants states that the child witness in her testimony before the court begins with her testimony that her father had blocked her mother on the telephone but subsequently very elaborately she goes on to testify that in fact she was allowed/permitted/given the freedom to talk to her mother on a daily basis. She had on her own also informed the court that one Kanha Bhaiya who was her first cousin and the son of the second accused, Samoj Bahuguna, used to come to the house where she was staying and nothing untoward used to happen. She had also never mentioned anything of the wrong doings of her father and her Tau ji to Kanha Bhaiya. Learned counsel for the appellants further has taken the Court through the statements of the child witness and has particularly pointed out that the father was always addressed by name in the court i.e. Yatindra Mohan Bahuguna. Quite often the child even called him as Yatindra and many a time she also addressed him as Yatindra Bahuguna, but when it came to her first cousin, she mentioned his name as “Kanha Bhaiya”. Learned counsel for the appellants therefore states that there was

all material on the record to show that the mother had filled poison in the mind of the child victim. The child had also got herself photographed wherein she was hugging her father. This was exhibited as “67 kha/4”. Why she was now addressing him by name has to be analyzed. He submits that what the child witness had stated in the court was unbelievable. What was worse, he submits that her averments were not corroborated by the statements of the two females who were interrogated by the investigating agencies. Also, the male who had helped in the house, had also not spoken anything against the accused persons. They had throughout stated that they were of a very good character and that the child had always loved her father. The love was to the extent that she had also left her toys at Haldwani and had assured her servants that she would come back again to Haldwani to play with them. Learned counsel for the appellants, therefore, states that there was absolutely no ground to believe that the child witness had testified truthfully in the court. The arguments of the learned counsel for the appellants can be summed up in the following manner:

(a) There was a delay in the lodging of the F.I.R. and no plausible explanation had been furnished for the same. The incident alleged had occurred in between 23.03.2018 and 03.04.2018 and the F.I.R. was lodged on 08.06.2018. This, as per the learned counsel for the appellants, had chiefly happened when there was an effort on the part of the PW-2

and PW-3 to carve out a case that the PW-2 had been molested in Haldwani. The PW-2 and PW-3 had talked to each other while they were travelling from Bareilly to Varanasi yet, learned counsel for the appellants submitted that the mother had no definite information. Further he has submitted that even an email was written by the PW-3, mother of the victim, to her husband, the father of the victim, on 9th of April, 2018, where she had called him a paedophile and had stated such things which indicated that the father was indulging in illegal sexual activities in his house at Haldwani but nothing specific was mentioned about what was done to the child victim. He therefore submits that since 09.04.2018, she had been trying to concoct a case for implicating the accused for having abused her child. Being convinced that the touching etc. of the child with a bad touch would only implicate the accused with offences under Section 7 of the POCSO Act, she came up with the idea of actually reporting of the inserting of a test tube inside her sexual organ and that was ultimately also got reported in the F.I.R. and thus she made all efforts to bring the case under the offence of aggravated penetrative sexual assault so as to get a punishment of life imprisonment under Section 6 of the POCSO Act. Thus, learned counsel for the appellants states that the inordinate delay was not such a delay which could be excused. The

time lag was used to mull over the entire case and every effort was made to implicate the accused under Section 5(g), 5(l), 5(m), 5(n), 6 of the POCSO Act along with the other sections of the I.P.C.

Learned counsel for the appellants also relied upon the judgment in **Ganesh Orang vs. State of West Bengal & Anr.** reported in 2022 SCC OnLine Cal 255, and on **Debraj Dutta versus The State of West Bengal & Anr.** reported in 2026 SCC OnLine SC 664.

(b) Learned counsel for the appellants stated that as per the Section 29 of the POCSO Act, there was a presumption with regard to certain offences which were allegedly committed under Section 3, 5, 7 and 9 of the POCSO Act and it was provided in Section 29 of the POCSO Act that unless the contrary was proved, there was a presumption against the accused. Learned counsel for the appellants states that in order to attract statutory presumption under Section 29 of the POCSO Act, the factual foundations with regard to the ingredients of the offence under Section 6 of the said Act required to be established in the first place. He very vehemently stressed that in the present case, nothing had been placed on record on behalf of the prosecution to show that the victim was *prima facie* victimised by her father vis-a-vis certain sexual offences.

