

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.883 of 2016**

Arising Out of PS. Case No.-514 Year-2015 Thana- KHAGARIA District- Khagaria

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Bantoo Singh @ Prabhakar Singh @ Bantu Singh S/o Satyendra Kumar Singh
@ Turanti Singh Resident of Mauza- Sanhauili, P.S.- Khagaria Chitragupta
Nagar, District- Khagaria.

... .. Appellant/s

Versus

The State Of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajkumar Rajesh, Advocate.
	:	Mr. Sunil Kumar, Advocate.
For the Respondent/s	:	Mr. Abhay Kumar, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

Date : 20-09-2019

1. Appellant Bantoo Singh @ Prabhakar Singh @ Bantu Singh has been found guilty for an offence punishable under Section 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years as well as to pay fine appertaining to Rs.5000/- and in default thereof, to undergo rigorous imprisonment for six months, additionally, under Section 4 of the Protection of Children from Sexual Offences Act (for short POCSO Act) and sentenced to undergo rigorous imprisonment for seven years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo rigorous imprisonment for six months additionally with a further direction to run the sentences concurrently, with a further direction to set off the period having



undergone during course of trial U/s 428 Cr.P.C., vide Judgment of conviction dated 27.09.2016 and order of sentence dated 30.09.2016 passed by the Additional Sessions Judge-I-cum-Special Judge, Khagaria in POCSO Case No. 16 of 2015 arising out of Khagaria (Chitragupta Nagar) P.S. Case No. 514 of 2015.

2. Sweety Devi (P.W.3), mother of the victim (named with held, P.W.5) filed a written report on 02.08.2015 putting an allegation therein that on 01.08.2015, she along with her husband, Gotni gone to Sadar Hospital for her treatment leaving her daughters, victim aged about eight years, Mili Kumari aged about five years and a son aged about one year under the custody of her mother-in-law. At about 7 P.M. when she returned back from the hospital, she found her daughter weeping whereupon she enquired. Then the victim disclosed that her neighbour Prabhakar Singh @ Bantoo Singh after alluring her, took her in a half newly constructed house which was lonely where he undressed her and then, committed sin with her in a room. She, on account of perceiving severe pain raised alarm but her mouth was gagged. Thereafter, directing that in case of disclosure to anybody, she will be murdered by throttling, he escaped therefrom. Any how, she came therefrom. In the midst of way, she met with her grand mother whom she disclosed the whole incident. Thereafter, the



Mohalla people were informed but till then, night has fallen and so, no reporting was made in the night.

3. After registration of Khagaria (Chitragupta Nagar) P.S. Case No. 514 of 2015, investigation commenced and after concluding the same, followed with submission of charge sheet facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that on account of village politics he has falsely been implicated in this case on wrong and false pretext.

5. In order to substantiate its case, prosecution has examined altogether seven witnesses, who are P.W.-1 Usah Devi, P.W.-2 Arhula Devi, P.W.3- Sweety Devi (informant). P.W.4- Umesh Sah, P.W.-5 Victim, P.W.-6 Dr. Jyotashana Kumari Sinha and P.W.-7 Manish Kumar Anand (I.O.). Side by side also exhibited, Exhibit-1 Signature of informant over written application, Exhibit-2 Written application, Exhibit-3 Signature of the victim on her statement made before the police, Exhibit-3/1 Signature of the victim on statement made by her under Section



164 Cr.P.C., Exhibit-4 and Exhibit-4/1 Series of medical report, Exhibit-5 Seizure list, Exhibit-6 Formal FIR.

6. As stated above nothing has been adduced on behalf of the defence.

7. It has been submitted at the end of the learned counsel for the appellant that the judgment of conviction and sentence recorded by the learned lower Court happens to be inconsistent with the settled principle of law whereupon is fit to be set aside.

