



2. In a nutshell, the allegations against the petitioners are that on 30.08.2020, petitioner No. 2 herein (arrayed as Accused No.2 in the FIR) kidnapped the victim girl, who was a minor at that time, and brought her to the village of his maternal uncle. It is also alleged by the victim that the other petitioners-accused, in connivance with petitioner No. 2, got her married to him at a Devi Temple of the village. She was then taken by petitioner No. 2, with the help of co-accused persons, including the petitioners herein, to village-Rahama in the Jagatsinghpur District, Odisha. During this period i.e. of 7-8 days, the victim was with the petitioner No.2. It is also alleged that petitioner No.2 had forcibly made sexual relations with the victim. The victim was ultimately rescued by her parents on 18.11.2020 with the help of the officials of Police Station-Ranpur. She was then brought to P.S.-Ranpur and was first examined by the police and then her statement under Section 164 of the Cr.P.C was recorded before the jurisdictional Magistrate. Thereafter, she was sent for medical examination at the Ranpur Hospital. The victim also produced her D.O.B certificate, as per which her D.O.B is 14.03.2005.

3. The petitioners have challenged the order dated 15.05.2024 passed by the High Court of Orissa, by which their application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') was dismissed. The petitioners had approached the High Court, assailing the order dated 10.10.2023 by which the Special Court rejected their application under Section 311 of Cr.P.C, which was filed for recalling the victim/PW-1 for re-examination as witness. While rejecting the plea for recall of the victim, the Special Court relied upon Section 33 (5) of the Act where the statute itself mandates that a child will not be called in the Court to testify.
  
4. The High Court again held the same provision against the petitioners while dismissing the Application under Section 482 of the Cr.P.C filed by them. It is important to state here that POCSO Act is a special legislation, which was enacted to protect children from sexual offences and for safeguarding interests and ensuring the well-being of the child at every stage of trial of offences under the Act. Section 33 of the POCSO Act provides for the procedure and powers of the Special Court and reads as under:

**“33. Procedure and powers of Special Court. — (1)**

A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to be put to the child to the Special Court which shall in turn put those questions to the child.

(3) The Special Court may, if it considers necessary, permit frequent breaks for the child during the trial.

(4) The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the court.

**(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.**

(6) The Special Court shall not permit aggressive questioning or character assassination of the child and ensure that dignity of the child is maintained at all times during the trial.

(7) The Special Court shall ensure that the identity of the child is not disclosed at any time during the course of investigation or trial.....”

A bare perusal of Section 33 (5) of the Act indicates that a duty is cast upon the Special Court to ensure that a child is not repeatedly called to give his/her testimony before the court. The legislative intent behind this provision is clear. It is to ensure that the child who has suffered a traumatic experience of sexual

assault is not called time and again to testify about the same incident.

5. We have heard learned counsel for the petitioners, who would submit that Section 33 (5) does not operate as an absolute bar for recalling the child as a witness for re-examination. Learned counsel for the petitioners would argue that Section 33 (5) would also not come in the way of the Special Court's powers under Section 311 of the Cr.P.C to recall or re-examine any person who has already been examined. It would be apposite to reproduce Section 311 of the Cr.P.C before adverting to the facts of the present case. Section 311 of the Cr.P.C reads as under:

***“311. Power to summon material witness, or examine person present. - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case...”***

We are of the considered opinion that although Section 33 (5) would not act as an absolute bar to recall the victim for re-examination as a witness, each case must be looked at in the context of its individual facts and circumstances. Thus, the

question which falls for our consideration in the present case is whether in the exercise of its powers under Section 311 of the Cr.P.C, the Special Court ought to have recalled the child/victim for re-examination as witness, keeping in mind the mandate under Section 33 (5) of the Act.