(c) Learned counsel for the appellants states that from the statements of the prosecution witnesses, this much definitely could be gleaned out that the PW-3, mother of the victim, was aggrieved by the fact that the land in Haldwani which was a joint property with her and her husband was mortgaged and loan was taken and that she was made a guarantor for the loan without her consent. He further submits that from the records of the entire case there was also a possibility that the PW-3 wanted to stay at Varanasi and do her independent job and that she did not wish to avail the ENT facilities which were provided by her doctor husband at the Haldwani hospital. Learned counsel for the appellants submits that by writing the email on 09th of April, 2018, she probably had thought that she would terrify the accused no. 1 into coming to terms with the proposals of the PW-3. However, when in fact the email had an adverse effect and a suit for divorce was filed on 08.05.2018, then the wife of the accused i.e. mother of the victim lodged the F.I.R. on 08.06.2018 after getting all the legal advice. Learned counsel for the appellants states that matrimonial disputes leading to levelling of false allegations of sexual abuse of the child by the father thus had very harmful consequences on all the parties involved. He submits that in the instant case the allegations made by the child were such which if would be shown to the child when she grew up,

she would in fact be very embarrassed. He submitted that the Kerala High Court in the case of **XXX XXX versus State of Kerala, Rep by the Public Prosecutor and Anr.** reported in **2024 SCC OnLine Ker 4213** has very beautifully expressed as to how the matrimonial conflicts between the parents gets into the child the entire tussle and the child somehow is made to give wrong statements. Since, learned counsel for the appellants relied upon paragraphs nos. 13 to 20 of the judgment, the same are being reproduced here as under:

“13. Matrimonial disputes leading to false allegations of child sexual exploitation by a father can have severe and far reaching consequences for all parties involved. False allegations can cause immense emotional distress for the accused, child and other family members. The accused may have to face the trauma of criminal charges even if the allegations are later proven false. The accused may suffer social ostracization, damage to reputation and loss of community stand. False allegations can lead to family break down, custody battles and long term psychological effects on the child. The child may experience emotional distress, guilt or anxiety due to being at the centre of the dispute. When the child is grown up and becomes major, the records of the case may be available to her. It will be an embarrassing situation. False allegations against the father of the child at the instance of the mother can create a ripple effect, damaging community interest and relationships. All parties involved may experience lasting psychological and emotional scars. It is essential to approach such situations with sensitivity, prioritizing the child's well being and seeking support from professionals

such as counsellors, social workers or law enforcement agencies to ensure a fair and just resolution.

14. *This Court considered similar situations in some of the decisions. In Xxx v. State of Kerala [2023 (2) KHC 339] this Court observed like this:*

“19. In the aforesaid decision, this Court highlighted the growing tendency of foisting false cases against the biological father alleging sexual abuse misusing the provisions of the POCSO Act. This Court alerted the Family Courts by emphasizing the necessity to adopt a conscious approach while dealing with the allegation of offences under the POCSO Act in cases where the custody of the child is under serious litigation. The courts, while dealing with the applications for bail, involving the offences of the POCSO Act, allegedly committed by the accused against their children, should take a very cautious approach, particularly when the custody of the child is under serious litigation between the parents. In such cases, when the materials placed before the court evoke a reasonable suspicion as to the veracity of the allegations, the courts should not hesitate to invoke the powers under section 438 of the Cr. P.C. What is at stake is someone's personal liberty, integrity, dignity and sometimes, the life itself. The power under section 438 is an important tool for the court to protect the personal liberty of the persons, which is one of the fundamental rights guaranteed under the Constitution of India.”

15. *Again in Xxxxx v. State of Kerala [2024 SCC OnLine Ker 3595], this Court observed that in matrimonial disputes in between husband and wife, their minor child/children would be meddled and weaponized to wreck vengeance at the teeth of POCSO Act to avoid claim for custody by the father. Same is the situation here*

also. In this case, when the father files a petition stating that his child is missing, a false case is filed by the mother of the child stating that the father sexually abused the child. A Division Bench of this Court in Suhara v. Muhammed Jaleel [2019 (2) KHC 596] observed that the Family Court has to apply its mind and unless there are reliable materials capable enough to convince the allegation of sexual abuse to be well founded, mere registration of crime shall not be reckoned as a ground for rejecting the claim of the parent for custody of the child.

