IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.550 of 2021

Arising Out of PS. Case No.-29 Year-2018 Thana- MAHILA PS District- Aurangabad

==========

Mannu @ Saddam @ Md. Mannu Sadam S/O Islam Khalifa @ Md. Eslam R/O Naya Bazar, P.S-Deo, District- Aurangabad.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

==========

Appearance :
For the Appellant/s : Mr. Satish Chandra Mishra, Advocate
Mr. Uma Kant Mishra, Advocate
For the State : Mr. Abhimanyu Sharma, APP

==========

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 30-10-2024

The present appeal has been preferred against the impugned judgment of conviction and order of sentence dated 12.07.2021 and 19.07.2021 respectively passed by Ld. Additional Sessions Judge-VIII-cum-Special Judge, POCSO Act, Aurangabad, Bihar, in G.R. No. 72 of 2018, C.I.S. No. 72 of 2018 arising out of Mahila P.S. Case No. 29 of 2018, whereby the sole appellant has been convicted for the offences punishable under Sections 376, 342 and 120 (B) of the Indian Penal Code and Section 4 of the POCSO Act. From perusal of the impugned order of sentence, it transpires that in view of Section 42 of the POCSO Act, the Trial Court has sentenced the appellant under Section

376 of the Indian Penal Code instead of Section 4 of the POCSO Act. Under Section 376 of the Indian Penal Code, the appellant has been sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.30,000/- and in case of default to pay the fine, he has been further directed to undergo additional simple imprisonment for six months. Under Section 342 of the Indian Penal Code, the appellant has been directed to pay a fine of Rs.1,000/- and in case of default to pay the fine, to undergo simple imprisonment of three months. Under Section 120B of the Indian Penal Code, the appellant has been sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 30,000/- and, in case of default to pay the fine, to undergo additional simple imprisonment for 6 months. All the sentences have been directed to run concurrently.

2. By the impugned order of sentence, the learned Trial Court has also found the informant as victim of the crime and recommended District Legal Services Authority, Aurangabad to pay Rs.4,00,000/- to the victim towards compensation. In case of any interim compensation being already paid to the victim, the same has been directed to be adjusted against final compensation of Rs.4,00,000/-.

Prosecution case

3. The prosecution case as emerging from the written report received by the Aurangabad Mahila Police Station on 25.10.2018 is that on 21.10.2018 at about 4:00 P.M. the friend of the informant, namely, GuriyaPerween, took her to Dev market to purchase some articles for practical. Thereafter, she took the informant to her home. Thereafter, elder brother of her friend namely, Mannu @ Saddam, who is appellant herein, confined her to a room. When she tried to come out from the room, the appellant gagged her and kept her confined in the room and committed rape upon her whole night. In the next morning, when the appellant went out from the room to take water, she started crying calling the name of Guriya. Hearing her sound, GuriyaPerween came to her. The informant asked her to take her with herself. Thereafter, Guriyatook her with herself at about 4:00 A.M. to Aurangabad where both of them stayed in a Mosque at Kasai Mohalla. In the evening, she was again persuaded to go to Ranchi by bus wherefrom she was taken to Gumla. Thereafter, she was taken to the house of mousi of her friend at village Satbarva. Her mousi informed the brother of the informant and thereafter, her brother Shahnawaz Alam and Shahzad Alam reached there and taken to Dev Police Station on 25.10.2018 at 10 O’clock. Thereafter, she was sent to Mahila Police Station,

Aurangabad.

Factual backgrounds

4. On the basis of the written report, Mahila P.S. Case No. 29 of 2018 was lodged against the appellant and co-accused GuriyaPerween for the offences punishable under Sections 342, 343, 376, 120(B) of the Indian Penal Code and Section 4 of the POCSO Act.

5. After investigation, charge-sheet bearing No. 29 of 2018 dated 24.12.2018 was submitted against both the accused for the offences punishable under Sections 342, 343, 376, 120(B) of the Indian Penal Code and Section 4 of POCSO Act. On her application, GuriyaPerween was declared juvenile and her case was separated and sent to Juvenile Justice Board.

6. Charge under Sections 343, 376, 120(B) of the Indian Penal Code and Section 4 of the POCSO Act was framed against the appellant. The charges were read over to him to which he pleaded not guilty and claimed to be tried.