8. In order to justify such plea, it has been submitted that the basic theory of criminal jurisprudence always lean in favour of an accused and that happens to be reason behind that the prosecution is under obligation to prove its case beyond all reasonable doubt. After following the aforesaid principle, when the materials having adduced on behalf of the prosecution is minutely gone through, it is apparent that it no way suggest, justify the finding recorded by the learned Lower Court on the following reasons:-

(A) The victim had not deposed during course of trial that during course of occurrence, there was penetration rather the word so used "***Galat Kam***" and which, if properly considered in accordance with the definition so laid down under the POCSO Act or under I.P.C., it could be a case of harassment or teasing or



outraging modesty and not of rape as penetration is condition precedent for constitution of the offence of rape or penetrative sexual assault.

(B) The aforesaid event is found further fortified from the medical report whereas, the medical report rules out the factum of rape.

(C) None is an eye witness to the occurrence save and except the victim herself and as stated above, the testimony of the victim is not of penetrative assault/rape.

(D) The prosecution case is found suspicious one in the background of fact that not even a single independent witness has been examined and their non-examination is not explained at the end of the prosecution.

9. It is not the judicial norms that the evidence of victim should be discarded abruptly but, wherever her testimony is found to be suspicious or inconsistent then, in that circumstances, it needs corroboration and having non-corroboration at the end of the medical evidence, completely nullifies the finding so recorded by the learned lower Court so; it has been submitted that the judgment of conviction and sentence is fit to be set aside.

10. On the other hand, learned A.P.P. while supporting the finding recorded by the learned lower Court has submitted that



on account of presence of so many infirmities at the end of learned lower Court in utter violation the mandate of POCSO Act, the matter is to be sent to lower court for re-trial after setting aside the judgment impugned.

11. In order to properly appreciate the submission raised on behalf of rival end, first of all the relevant provisions are to be taken note of. As per Section 35 of the POCSO Act the examination of the victim must be recorded within 30 days from the date of taking of cognizance which is found to be violated. In likewise manner, from the cross-examination which the victim had faced, speaks a lot. In accordance with Section 33 (2) of the POCSO Act, the Additional P.P. as well as the defence counsel are not at all allowed to put direct question before the victim rather, the same has to be addressed before the Court first which the Court has to consider and then, the court will ask the same whereupon victim has to answer. From the deposition, it is evident that no paraphernalia has been followed. It is further evident from Section 33 itself that victim should not be subjected to lengthy cross-examination, rather should be allowed to an interval, the whole event be in presence of guardian or a person in whom the victim has enstrusted, that too having child friendly atmosphere.



12. Introduction of an enactment is always guided with aim and object of that enactment. The aim and object of POCSO Act is prevent the interest of the victim being minor irrespective of her age though, the outer limit has been fixed which happens to be upto 18 years, any kind of sexual exploitation. That means to say, being of immature mind, opportunity to allurement, in some cases, on account of tenderness, ignorant, unable to perceive what has been committed upon her or him even having been ruthlessly exploited, in some cases such exploitation ultimately cost her/his life, let the Parliament to introduce the POCSO Act, and that is the reason behind for introduction of Sections 29, 30 of the POCSO Act, whereunder, an obligation has been cast upon the accused to rebut the legal presumption, as is provided U/s 29 allowing legal presumption in favour of the prosecution which the accused is under obligation to rebut and so far as section 30 is concerned, certainly the prosecution has to prima facie substantiate its case in order to attract mental culpability. So far Section 29 is concerned, it happens to be under the theme of reverse burden while Section 30 did not allow such presumption. Furthermore, considering the status of the victim, victim could not be found herself/himself capable to perceive niceties on account of her/his tenderness, immaturity, not accustomed to face the jugglery of the legal parlance,



unable to face intelligent legal expertise, requirement of law, should not be allowed to stand puzzled, instable, perplexed, therefore, direct confrontation has been forbidden, on the other hand, the Court has been made guardian in order to have proper consideration of the questionnaire as to whether it is to be put before the victim having in the witness box that too through the mouth of the P.O. himself and by none others and are enumerated under Sub-Section (2) of Section 33 as well as under Section 35 of the POCSO Act.