16. I am of the considered opinion that the POCSO Courts which try cases like this in which an accusation of sexual abuse is made against the father of the minor child, especially when there is a custody dispute, the court should look into the facts again and again before deciding the cases. All cases will be decided by all courts with great caution. But these types of cases should be dealt with very seriously because if the allegations are correct, that is serious; but if the allegations are false, a man is crucified without any substance and he will be defamed in the society because of such allegations. Therefore it is the duty of the court to see that there is no false allegation against parents especially when there is a dispute regarding the custody. Moreover, Section 22 of the POCSO Act provides punishment for false complaint or false information. In appropriate cases, the court should inform the police for investigation, if a prima facie case under Section 22 of the POCSO Act is made out. This is a fit case in which the Investigating Officer in Crime No. 668/2015 has to consider whether any offence under Section 22 of the POCSO Act is committed by the 2nd respondent. Section 22 of the POCSO Act says that any person who makes false complaint or provides false information against any person in respect of an offence under Sections 3, 5, 7 and 9 solely with the intention to

humiliate, extort, threaten or defame shall be punished with imprisonment for a term which may extend to six months or with fine or with both. This is a matter to be looked into by the investigating officer in this crime. All the POCSO Courts should take appropriate steps in this regard if it is found that there is any false complaint or false information submitted by the complainants. If the POCSO Court found after trial that there is substance in the case of the accused that it is a false accusation, the POCSO Court should direct the Police authorities to register a case under Section 22 of the POCSO Act and proceed in accordance with the law.

*17. The above discussion would lead to the definite conclusion that the prosecution against the petitioner in this case, who is the father of the minor victim is a frivolous, false complaint from the 2nd respondent to get the custody of the child from the petitioner. I am more disturbed because the child gave a Section 164 Cr. P.C. statement, which is extracted in the earlier paragraph of this judgment, in which she stated that she likes her father and mother and she likes her father more. Such a loving father is prosecuted by the mother of the child alleging serious allegations of the POCSO Act. These types of culprits' names should be disclosed to the public, so that the man who was defamed because of their complaint could stand before his child and society with dignity. But considering the privacy of the child I refrain from doing so. The Apex Court in *Nipun Saxena v. Union of India* [2019 (1) KHC 199], also said so.*

18. Every parent loves their children. Children are the same; they would love their parents just as much. The question of who loves their children more than the other and vice versa would never arise. But in certain situations, the same is also relevant. Here is a case where the child says that I like my father more than my mother. Here, the mother filed a complaint against the father

stating that the father sexually misused the minor child aged 3 years. This Court found that the case is false. This Court imagines the mental agony faced by the petitioner, who is the father of the child. Here, I like to quote a small film song by Sri. Kaithappam Damodaran Namboothiri."

"സൂര്യനായ്

തഴുകിയുറക്കുമുണർത്തുമെൻ
അച്ഛനെയാണെന്നിരിക്കിപ്പും
ഞാനൊന്നു കരയുമ്പോളറിയാതെ
ഉരുക്കുമെൻ
അച്ഛനെയാണെന്നിരിക്കിപ്പും

കല്ലെടുക്കും കണിത്തുമ്പിയെ
പോലെ
ഒരുപാടു നോവുകൾക്കിടയിലും
പൂഞ്ചിരിചിറകു വിടർത്തുമെൻ
അച്ഛൻ

എന്നുമെൻ പുസ്തകത്താളിൽ
മയങ്ങുന്ന
നന്മ തൻ പീലിയാണച്ഛൻ
കടലാസ്സു തോണിയെ പോലെന്റെ
ബാല്യത്തിലൊഴുകുന്നാരോർമ്മ
യാണച്ഛൻ
ഉടലാർന്ന കാരുണ്യമച്ഛൻ
കൈ വന്ന ഭാഗ്യമാണച്ഛൻ

അറിയില്ലെന്നിങ്ങേതു വാക്കിനാ-
ലച്ഛനെ വാഴ്ത്തുമെന്നറിയില്ല
ഇന്നും
എഴുതുമീ
സ്നേഹാക്ഷരങ്ങൾക്കുമപ്പുറം
അനുപമ സങ്കല്പമച്ഛൻ
അണയാത്ത ദീപമാണച്ഛൻ
കാണുന്ന ദൈവമാണച്ഛൻ."