7. During the trial, the following seven witnesses were examined:-

(1) **P.W.-1** – Meena Khatoon
(ii) **P.W.-2** – Brother of the victim
(iii) **P.W.-3** –Brother of the victim
(iv) **P.W.-4** – Mother of the victim
(v) **P.W.-5** – Victim/Informant
(vi) **P.W.-6** – Dr. Lalsa Sinha (Doctor)

(vii) **P.W.-7-** Shakuntala Kumari (I.O)

8. During the trial, the prosecution has also brought on record the following documentary evidence:-

(i) **Ext. 1** – Signature of the victim on the written report
(ii) **Ext. 2** - Signature of victim on her statement under Section 164 Cr.PC;
(iii) **Ext. 3** – Medical Report of the victim
(iv) **Ext. 3/1** – Supplementary Medical Report of the victim
(v) **Ext. 4** – Signature of Dr. R.B. Choudhary on the supplementary Medical Report.
(vi) **Ext. 5** – Endorsement on the written report of Mahila P.S. Case No. 29 of 2018.
(vii) **Ext. 6-** Formal FIR of Mahila P.S. Case No. 29 of 2018.

Statement under Section 313 Cr.PC.

9. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.PC, confronting him with the incriminating circumstances which had come in the prosecution evidence, so as to afford him an opportunity to explain him. He claimed that the allegation is false and he is innocent. However, he has stated that there is one room for him in his house and the rest rooms are for other family members. He was also not aware where was his sister GuriyaPerween on 22.10.2010. However, in the morning she was at home itself. He has also admitted that the house of his Mousi is at Satbarwa, Gumla. However, he has not adduced any evidence in his

defence.

Findings of the Trial Court

10. The learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and the order of sentence, finding that the Prosecution was successful to prove its case against the appellant beyond all reasonable doubts and the appellant has failed to rebut the presumption as provided under Section 29 of the POCSO Act.

Submissions of the parties

11. We have heard learned counsel for the appellant and learned APP for the State.

12. Learned counsel for the appellant has submitted that the impugned judgment of conviction and the order of sentence passed by learned Trial Court are not sustainable in the eye of law or on facts.

13. To substantiate their submissions, they have submitted that the provisions of the POCSO Act is not applicable against the appellant in view of the evidence on record. The first and foremost requirement for application of the provisions of POCSO Act is that the alleged victim must be a child i.e. below 18 years of age and the burden lies on the

prosecution to prove the minority of the alleged victim as per procedure as provided under Section 94 of the POCSO Act. But the age of the alleged victim is not proved by the prosecution as required by law.

14. It has been further submitted by the learned counsel for the appellant that the prosecution case has to stand on its own leg without any help of any presumption. Sections 29 and 30 of the POCSO Act are no longer available. Hence, the prosecution is required to prove the charges framed under the Indian Penal Code beyond all reasonable doubts.

15. They have further submitted that the informant (P.W.-5) is the only eye witness to the alleged occurrence. But there are various improvements and contradictions in her statement rendering her untrustworthy. Moreover, the allegation of the rape is also not supported by the medical evidence.

16. They have further submitted that except P.W.-1, all non-official witnesses are close family members of the informant and hence they are interested and untrustworthy witnesses and their testimony cannot be relied upon to pass judgment of conviction against the appellant.

17. *Per contra*, learned Additional Public Prosecutor for the State has defended the impugned judgment and the order

of sentence submitting that the victim was below 18 years of age at the time of occurrence as per the oral evidence of the informant as well as her mother and brothers, who are examined as P.W.-2 to P.W.-4. The prosecution has proved its case against the appellant beyond all reasonable doubts. There is no illegality or infirmity in the impugned judgment and order of sentence.

Requirement of the prosecution to prove minority of the victim for Application of the POCSO Act.

18. We have thoroughly perused the relevant materials on record and given thoughtful consideration to the submissions advanced by both the parties.

19. The POCSO Act, 2012 deals with offences committed against children as is apparent from the provisions of the Act, and as per Section 2(d) of the Act, child means a person below the age of 18 years. Hence, the first and foremost requirement for application of the POCSO Act is that the alleged victim was a child i.e. below 18 years of age, on the date of the occurrence and it is the prosecution which is required to prove the minority of the victim for application of the POCSO Act against the accused/appellant.