6. The principles which would guide the exercise of a Court's power under Section 311 of the Cr.P.C were succinctly summed up by this Court in ***State (NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402***. It was laid down by this Court that first, the plea for recall of a witness under Section 311 must be *bona fide* and genuine. Secondly, applications for recall of a witness under Section 311 should not be allowed as a matter of course and the discretion given to the Court must be exercised judiciously, not arbitrarily.
7. Let us now examine whether in the given facts and circumstances, plea of the petitioners for recalling the victim as witness for re-examination ought to have been allowed by the Special Court. The victim here is a girl who at the time of the incident was around 15 years of age allegedly. It is an admitted fact here that even before the application under Section 311 of

the Cr.P.C was filed by the petitioners, the defence counsel was given the opportunity to cross-examine the victim twice already. On 22.07.2023, the examination-in-chief of the victim was conducted and on the same day, she was cross-examined by the counsel engaged by the petitioners before the Special Court. Thereafter, further cross-examination of the victim was deferred to 14.08.2023 on the request of the counsel engaged by the petitioners. On 14.08.2023, she was cross-examined at length and yet again, a request for adjournment was made by the counsel engaged by the petitioners, which was then turned down by the Special Court. It is then that the application under Section 311 of Cr.P.C came to be filed by the petitioners seeking recall of the victim which was rightly rejected vide Order dated 10.10.2023 of the Special Court.

8. What weighed with the Special Court, while dismissing their application was the fact that the after having availed their first opportunity to cross-examine the victim on 22.07.2023, the accused sought an adjournment which was granted and thus they were given a second opportunity to cross-examine the victim on 14.08.2023 and on this day, their advocate cross-examined her at length but again sought an adjournment which

was disallowed as there was no justification for seeking an adjournment. Since the accused did not challenge this order of rejection, the Special Court observed that its findings in the said order that there was no justification to adjourn or defer cross-examination to a later date had attained a finality. The Special Court also placed its reliance on Section 33 (5) of the Act and emphasised that it is mandated to ensure that the child is not repeatedly called to testify before it.

9. From a perusal of the record of the case, it is abundantly clear that ample opportunities were given to the defence counsel to cross-examine the victim. When the victim has been examined and then cross-examined at length twice already, mechanically allowing an application for recall of the victim, especially in trial of offences under the POCSO Act would defeat the very purpose of the statute. Hence, we find no error or illegality in the impugned order of the High Court or the Order dt. 10.10.2023 of the Special Court.
10. In view of the above, we see no reason to interfere with the impugned order passed by the High Court.



11. Accordingly, the Special Leave Petition filed by the petitioners is dismissed.

12. Pending applications, if any, are accordingly disposed of.

.....J.  
(SUDHANSHU DHULIA)

.....J.  
(AHSANUDDIN AMANULLAH)

**New Delhi**  
**August 5, 2024**

ITEM NO.33/1

COURT NO.16

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.10082/2024

(Arising out of impugned final judgment and order dated 15-05-2024 in CRLMC No. 4973/2023 passed by the High Court of Orissa at Cuttack)

MADHAB CHANDRA PRADHAN  
& ORS.

Petitioner(s)

VERSUS

STATE OF ODISHA

Respondent(s)

(FOR ADMISSION )

Date : 05-08-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. Shakti Kanta Pattanaik, AOR  
Mr. Anukul Chandra Pradhan, Sr. Adv.  
Ms. Aradhana Parmar, Adv, Adv.  
Ms. Rajni Bala Sharma, Adv, Adv.  
Dr. Monika Mishra, Adv, Adv.  
Mr. Sparsh Kanta Nayak, Adv, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

1. The special leave petition is dismissed in terms of the signed order.

2. Pending application(s), if any, stand(s) disposed of.

(CHANDRESH)  
COURT MASTER (SH)

(RENU BALA GAMBHIR)  
COURT MASTER (NSH)

[Signed order is placed on the file]

ITEM NO.33

COURT NO.16

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

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For Petitioner(s) Mr. Shakti Kanta Pattanaik, AOR  
Mr. Anukul Chandra Pradhan, Sr. Adv.  
Ms. Aradhana Parmar, Adv, Adv.  
Ms. Rajni Bala Sharma, Adv, Adv.  
Dr. Monika Mishra, Adv, Adv.  
Mr. Sparsh Kanta Nayak, Adv, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Heard learned counsel for the petitioners.

The Special Leave Petition is, dismissed, accordingly.

Reasons to follow.

(CHANDRESH)  
COURT MASTER (SH)

(RENU BALA GAMBHIR)  
COURT MASTER (NSH)