English translation of the above mentioned song:

*"He is the sun who caresses me awake from slumber;
 he is the one who wipes away my tears when I weep.
 He is the one who gently lifts me up amidst the crowd;
 my father, who spreads his wings and smiles.*

*He is the embodiment of goodness residing within the
 pages of my life;
 he is the deep, boundless ocean of my childhood
 memories.
 He is compassion incarnate; he is the greatest blessing I
 have ever received.*

*Father is the one who shapes our lives;
 Words cannot fully praise the greatness of a father.
 He is the embodiment of incomparable love,
 An unquenchable flame,
 And the gateway through which we see the world."*

Hindi translation of the song:

*"वह सूरज की तरह हैं जो मुझे नींद से प्यार से जगाते हैं;
 वही मेरे आँसू पोछते हैं जब मैं रोती हूँ।
 वही मुझे भीड़ के बीच प्यार से सहारा देकर उठाते हैं;
 मेरे पिता, जो अपने पंख फैलाते हैं और मुस्कुराते हैं।*

*वह अच्छाई की मूरत हैं जो मेरी जिंदगी के पन्नों में बसे हैं;
 वह मेरे बचपन की यादों का गहरा और असीम सागर हैं।
 वह करुणा की साक्षात मूरत हैं; वह सबसे बड़ा आशीर्वाद हैं
 जो मुझे कभी मिला है।*

*"पिता ही हमारी जिंदगी को आकार देते हैं;
 शब्दों में पिता की महानता का पूरा वर्णन नहीं किया जा सकता।
 वह बेमिसाल प्यार की मूरत हैं,
 एक कभी न बुझने वाली लौ हैं,*

और वह दरवाज़ा है जिससे हम दुनिया को देखते हैं।"

[For the translation we are indebted to the SUVAS Cell (Supreme Court Vidhik Anuvaad Software) of the High Court]

This song beautifully describes the love of a child for his father. Let the petitioner-father be proud that he is the hero of his child.

19. *The upshot of the above discussion is that the prosecution against the petitioner is to be set aside.*

20. *Therefore, this Criminal Miscellaneous case is allowed. All further proceedings against the petitioner in SC No. 205/2016 on the file of Fast Track Special Court, Attingal arising from Crime No. 668/2015 of Mangalapuram Police Station are quashed. The Registry will forward a copy of this judgment to the Station House Officer, Mangalapuram for taking appropriate action, in accordance with law based on the above judgment. I make it clear that if any crime is registered against the 2nd respondent, the investigating officer is free to investigate the same, untrammelled by any observation in this judgment.*

Learned counsel for the appellants further relied upon the further judgments in **Velayutham versus The State of Tamil Nadu** reported in **MANU/TN/0162/2026**, **Bhanu Pratap versus State** reported in **2025 SCC OnLine Del 5584**, **The State of Madhya Pradesh versus Balveer Singh** reported in **(2025) 8 SCC 545** and in **State of Madhya Pradesh vs Ramesh and Anr.** reported in **(2011) 4 SCC 786**. Since the learned counsel relied upon the

paragraphs no. 7 to 14 of the judgment reported in (2011) 4 SCC 786, the same are being reproduced here as under:

“Child witness

7. In Rameshwar v. State of Rajasthan [1951 SCC 1213 : AIR 1952 SC 54 : 1952 Cri LJ 547] this Court examined the provisions of Section 5 of the Oaths Act, 1873 and Section 118 of the Evidence Act, 1872 and held that (AIR p. 55, para 7) every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age, extreme old age, disease whether of body or mind or any other cause of the same kind. There is always competency in fact unless the court considers otherwise. The Court further held as under : (AIR p. 56, para 11)

“11. ... it is desirable that Judges and Magistrates should always record their opinion that the child understands the duty of speaking the truth and state why they think that, otherwise the credibility of the witness may be seriously affected, so much so, that in some cases it may be necessary to reject the evidence altogether. But whether the Magistrate or Judge really was of that opinion can, I think, be gathered from the circumstances when there is no formal certificate.

8. In Mangoo v. State of M.P. [AIR 1995 SC 959 : 1995 Cri LJ 1461] this Court while dealing with the evidence of a child witness observed that there was always scope to tutor the child, however, it cannot alone be a ground to come to the conclusion that the child witness must have been tutored. The court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring.

9. *In Panchhi v. State of U.P.* [(1998) 7 SCC 177 : 1998 SCC (Cri) 1561 : AIR 1998 SC 2726] this Court while placing reliance upon a large number of its earlier judgments observed that the testimony of a child witness must find adequate corroboration before it is relied on. However, it is more a rule of practical wisdom than of law. It cannot be held that the evidence of a child witness would always stand irretrievably stigmatised. It is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring” (SCC p. 181, para 11).