13. The cognizance, as is evident from the L.C.R. has been taken on 26.09.2015 while the victim has been examined as P.W.5 on 29th June, 2016. So certainly it happens to be in utter contravention of Section 35 and further, from the Judgment impugned it is evident that the reason of non-examination of the victim within the stipulated period as is required to be properly explained, is also found lacking. It is further evident from the deposition that neither it speaks about any precaution having been taken at the end of the P.O. in accordance with Section 33 (2) of the POCSO Act nor the order-sheet divulges so. In the aforesaid background, it is apparent that the learned lower court had violated the statutory provisions of the Act, during course of trial. However, the occurrence being of the year 2015 and appellant having been



under judicial custody since then, is a circumstance which forbided, at the present moment to accede with the submission having at the end of the learned Additional P.P. that after setting aside the Judgment impugned, matter be remitted back to the learned lower Court for de novo trial. save and except minor infirmities, substantially the deposition of the victim P.W.5 is found intact. It is also to be seen, who is the sufferer? prosecution could not be able to show that on account of non-compliance of mandatory provisions it has suffered a lot, by way of having adverse impact upon the testimony of the victim and in likewise manner, appellant also did not been able to divulge.

14. At the present moment one thing more event needs attraction that under the Indian Oath Act, a person below the age of 12 years is not at all required to take oath and so, on that very score the controversy should not be allowed to persist.

15. In the Rameshwar v. State of Rajasthan, reported in AIR 1952 SC 54 it has been held that “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.”

“It is not to be supposed that any Judge would accept as a witness a person who he considered was incapable not only of understanding the nature of an oath but also the necessity of speaking the truth when examined as a witness.”

16. In the case of **Nivrutti Pandurang Kokate & Ors.**

V. State of Maharashtra, reported in AIR 2008 SC 1460, it has been held as under;

“ The decision of 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, shaken 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.”

17. In the case of **Narender Kumar Vs. State (NCT OF DELHI) reported in (2012) 7 SCC**, it has been held in para 20 and 21 is quoted below;

“20. It is settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the Court as such conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the Court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition of judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should



not be a ground for throwing out an otherwise reliable prosecution case.

“21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial (sic circumstantial), which it may lend assurance to her testimony. (Vide Vimal Suresh Kamble v. Chaluverapinake Apal S.P. and Vishnu V. State of Maharashtra reported in (2003) 3 SCC 175: 2003 SCC (Cri) 596: AIR 2003 SC 818.

18. Now coming to status of child witness, it is evident that disqualification on that very score is not at all found under Evidence Act, rather Section 118 speaks about competence to a witness otherwise found entitled to save and except so,



disintegrated therein. Thus, a witness, being child could not be derecognized on that score alone.

19. Before coming to the evidences available on the record, Section 29 of the POCSO Act, is to be perceived in its rights perspective and for that, first of all the same is quoted below:-

“Presumption as to certain offences:-

Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7, and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

20. Thus, from plain reading of Section 29 it is evident that the scale of presumption so prescribed thereunder has clear distinction than the presumption so prescribed under the evidence Act, Its presence under the POCSO Act has got bearing in order to achieve goal of the Act. That being so, a legal fiction stood in favour of prosecution wherever, prosecution under relevant provisions of POCSO Act is being sailed, enabling the Court to admit, unless and until rebutted by an accused. That means to say Section 29 deals with situation inconsistent with the basic



principle of law as envisaged under Section 101 of the Evidence Act. Therefore, while appreciating the evidence having on the record, concerning trial relating to POCSO Act, the court has to be cautious more particularly, in tracing out whether accused has properly, discharged of burden and as it further speaks it should not be under the banner of preponderance of probability, rather on higher pedestal. So far as status of P.W.1, P.W.3 and P.W.4 are concerned, they are family members. It is manifest that admittedly are not eye witnesses to the occurrence. They have got their status as corroborative in nature. P.W.2 is the grand mother of the victim who during course of her evidence, as it appears, became more enthusiastic, whereupon some exaggeration is there. P.W.5 is the victim herself. P.W.6 is the doctor and P.W.7 is the I.O. of the case.