Requirement of the prosecution to prove foundational facts of the alleged offence to raise presumption under Sections 29 and 30 of the POCSO Act, 2012.

20. It is also settled position of law that the foundational facts of the alleged offence are required to be proved by the prosecution before the Court raises the presumption under Sections 29 and 30 of the POCSO Act against the accused. Lodgement of F.I.R. or submission of charge-sheet under the POCSO Act does not automatically leads to presumption of guilt of the accused during trial. The presumption of innocence of the accused is a fundamental tenet of our criminal jurisprudence enshrined in Article 14 and 21 of the our Constitution.

21. In **Babu Vs. State of Kerala, (2010) 9 SCC 189,** Hon'ble Supreme Court has held that presumption of innocence is a human right, though the exception may be created by statutory provisions. But even such statutory presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution.

22. In **Navin Dhaniram Baraiye Vs. State of Maharashtra, 2018 SCC Online Bom 1281, Bombay High Court** has held that the presumption under Section 29 of the POCSO Act, 2012 operates against the accused only when the prosecution proves the foundational facts against him beyond

reasonable doubts, in the context of the allegation under the Act and the accused has a right to rebut the presumption, either by discrediting prosecution witnesses through cross-examination or by leading evidence to prove his defence. Rebuttal of the presumption would be on the touchstone of preponderance of probability.

23. Similar view has been expressed by other High Courts also. Here, one may refer to the following judicial precedents:-

(i) Joy V. S. Vs. **State of Kerala, (2019) SCC Online Ker 783**
(ii) Sahid Hossain Biswas Vs. **State of West Bengal, 2017 SCC Online Cal 5023**
(iii) Dharmender Singh Vs. **State (Govt. of NCT of Delhi) (2020 SCC Online Del 1267)**
(iv) Latu Das Vs. **State of Assam, 2019 SCC OnLine Gau 5947**

24. Now, we are required to examine the evidence on record to see whether the prosecution has proved the minority of the informant/victim and foundational facts of the alleged offence.

Prosecution Evidence

25. Coming to the evidence on record, we find that the **victim/informant** has been examined as **P.W.-5.** In her **examination-in-chief**, she has supported the prosecution case

deposing in consonance with her written report. She has also deposed that she was 15 years of age at the time of alleged occurrence. She has also developed its case in her **examination-in-chief** deposing that when the door of the room of the accused where she was raped was opened, GuriyaPerween came and stated to her that if she cried, neighbours would come. She also cautioned her not to cry, because her brother was a criminal and he might kill her family members. She has further developed the case deposing that Guriya Perween saw that her clothes were torn and had blood spots. Hence, she gave her own clothes to her to wear. Then she asked her to accompany her for treatment and thereafter, both of them went to Aurangabad by tempo and got off near Masjid at Aurangabad. Thereafter, she was asked by Guriya to stay there. Thereafter, she brought some medicine and got it eaten by her. After taking medicine, she started feeling intoxicated. Thereafter, she was taken to Ranchi wherefrom she was taken to Satbarwa. En route, she used to give her medicine at every two hours. At Satbarwa, she was taken to the house of her mausi. When she got conscious, she started crying and asked her to get her talking with her family members. Thereafter, they talked to her family members and informed them about her presence there. Thereafter, her brothers came and took her to

Police Station. In her **cross-examination,** she has deposed that the house of the appellant is situated only at the distance of one kilometer to the east of her house. Guriya Perween came to her house at 2:00 PM and stayed about 10 minutes and asked her to accompany her. Both of them went to market. They spent half an hour in the market. She reached the home of Guriya Perween at 3:00 PM. Her friendship with Guriya Perween was 10-15 days old. She was her classmate. She did not return to her home. She did not raise even hulla. From the house of Guriya Perween, she went to Aurangabad by Auto Rickshaw. In the Auto Rickshaw, besides driver, only she and Guriya Perween were sitting. She did not raise any hulla because she was being threatened by Guriya Perween. Near Deo turning, there are so many shops, but she did not cry even there, because she was being threatened by Guriya Perween. She reached near Masjid at 5:00 AM and thereafter, she was immediately given medicine. She had taken bus for Ranchi from bus stand of Aurangabad. She had gone to bus stand by tempo. She was feeling intoxicated, but Guriya Perween was holding her. She did not raise hulla en route because she was feeling unconscious. At Satbarwa, she had stayed about one or two hours. Thereafter, her bother had come. While she was returning along with her

brother, she did not get any treatment. She had given all the information to her bother regarding the occurrence. She had not given any information to police Station while coming from Satbarwa. There were three rooms in the house of the appellant. She had not gone inside the house of the appellant. There was one room outside the house and she had gone in that room.