10. *In Nivrutti Pandurang Kokate v. State of Maharashtra* [(2008) 12 SCC 565 : (2009) 1 SCC (Cri) 454 : AIR 2008 SC 1460] this Court dealing with the child witness has observed as under : (SCC pp. 567-68, para 10)

“10. ‘... 7. ... The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are

pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.’ [Ed. : As observed in Ratansinh Dalsukhbhai Nayak v. State of Gujarat, (2004) 1 SCC 64 : 2004 SCC (Cri) 7, at SCC pp. 67-68, para 7.] ”

11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong.

The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide Himmat Sukhadeo Wahurwagh v. State of Maharashtra [(2009) 6 SCC 712 : (2009) 3 SCC (Cri) 1 : AIR 2009 SC 2292] .)

12. *In State of U.P. v. Krishna Master [(2010) 12 SCC 324 : (2011) 1 SCC (Cri) 381 : AIR 2010 SC 3071] this Court held that there is no principle of law that it is inconceivable that a child of tender age would not be able to recapitulate the facts in his memory. A child is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child may be able to recapitulate carefully and exactly when asked about the same in the future. In case the child explains the relevant events of the crime without*

improvements or embellishments, and the same inspire confidence of the court, his deposition does not require any corroboration whatsoever. The child at a tender age is incapable of having any malice or ill will against any person. Therefore, there must be something on record to satisfy the court that something had gone wrong between the date of incident and recording evidence of the child witness due to which the witness wanted to implicate the accused falsely in a case of a serious nature.

13. *Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored part inspires confidence. In such an eventuality the untutored part can be believed or at least taken into consideration for the purpose of corroboration as in the case of a hostile witness. (Vide Gagan Kanojia v. State of Punjab [(2006) 13 SCC 516 : (2008) 1 SCC (Cri) 109] .)*

14. *In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”*

(d) Definitely, learned counsel for the appellants states that if the statement of the PW-2 and the PW-3 are perused, we find that there are contradictions in their statements. The chief being that while the PW-3 had stated that the child

was making complaint about her maltreatment, there were in fact statements of the child during her testimony wherein she had stated that the father allowed her to talk to her mother everyday and that the child had a very good time at Haldwani.

(e) Learned counsel for the appellants states that what had been stated in the F.I.R. and the case which had been tried to be carved out by the prosecution, was not at all corroborated by the medical evidence. The doctor who was examined as PW-5, Dr. Archana Varma, categorically stated that if a big tube was inserted there must be some swelling or bleeding. The pathological report had said that there was no sperm seen and thus it could certainly be said that a concocted case had been got up for implicating the accused.

(f) Learned counsel for the appellant states that the mother, Dr. Dipti Pandey, who was a doctor herself, if the actual incident had occurred and if any injury had been seen by her then she would have herself examined the same and reported the matter immediately. But in fact she waited for full two months to gather material to implicate her own husband in such a heinous offence.

(g) Further, learned counsel for the appellants states that when it came to investigation being done by the Investigating Officer of Haldwani, chiefly the PW-10 namely Gurvinder Kaur then it becomes apparent that the

mother never cooperated in the investigation. What is very relevant to mention here is, learned counsel for the appellants states, that even the parents of the complainant who were always living with the child victim and the complainant never came to the witness box to testify against the accused.

24. Sri Dharmendra Kumar Chaubey, learned counsel appearing for the complainant and Sri C.B. Dhar Dubey along with Sri Muni Raj Mehrotra, learned Additional Government Advocates for the State, however, have opposed the Appeal and have submitted that F.I.Rs. in such cases where sexual offences are involved do take some time to get lodged and the delay must be leniently condoned. He further heavily relied upon the statements of the PW-2 and the PW-3 under Section 161 of Cr.P.C. He further submitted that if the statement of the victim under Section 164 of Cr.P.C. is seen, then there is no scope left for this Court to interfere at all. Learned counsel appearing for the complainant and the learned A.G.A. have also submitted that the child who was seven years of age at the time of the incident had got her statement-in-chief recorded and had also got cross-examined and she had clearly supported the case of the prosecution.