21. In the case of **Mohabbat and others Vs. State of Madhya Pradesh reported in (2009) 13 SCC 630**, it has been that “Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.”



22. So, now the next step begins with the consideration of the evidence of the victim in consonance with the medical evidence as well as the evidence of the Investigating Officer. Victim was tested before her examination by the learned P.O. and, after having been satisfied with her reply to be competent has been allowed to depose. During course of her evidence, she has stated that Bantoo Singh took her in a newly constructed house, lied her down over a bed, undressed her, also undressed himself and then, committed wrong with her. She shouted but, on account of gagging of her mouth, voice could not come out. Bantoo Singh also kissed her. During course thereof, he had also queried her name and who you are? At the time while she was being taken by him, he had sent his younger sister for bringing key from the roof. She has also stated that Bantoo Singh forcibly lifted her from the road. While she was raising cry, he had threatened to assault. Then identify her signature over her statement recorded by a magistrate as well as statement recorded under Section 164 of the Cr.P.C. Then she disclosed the date of occurrence to be 1st August, 2015. During cross-examination at para-5 she has stated that none has tutored her to depose. Then happens to be cross-examination over her family status. In para-6 she has stated that on the alleged date of occurrence her Mummy was unwell and so, had gone to hospital



along with other family members leaving behind her along with her younger sister and grand mother. In Para-7 there happens to be cross-examination over her mental I.Q. In para-8 she has stated that she is unable to disclose the boundary of the newly constructed house wherein wrong was done with her. She has further stated that she had not seen the house of Hukum Singh. Then she disclosed that houses are present in the vicinity of the newly constructed house. In para-9 she has stated that the bed over which the Bantoo Singh had committed sin with her, was kept adjacent to the wall, but on which side, she is unable to disclose. In that room there was window but having no shutter. In para-10 she has stated that on the date of occurrence she had worn Pant, T-shirt Pant was of white colour while T. Shirt was green. There was no blood-stains over the same but white substance was there on account of kissing there was no cut mark over her cheek. There was no spot . She came to her house in the same dress but her grand mother washed it away subsequently. Whereupon, the spot got lost. In para-13 she has denied the suggestion that at the instance of her family members, she has deposed falsely. She has denied the suggestion that there happens to be some sort of strain relationship in between her family and family of Bantoo Singh. She has also denied the suggestion that she had fallen over



pressure cooker kept near the hand-pump and on account thereof, she sustained injury over her private part and then, the aforesaid event has been taken, a golden chance for implicating the appellant in this case. She also denied the suggestion that no such kind of occurrence had ever taken place. In para-15 she has disclosed that marriage of Bantoo Singh has been solemnized about 3-4 years ago. In para-16, it is evident that after seeing the accused in dock she has stated that he is the Bantoo Singh who had committed wrong with her.

23. P.W.6 is the doctor who had examined the victim on 02.08.2015 and found the following:- Height 4' feet, weight 18 kg. Number of teeth 23 in numbers. M.I. Till mark on dorsum of wrist joint on right side.

General Examination;- Average body built, Auxiliary hair not developed, Breast not developed, public hair not develop. Blood stain present over Genetalia. Hymen ruptured recently. Small tear in margin bleeding present. Tendered orplis lax admit one finger easily. Vaginal swab taken and sent for microscopic examination to the pathologist J.L.N.M.C.H., Bhagalpur.

Opinion:- The age of girl is 8 to 9 years. Evidence of rape is present. Supplementary report shows Spermatozoa not found. Exhibited the same.