26. P.W.-1 is **Meena Khatoon**. She is neighbour of the appellant. Supporting the prosecution case, she has deposed in her **examination-in-chief** that the occurrence had taken place about 8-9 months ago. The informant was 18 years of age at that time. She has further deposed that Guriya Perween and informant had come to her house and seen T.V. for about 10 minutes in her house. Nothing more she knows about the occurrence. In her **cross-examination**, she has deposed that after seeing the T.V., both informant and Guriya Perween had gone out from her house, but she is not aware where they had gone.

27. P.W.-2 is brother of the informant. He has supported the prosecution case deposing in her **examination-in-chie**f that the informant was 14 years of age at the time of occurrence on 21.10.2018. He has further deposed that Guriya Perween had come to his house and the informant had gone to

market with her. By 7:00 PM, when he came home and inquired about the informant, he came to know that she had not returned. He went to the house of Guriya Perween and asked her mother about his sister/informant. He was told that she had gone her home. He came back to his home looking for his sister on the way, but he came to know from his mother that she had not come home. He gave this information to his brother (P.W.-3). Thereafter, he along with his brother again went to the house of Guriya Perween. Guriya and her mother came out from their home and stated to him that his sister had gone from there. In the next morning also he went to the house of Guriya Perween, but mother of Guriya Perween expressed her ignorance regarding whereabout of his sister. After returning from home of Guriya Perween, he and his broher went to Police Station and gave information about it. On 24.10.2018, he came to know that she was at Satbawa village. In his **cross-examination**, he has deposed that while taking her sister from Satbarwa, he had gone to Dev Police Station and stayed there for about half an hour and lodged a case there. His mother and sister/informant had put their signature.

28. P.W.-3 is also a brother of the informant. He has also supported the prosecution case deposing in his

examination-in-chief that the informant was 14 years of age on the date of occurrence. His sister/informant had gone along with Guriya Perween to market. When he reached Satbarwa, the informant started weeping En route, she gave information about the occurrence. He took his sister to Dev Police Station, which sent them to Mahila Police Station, Aurangabad where his sister was medically examined. In his **cross-examination**, he has deposed that his sister had taken admission in class one, but he is not aware when she had taken the admission. He has two brothers and four sisters. The informant is the fourth child of her parents. The eldest brother is 23-24 years old. The second child of his parents is 19 years old. Third child of his parents is 16-17 years old, whereas the informant/sister is 15 years old. At about 7:00 PM, he came to know that his sister is not at home. His brother tried to search her. He deposed about occurrence as per hearsay from his sister.

29. **P.W.-4** is mother of the informant. She has supported the prosecution case deposing in her **examination-in-chief** that the informant was 14 years of age at the time of alleged occurrence. At the time of alleged occurrence, the informant/her daughter was at home when Guriya Parveen came to her house and took her to market to purchase practical copy.

When the Informant did not return home and darkness started commencing, she called Guriya on telephone and came to know that she is at the home of Guriya and she is filling up practical copy and she would not return today but she asked Guriya to send her back. Thereafter, Guriya switched her mobile off. In her **cross-examination**, she has deposed that when her daughter did not come back in the night, she did not go to the house of Guriya. Next day at 10:00 am she had gone to the house of Saddam/appellant and talked his mother and father. She raised hulla for about 10-20 minutes about the whereabouts of her daughter. 3-4 men and 3-4 ladies came from the neighbour. But they were not aware of the whereabouts of her daughter. The house of the Appellant is at the distance of one kilometer from her house. When she asked her daughter about the treatment, she informed that she had not got any treatment. The information about the whereabouts of her daughter at Satbarwa was given by Juber Alam, who is the son of her sister. She has denied the suggestion that her daughter/informant had not gone to the house of Guriya, nor did she stay at her home during night, nor was she raped by the Appellant.