25. Relying upon the judgment **(2019) 16 SCC 759; State of Himanchal Pradesh versus Manga Singh**, he submitted that the Supreme Court on the basis of the testimony of a nine year old child, even when the medical evidence or injuries on the child were missing had convicted the accused by saying that the statement of the child had

to be believed and no corroboration was required unless there were compelling reasons which necessitated the Court to insist for corroboration of the statement of the child. He submitted that in fact the conviction had taken place on the sole testimony of the child herself. Then again relying upon the judgment of **Ranjit Hazarika versus State of Assam** reported in (1998) 8 SCC 635, learned counsel for the informant and the learned A.G.A. have submitted that non-rupture of the hymen or absence of the injuries on the victim's private part would not necessarily lead a Court to believe that her testimony was false and thus submitted that the corroboration by medical evidence in such a case was not always essential. Then again relying upon the judgment of **Attorney General For India versus Satish And Another** reported in (2022) 5 SCC 545, learned counsel for the informant submitted that the Supreme Court had stated that it was a sexual intent which was more important and not a skin to skin contact.

26. With regard to the delayed F.I.R., learned counsel for the informant and learned A.G.A. relied upon **Ravinder Kumar and Anr. versus State of Punjab** reported in (2001) 7 SCC 690 and he submitted that as per the Supreme Court, a delayed F.I.R. is not always useless and is not necessarily fatal. He submitted that the Court had to ascertain the causes for the delay in a particular case and if the causes are not attributable to any effort to concoct a version, mere delay by itself could not be fatal to the prosecution case. In this regard, learned counsel for the appellant further relied upon the judgments of **Ravinder Singh versus State Government of NCT of Delhi** reported in (2024) 2 SCC

323, Deepak Kumar Sahu versus State of Chhattisgarh reported in **AIR 2025 Supreme Court 3763** and **State of Punjab versus Gurmit Singh And Anr.** reported in **(1996) 2 SCC 384**.

27. Concluding their arguments, learned counsel for the complainant and the learned A.G.A. have submitted that when there was a strong evidence on record which thoroughly went to prove that the father of the child victim had committed the crime then no further investigation was required and the Appeal be dismissed without any interference with heavy cost.

28. Having heard the learned counsel for the parties, the Court finds that the child victim had gone with her father to Haldwani on 23rd of March, 2018, and the mother had given a free consent to the father to take the child. We also find that after the child had left for Varanasi by car, she stayed with her father for ten days. The time which the child had spent with the father was a very cheerful one. She used to talk to her mother almost everyday on the mobile phone of her father. We also find that during her stay, the child had her separate mobile phone which was given to her by her father. She had taken certain photographs which had also been placed on record. However, we find that after the child had gone back to Varanasi with her mother who had come to fetch her at Bareilly, things began to go awry. The child has not stated anything against the father while she was going from Bareilly to Varanasi and this fact was clear from her testimony in the Court. The mother, however, had mentioned that she had stated about certain beating etc. which had been done by the father. We still further find that the case had been

brought up by the mother that when on 8th of April, 2018, she was assisting the child with her homework and a letter had to be written to her father as a homework then she had refused to address her father as “dear father”. Upon questioning the child the mother was told that the child was considering her father as a stranger and that he was definitely not a “dear father”. This allegedly happened on the 8th of April, 2018. What is on record is an email written to the accused by the mother of the victim. Though, the email has professed the accused as a rapists etc. but no mention is there of what the girl had stated on 8th of April, 2018, while the letter was being written. This definitely leads us to conclude that the mother was trying to embroil the child in the fight between the husband and the wife. In the email she had written about the bad touch etc. The mention of the letter writing and of the homework was not there. All this was probably tutored to the child after some legal advice.

29. Be that as it may, we find that bad touch and the other allegations made in the email would have at the most led to a conviction under Section 7 of the POCSO Act whereby a sexual assault which included, even a sexual intent was punishable for 3 to 5 years with fine and therefore a story was concocted with the passage of time about the insertion of a test tube inside the private part of the victim. This took almost two months and even the lodging of the F.I.R. was preceded by filing of a divorce petition by the father of the victim. We also find that there were contradictions in the statements of the PW-2, victim, and the PW-3, mother, wherein the victim had gone to the extent of saying that the father had blocked the mother’s phone number but had very