24. During cross-examination as it appears that she has been put to lengthy cross-examination with regard to proper placing of hymen then, location of uterus, the exact status so far victim is concerned whereupon she has stated that she had not examined the victim on that very aspect. In para-9 she has stated that hymen cannot rupture on falling from bicycle but could be if fallen on hard and blunt substance. In para-10 she has stated that bleeding was from the margin of the hymen and then, she has stated on a query made by the learned defence counsel that if a victim aged about 7-8 years is ravished to such extent then only there would be rupture of the vagina valve. In para-11 she has stated that she had not stitched vagina of the victim whether she could say the victim will become unconscious on account of penetration by a man of 30 years whereupon she answered may or may not. In para-12 she has stated that for the confirmation of the rape, she had sent the vaginal swab to Bhagalpur. She had received the report on 28.08.2015. She had issued the first injury report on 03.08.2015 wherein she had reported evidence of rape was present. After receiving report from the Bhagalpur, she had mentioned that spermatozoa was not found. There is opinion mentioned in the report sent from Bhagalpur that “no evidence of commission of rape inside vaginal within 48-72 hours”.



25. P.W.7 is the I.O. During examination-in-chief, he has stated that having entrusted with the investigation by the Officer-in-charge, he recorded further statement of the informant, statement of the witness. Then he took the victim along with her parents to the O/c of the Mahila Police Station who recorded her(victim) statement (Exhibit-3). Then, thereafter, victim was sent to the Sadar hospital for medical examination. At the hospital itself, the apparel were produced before him and for that, he had prepared production-cum-seizure list (Exhibit-5). Then he proceeded to place of occurrence where he came to know that accused has been apprehended by the villagers whereupon had gone to the place and arrested the accused Bantoo Singh @ Prabhakar Singh. Recorded statement of the witnesses. Inspected the place of occurrence as pointed out by the victim herself which happens to be the half constructed building of the accused Prabhakar Singh himself. After entering into inside the house, one chowki was found in a room whereupon victim had disclosed regarding commission of rape over the chowki. Then had shown boundary of the P.O. as east house of Pappu Singh, West road, and then house of Dheeraj Singh, north Gali and then the house of Tuntun Singh and south thatched house of Chadpan Singh. Then procured the relevant report, received the supervision note and



then, completing the investigation, submitted charge-sheet. Exhibited all the relevant documents including formal F.I.R. etc.. During cross-examination, it is evident from para-8 that accused was arrested near the house of the informant but he had not mentioned the time. Accused was medically examined but he had not mentioned the same in the case diary. In Para-9 he has stated that he had seen the body as well as wounds over the private part of the accused but that has not been mentioned in the case diary. He had not got the apparel of the accused examined by the FSL. The accused was arrested on 02.08.2015 itself. There happens to be contradiction relating to evidence of father of the victim in para-7, with regard to the victim, in para- 14 he has stated that he had not found blood or incriminating substance over the Chowki. Because it was a newly half constructed building on account thereof, neither there was shutter nor the door as well as window panel were affixed. In para-16 he has stated that he had sent the apparel of the victim to the FSL after obtaining order of the court but he had not received the FSL examination report till submission of the charge-sheet. In para-40 of the case diary he had mentioned the fact that the test report is available wherefrom rape is not found substantially proved. Again in paras 17 and 18 there happens to be cross-examination relating to the apparel of the victim.



26. P.W. 1, P.W.3 and P.W.4 during their examination-in-chief they all have stated that they have gone to the hospital along with the informant (P.W.3) for her treatment leaving victim, her younger sister, brother under guardianship of grand mother. When they returned back, found the victim weeping who, on interrogation, disclosed that she has been raped by the Bantoo Chacha @ Prabhakar firstly. They have gone to the police station where case was instituted. Then gone to Sadar Hospital where the victim was examined. In Para-2 of cross-examination P.W.1 has stated that there happens to be land dispute in between Bantoo Singh and the family of the victim. Then she has stated that the mother of the victim happens to be her Gotni. In Para-5 she has stated that she along with the parents of the victim resides in the same house. On query, the victim had disclosed regarding the occurrence. P.W.3 (informant) during cross-examination in para-2 has stated that when she came back at her house she had seen the victim weeping. At that very time, none others were present. In Para-3 she has stated that when her daughter had disclosed regarding the occurrence, at that very time she had not gone to place of occurrence. Her house lies 100 meter away from the house of the accused. Then she denied the suggestion that she had borrowed Rs.3000/- on interest from the accused which she had



not returned back, and as accused began to demand the money, in the aforesaid background, this false case has been instituted.