30. **P.W.-6** is **Dr. Lalsa Sinha**, who had conducted the Medical Examination on the informant. After examination, she

has found as follows:

> "…..Hymen ruptured old, vagina admits one finger very easily. She is menstruating at the time of examination. No marks of injury present locally except slight tenderness at introitus during examination. Vaginal swab taken and sent for histo-pathological examination. Victim girl sent to Radiological examination. Opinion reserved till all reports come in…….Pathological reports given by Dr. R. B. Chaudhary, M.O. Sadar Hospital, Aurangabad. As per his reports- No spermatozoa found on either both slides"

31. On the basis of the findings, she opined that the informant seemed to have undergone sexual act. In her **cross-examination** she has deposed that there was no injury on the person of the informant. Age was not determined by the Medical Board because police had not asked for such report.

32. P.W.-7 is **Sub-Inspector Shakuntala Kumari** who was Investigating Officer of the case. She did not get the informant medically examined in regard to age of the victim/informant because at Sadar Hospital, Aurangabad, there was no x-ray test facilities. She has also deposed that witness Shahzad Alam (P.W.-2) has not stated to her that when he went to house of Guriya Perween, he was told that his sister was not there. She has also deposed that no information was given to any Police Station prior to the present First Information Report.

Whether the informant/victim was a child on the date of occurrence.

33. The **first and foremost question** is whether the

prosecution has proved that the alleged victim was child i.e. below 18 years of age on the date of occurrence in terms of Section 2(1)(d) of the POCSO Act. It is a prerequisite for application of the POCSO Act against the Appellant.

34. Now question is what is the procedure to determine the age of the alleged victim? In the POCSO Act, there is no such procedure provided under Section 34 (2) of the POCSO Act only provides that if any question arises whether a person is a child or not, such question is required to be determined by the Special Court after satisfying itself about the age of such person and to record in writing its reason for such determination.

35. However in landmark judgment of **Jarnail Singh Vs. State of Haryana, (2013) 7 SCC 263**, which is still holding the field and being followed by all Courts, Hon’ble Apex Court has held that procedure provided for determination of age of a juvenile in conflict with law should be adopted for determination of the age of the victim of a crime also, because there is hardly any difference, in so far as issue of minority is concerned, between the child in conflict with law and the child who is the victim of a crime.

36. Similar view has been expressed by Hon’ble Apex

Court in recent case of **P. Yuvaprakash Vs. State, 2023 SCC onLine SC 846** referring to Section 34 of the POCSO Act and Section 94 of the J.J. Act, 2015.

37. Section 94 of the J.J. Act, 2015, which deals with presumption and determination of age, reads as follows:

> "**94. Presumption and determination of age.-** (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.
>
> (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—
>
> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of *(i)* and *(ii)* above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:
>
> Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.
>
> (3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

38. Hon'ble Apex Court in **P. Yuvaprakash Case**

(supra), has held as follows:

> "13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:
>
> "(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board".
>
> (Emphasis supplied)

39. As such, the age of the victim is determined on the basis of birth certificate from the school or matriculation or equivalent certificate, if available. In other words, if the victim was a student of school, the aforesaid certificates have precedence over other mode of proof regarding the age. In the absence of such certificate, birth certificate given by Municipal Authorities or Panchayat is required to be considered for determination of the age of the victim. In the absence of the aforesaid certificates, the age of the victim is required to be determined by ossification test or any other latest medical test. Any other proof like oral evidence is impliedly excluded from

consideration for determination of the age of the victim.

40. Now coming to the prosecution evidence, we find that out of seven prosecution witnesses, five witnesses (P.W.-1 to P.W.-5) are non-official witnesses, out of whom, only P.W.-1 is independent witness because she is neighbour of the appellant. No way she is related with the informant or the appellant. However, she is co-villager of the informant. We further find that P.W.-5 is informant herself and P.W.-2 to P.W.-4 are her family members. P.W.-2 and P.W.-3 are brothers whereas P.W.-4 is mother of the informant. P.W.-6 is doctor who had conducted medical examination of the informant whereas P.W.-7 is Investigating Officer.