innocently stated that she used to talk to her mother everyday and the content of the conversations used to be always very congenial. However, the mother in her statement had stated that on the 30th of March, 2018, the daughter had mentioned about some beating. On the 2nd of April, 2018, again she had intended to convey some maltreatment but she could not catch the exact words. This further leads us to conclude that the delay in the lodging of the F.I.R. by the mother was not because of the fact that the mother had wanted to save the reputation of the family or was not wanting to disturb the sick people in her house but it was because of the fact that she was manoeuvring the entire plan to indict the husband with such offences which would make him face an imprisonment for life. We also find that the victim had been with the mother since 2017 when she was only 5 years of age. She continued to stay with her mother till she came to testify in the Court i.e. till she was ten years of age. Undoubtedly, she was suffering the agonies which her mother was undergoing because of the strained marriage relationship with her husband and this definitely would have led her to get tutored with whatever her mother suggested her to learn. The fact that she had called her father by name i.e. Yatindra Bahuguna and has mentioned her first cousin as Kanha Bhaiya shows that she had been tutored to have ill-will against her own father and that she had thus borne a grudge that her father had actually maltreated her mother. All this, we presume must have led the child to believe in all such things as the mother taught and therefore this Court is of the view that the statements given by the child victim in the Court could not be believed. This we further state because

the servants in the house at Haldwani had not mentioned even a single word against the accused, Yatindra. We are also led to conclude that there was congenial relationship between the victim and the father because all the photographs which had been filed in the Court showed that she was hugging her father and always was affectionately looking up to him.

30. Next, we would have given some credence to what was stated by the mother and the daughter had there been any other blot on the reputation of the accused. A paedophile is such a person who likes to indulge in dirty work with small children but from the entire record we find that no evidence was led to lead us to conclude that the accused Yatindra was a man of such a character. Definitely, the accused had borne no grudge against his own daughter and therefore we conclude that he must not have done anything as was alleged by the prosecution. Also if there was any substance in what the victim had said then to corroborate it all her nana and nani with whom the PW-2 and PW-3 were staying would have come to the witness box to establish the case. In the instant case, when everything was based on circumstantial evidence, then definitely what was alleged had to be proved and corroborated by at least some evidence, specially when the medical evidence as was brought forth had failed when the Dr. Archana Varma, PW-5, had stated that insertion of a tube would definitely have led to an injury and bleeding from the private part of the victim.

31. We would like to add that cases in which the POCSO Act is being used as an instrument to accuse either of the parents then the evidence of

a child witness should be considered with great caution. Undoubtedly, a child is supposed to speak the truth but when it is portrayed by one parent that the other parent had brought about injustice him or her and the child begins to sincerely believe that the parent with whom he or she is living has been wronged then the child begins to testify against the other parent even wrong things believing that they were true. Therefore, we are of the view that in such cases the evidence brought forth by a child witness should be considered with great sagacity.

32. We are thus of the view that the judgments relied upon by the learned A.G.A. and learned counsel appearing for the informant with regard to the delay in the lodging of the F.I.R. and with regard to the fact that the conviction could be done also on the solitary statement of the victim are of no help to the complainant and the prosecution. Also we find that the appellant no. 2 Samoj Bahuguna had been roped in for no reason whatsoever. There is absolutely no evidence against him and thus we are of the view that the appellant no. 2 Samoj Bahuguna along with appellant no. 1 Yatindra Mohan Bahuguna is also innocent.

33. Thus for all the reasons stated above, we are of the view that the instant Appeal be allowed. The conviction order dated 11/13.02.2025 passed by the Additional District and Session Judge/ Special Judge (POCSO Act) Court No. 3, Room No. 7, Varanasi in Session Trial No. 919 of 2021 (State versus Yatindra Mohan Bahuguna and Another) deserves to be set aside. We accordingly set-aside the order dated 11/13.02.2025 and allow the appeal.

34. The appellants are honourably acquitted of all the charges as were levelled against them in the instant case. The appellant no. 1, Yatindra Mohan Bahuguna, who is in jail be released forthwith.

35. The appellant no. 2, Samoj Bahuguna, who is on bail, need not surrender. His sureties and bail bonds be discharged. The trial court record be sent back to the concerned trial court.

35. Before parting with the judgment, we would like to put in a word of appreciation for our Research Associate Mr. Abhishek Verma, for the research work done by him.

(Jai Krishan Upadhyay,J.) (Siddhartha Varma,J.)

August 13, 2026

M.S. Ansari