27. P.W.4 during cross-examination at Para-4 has stated that house of Ashok Sinha lies contiguous to his house, name of his brother happens to be Dr. P.K. Sinha and the name of wife of Dr. P.K.Sinha happens to be the Dr. Jotsana Kumari, who was posted at Khagaria Sadar Hospital. Dr. P.K. Sinha is residing with his wife at Mohalla Gulab Nagar. In para-5 there happens to be cross-examination with regard to his family status. Then there happens to be suggestion that no such kind of occurrence had ever taken place.

28. P.W.2 is the grand mother of the victim, she has stated that on the alleged date and time of occurrence, while she was returning from the shop of Chummo Singh, she had seen Bantoo Singh dragging her grand daughter (victim) to his house. She had followed whereupon he pushed her. Thereafter, she had seen after undressing her grand daughter, Bantoo Singh committed rape. Identified the accused. There happens to be cross-examination with regard to her family status in Paras 2. At para 2 it was suggested that her one son Doklu had borrowed Rs.2300/- from the accused and was not inclined to return the same and only to digest money, this case has been filed. At para 3 she has stated



that she had gone to shop at about 4 P.M. she was unable to disclose the exact time at which Bantoo Singh had dragged the victim. She had not gone along with the accused, when the victim was taken away, she was at the shop. After returning from the shop three persons were present but she is unable to disclose their names. At para-4 she has stated that when she returned from the shop she had found her grand daughter in the Bhuskar of the accused. She had gone inside the Bhuskar. Bhuskar was not full of straw. There was a Chowki in the Bhuskar. Her statement was recorded by the police. Police had gone to Bhuskar. Then she disclosed that all the event were narrated before the police.

29. From the evidence available on the record, it is crystal clear that the evidence of the victim irrespective of contravention of the mandate of law during course of recording of her evidence as prescribed under POCSO Act, even then, the factum of rape has not been shaken at the end of appellant even though being aged about eight years and subjected to such long, lengthy cross-examination. She has spoken in the manner so perceived by her. She has detailed how she was undressed by the accused, who also became naked and then, lying down her on the chowki, committed wrong with her. So this part would have been challenged at the end of the appellant at least by way of rebuttal as



required under Section 29 of the POCSO Act, and would have suggested that such activity was not a rape, not a penetrative sexual assault as defined under Section 3 of the POCSO Act, as no penetration was effected rather it was just outraging her modesty. Keeping silence on that very score, could go adverse to the accused because of the fact that unless and until there happens to be some sort of evidence on the record that the meaning of “**Galat Kam**” what the victim has disclosed was not rape nor the penetrative assault rather was mere tearing, it is further evident that, medical evidence is found corroborative suggesting victimization of the P.W. 5. Neither under Section 3 of the POCSO Act, nor under Section 375 of the Indian Penal Code, presence of spermatozoa in the vaginal swab that means to say ejaculation has been made condition precedent for constitution of an offence rather slightest penetration is sufficient to constitute the offence.

30. Furthermore, the objective finding of the I.O. regarding place of occurrence which was shown by the victim herself who took him inside the half constructed house and shown the Chowki whereupon she was raped is an additional corroborative evidence. The evidence of other witnesses did not matter because of the fact that victim is found truthful and further corroborated with other scientific evidence. Moreover, the non-



rebuttal at the end of the accused in accordance with Section 29 of the POCSO Act, is additional circumstance. Consequent thereupon, the Judgment impugned attracts no interference. As such, this appeal sans merit and accordingly, dismissed. Appellant is in custody which he will remain till saturation of the period of sentence.

(Aditya Kumar Trivedi, J)

T.Kr./-Rahul/-

AFR/NAFR	NAFR
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