41. We further find that the informant/victim is a school student. But neither any school certificate nor any birth certificate issued by Panchayat or Municipal authorities has been brought on record by the prosecution despite legal requirement. Even ossification test or any other medical test of the victim has not been conducted for determination of her age. Hence, we find that the prosecution has failed to prove the age of the victim as per the procedure and mode as stipulated in Section 94 of the Juvenile Justice Act, 2015. Oral evidence of age of the victim is impliedly excluded by Section 94 of the Juvenile Justice Act,

2015. Hence, oral testimony of the mother and brothers as well as the victim herself is of no use. Even otherwise, as per testimony of P.W.-1 who is a co-villager of the victim, the age of the victim at the time of occurrence was 18 years.

42. Hence, on account of failure of the prosecution to bring on record admissible documents regarding age of the victim despite availability/feasibility of such documents, the Court is constrained to draw adverse inference against the minority of the victim. Accordingly, the victim is held to be major i.e. above 18 years of the age on the date of the occurrence.

43. In view of the finding that the victim was not a child at the time of alleged occurrence, the provisions of the POCSO Act do not apply against the appellant. Hence, the appellant cannot be convicted under Section 6 of the POCSO Act. Accordingly, he stands acquitted of the charge under Section 6 of the POCSO Act.

Whether the prosecution has proved the charges framed under the Indian Penal Code beyond all reasonable doubts against the appellant.

44. Now only question is whether the prosecution has succeeded to prove the charges framed under the Indian Penal Code. However, before we discuss and appreciate the evidence on record in this regard, it would be pertinent to mention few principles of appreciation of evidence in view of the

submissions of the parties.

45. It is a settled position of law that prosecution cannot be thrown out or doubted on the sole ground that the independent witnesses have not been examined because as per experience, civilized people are generally insensitive when a crime is committed in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. The Court is therefore required to appreciate the evidence of even related witnesses on its own merit, instead of doubting the prosecution case for want of independent witnesses. [Refer to **Appabhai and another Vs. State of Gujarat, 1988 Supp SCC 241].**

46. It is also a settled position of law that the evidence of any relative or family members cannot be discarded only on account of his or her relationship with the deceased. The evidence of such witnesses has to be weighed on the touchstone of truth and at most the court is required to take care and caution while appreciating their evidence. In this regard, one may refer to the following judicial precedents:

(i) **Abhishek Sharma Vs. State (NCT of Delhi)**, 2023 SCC OnLine SC 1358;
(ii) **Yogesh Singh Vs Mahabeer Singh & Ors**; (2017) 11 SCC 195;
(iii) **Mano Dutt and another Vs. State of UP**; (2012) 4 SCC 79;
(iv) **Daulatram Vs. State of Chhattisgarh**,

2009 (1) JIJ 1;
(v) **State Vs. Saravanan**, (AIR 2009 SC 152);
(vi) **State of U.P. v. Kishanpal**, (2008) 16 SCC 73;
(vii) **Namdeo Vs. State of Maharashtra**,
(2007) 14 SCC 150;
(viii) **State of A.P. Vs. S. Rayappa**,. (2006) 4 SCC 512;
(ix) **Pulicherla Nagaraju Vs. State of A.P**.,
(2006) 11 SCC 444;
(x) **Harbans Kaur Vs. State of Haryana**;
(2005) 9 SCC 195;
(xi) **Hari Obula Reddy and Ors. Vs. State of AP**,
(1981) 3 SCC 675
(xii) **Piara Singh and Ors. Vs. State of Punjab**,
(1977) 4 SCC 452

47. This is also a settled position of law that minor discrepancies, contradictions, improvements, embellishments or omissions on trivial matters not going to the root of the prosecution case should not be given undue importance. But if they relate to material particulars of the prosecution case, the testimony of such witnesses is liable to be discarded. In this regard, one may refer to the following judicial precedents:

(i) **C. Muniappan & others Vs. State of T.N.**,
(2010) 9 SCC 567;
(ii) **State of U.P. Vs. Krishan Master**,
(AIR 2010 SC 3071);
(iii) **Appabhai & Anr. Vs. State of Gujrat**,
AIR 1988 SC 696;
(iv)**Shivaji S. Bobade & Anr Vs. State Of Maharashtra**, (1973 AIR 2622);
(v) **Sanjay Kumar Vs. State of Bihar**,
2019 SCC OnLine Pat 1077;
(vi) **State of Madhya Pradesh Vs. Dal Singh**,
(2013) 14 SCC 159;
(vii) **Smt. Shamim Vs. State (GNCT of Delhi)**,
2018 (4) PLJR 160;
(viii) **S. Govidaarju Vs. State of Karnataka**,
2013 (10) SCALE 454
(ix) **Narotam Singh vs. State Of Punjab And Anr**.
(AIR 1978 SC 1542)

(x) **Leela Ram Vs. State of Haryana**,
(1999) 9 SCC 525;
(xi) **Subal Ghorai and Ors. Vs. State of WB**,
(2013) 4 SCC 607;
(xii) **Yogesh Singh Vs. Mahabeer Singh & Ors.**,
(2017) 11 SCC 195.

48. Now coming to the prosecution evidence on record, we find that informant/victim (P.W.-5) is the only eye-witness to the alleged occurrence. Other non-official witnesses P.W.-1 to P.W.-4 are witnesses to only pre and post occurrence facts and circumstances. Hence, evidence of P.W.-5 is most important witness to the prosecution.

49. We are conscious of the law that on the sole testimony of prosecutrix, accused may be convicted without corroboration of her testimony because she is not an accomplice and stands on the footing of an injured witness. But for such conviction, the prosecutrix is required to be trustworthy, inspiring confidence of the court. She must be sterling witness. But in the case on hand, it is found that the prosecutrix does not appear to be truthful and trustworthy. She has not only drastically improved her statement before the Court differing with her written statement given to the police, there are serious inherent contradictions in her statement and conduct rendering her unreliable and untrustworthy.

50. From the perusal of the evidence, we find that despite her claim that she was subjected to rape by brother of Guriya Perween at her home, she has relied upon Guriya Perween and she came to Aurangabad along with her. Moreover, she again went to

Ranchi and from Ranchi to Gumla along with Guriya Perween. She never protested her and tried to come back to her home. She never raised any voice against Guriya Perween, nor she sought any help from the public or police. As per her claim, she was given intoxicant by Guriya Perween to eat. But despite knowing that Guriya was giving intoxicant and not medicine, she never refused to eat it.

51. We also find that even the family members of the victim were not much concerned when she had not returned home on 21.10.2018 from market. Mother (P.W.-4) of the victim did not go to home of Guriya Perween on 21.10.2018, nor did elder brother (P.W.-3) of the victim go to the home of Guriya Perween to search the victim. Only P.W.-2 (a brother of the victim) has claimed that he had gone to the house of Guriya Perween to know the whereabout of the victim. But even his claim does not appear to be believable in view of his false claim that second time he had gone to the house of Guriya Perween along with his elder brother (P.W.-3) who has deposed that he had not visited the house of Guriya Perween. P.W.-2 has also claimed that he had given information to police on 22.10.2018. But there is no such informatory petition on record. The Investigating Officer (P.W.-7) has clearly deposed that no information was received by police prior to the written report of this case. Hence, it appears that the family members had not taken any steps after "missing" of the victim since 21.10.2018 till her "recovery" on 25.10.2018. Had the informant been forcibly confined

or abducted, her family members must have been active to search her and to take legal steps like giving missing report or written report to the Police.

52. In view of the aforesaid facts and circumstances, there are reasonable doubts that any force or coercion was applied against the alleged victim.

53. We also find that even the medical evidence does not support the prosecution case. No marks of injury was present on the body of the victim. Though the hymen was found ruptured but the rupture was old and how old it was, has not come in the medical evidence. Moreover, use of force and coercion is reasonably doubtful in view of conduct of the victim who is a major girl.

54. Hence, we find that the prosecution has miserably failed to prove the charges framed under the Indian Penal Code against the appellant beyond all reasonable doubts. It is very unsafe to uphold the judgment of conviction against the appellant. The appellant, therefore, deserves to be acquitted giving benefit of doubts. Accordingly, the impugned judgment of conviction and order of sentence against the appellant are not sustainable in the eyes of law.

55. The appeal is accordingly allowed**.** The appellant stands acquitted of the charges levelled against him.

55. Since the appellant/Mannu @ Saddam @ Md. Mannu Sadam is in jail, he is directed to be released forthwith, if

he is not required in any other case.

56. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

57. The records of the case be returned to the Trial Court forthwith.

58. Interlocutory application/s, if any, also stand disposed of accordingly.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

Shoaib/S.Ali/
chandan

AFR/NAFR	AFR
CAV DATE	01.10.2024
Uploading Date	30.10.2024
Transmission Date	30.10.2024