

IN THE HIGH COURT OF JUDICATURE AT PATNA
DEATH REFERENCE No.2 of 2019

Arising Out of PS. Case No.-274 Year-2018 Thana- BARHARIA District- Siwan

The State of Bihar

... .. Petitioner

Versus

Taslim (Name changed)

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 753 of 2019

Arising Out of PS. Case No.-274 Year-2018 Thana- BARHARIA District- Siwan

Taslim (Name changed)

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In DEATH REFERENCE No. 2 of 2019)

For the Petitioner :

For the Respondent : Mr. Ansul, *Amicus Curiae*

(In CRIMINAL APPEAL (DB) No. 753 of 2019)

For the Appellant : Mr. Bijay Prakash Singh, Advocate

For the Respondent : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 05-10-2021

Though the appellant has given full description in the appeal, it would be inappropriate to disclose his identity in view of the statutory provisions prescribed under Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015'). He is being referred to in the cause title as Taslim. Similarly, the name of the victim, a minor girl, aged 4 years and her mother is also changed as Nazia and Nargis because name and identity of victims of rape and sexual assault



cannot be discussed even in a remotest manner.

2. Registry while uploading the order on the website shall also ensure that the cause title is reflected in the similar manner.

3. The sole appellant Taslim has been convicted for the offences punishable under Sections 363, 376AB, 302, 201 of the Indian Penal Code (for short 'IPC') as well as 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') by the learned Additional Sessions Judge-cum-Special Judge, Siwan (hereinafter referred to as 'Trial Court') in G.R. Case No.4949 of 2018 corresponding to Trial (POCSO) No.104 of 2019 arising out of Barharia P.S. Case No.274 of 2018 vide judgment dated 24.04.2019. Consequently, vide order dated 08.05.2019, he has been sentenced to death for the offences punishable under Section 376-AB of the IPC Rigorous Imprisonment for life and a fine of Rs.25,000/- for the offence punishable under Section 302 of the IPC and in default of payment of fine to further undergo further imprisonment for a period of six months, Rigorous Imprisonment for five years and a fine of Rs.1,000/- for the offence punishable under Section 201 of the IPC and in default of payment of fine to further undergo imprisonment for a further period of one month, Rigorous



Imprisonment for five years and a fine of Rs.1,000/- for the offence punishable under Section 363 of the IPC and in default of payment of fine to further undergo imprisonment for a period of one month, Rigorous Imprisonment for five years and a fine of Rs.1,000/- for the offence punishable under Section 10 of the POCSO Act and in default of payment of fine, to further undergo imprisonment for a period of one month. The Trial Court has directed that all the sentences shall run concurrently.

4. After passing the impugned judgment dated 24.04.2019 and the order dated 08.05.2019, the Trial Court submitted to this Court the proceedings of trial for for confirmation of the death sentence awarded to the appellant in terms of Section 366 of the Code of Criminal Procedure (for short 'CrPC').

5. The reference made by the Trial Court and the appeal preferred by the appellant have been heard together and are being disposed of by a common judgment.

A. Findings with regard to Death Reference

6. In the memo of appeal, the appellant has taken a plea that he was a child on the date of commission of the offence. It was not informed to the Court that the said plea was also taken before the Trial Court and was rejected. When a



clarification was sought from the learned counsel for the appellant, he submitted that a legal aid counsel was provided to the appellant before the court below for conducting his trial and he himself was not aware of the fact that such plea was taken before the court below and was rejected.

7. Be that as it may, since it is a beneficial legislation, we have examined the Trial Court record. We find that in the present case, after the judgment of conviction dated 24.04.2019, was passed by the Trial Court, an application was filed on 01.05.2019 on behalf of the appellant that his date of birth is 01.01.2003. Hence, he was a child, who had not completed 16 years of age on the date of commission of the offence. In support of his claim, a copy of Aadhar Card was also filed.

8. It would appear from the order dated 01.05.2019 that the Trial Court made a tentative assessment of the age of the appellant on 01.05.2019 on the basis of his physical appearance and adjourned the matter to 07.05.2019 for passing order on the application filed on behalf of the appellant.

9. On 07.05.2019, the application filed on behalf of the appellant claiming that he was a child on the date of commission of the offence was rejected on the following grounds:-



- (a) On inquiry, though, the appellant admitted that he had studied in a village school upto class-II, he did not submit any certificate from the school disclosing his date of birth.
- (b) The claim of being a child on the date of commission of the offence had been made for the first time after the appellant was held guilty of the charges framed against him.
- (c) At the time of his first production before the court, he had disclosed his age between 19 and 20 years.
- (d) Since his age was already determined on the date of his first production on 30.08.2018 and no further prayer was made claiming that he was a child on the date of commission of the offence before the judgment, any other opinion by the court regarding his age would be contrary to law and facts, as the order dated 30.07.2018 has attained finality.
- (e) On the basis of physical appearance, his age is between 19-20 years.
- (f) It appears that filing of a copy of the Aadhar Card at a belated stage is nothing but an attempt to delay



the trial.

10. We are of the opinion that the entire procedure adopted by the Trial Court in dealing with the application preferred on behalf of the appellant on 01.05.2019 is erroneous.

11. Section 9 (1) of the Act of 2015 provides that when a Magistrate, not empowered to exercise the powers of the Juvenile Justice Board (for short 'Board') under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction over the proceedings.

12. Section 9(2) of the Act of 2015 provides that in case a person alleged to have committed an offence claims before a court other than a Board that the person was a child, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, then the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

13. The proviso to Section 9(2) of the Act of 2015



further clarifies that the claim being a child may be raised before any court and it shall be recognized at any stage of the proceedings, including stage after the final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in the Act of 2015 and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of the Act.

14. Section 9(3) of the Act of 2015 provides that if the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

15. It would be evident that the aforesaid Section 9 seeks to ensure that the benefits of the Act of 2015 are available to every child irrespective of the fact that whether the child be produced before the Juvenile Justice Board (for short 'The Board') or any other Magistrate not empowered to discharge the functions of the Board or any other Court.

16. In a nutshell, at any stage of proceeding, if the plea is taken that the person who has committed an offence was a child on the date of commission of such offence, it is obligatory



on the part of the Court to hold an inquiry in order to determine the age after providing an opportunity to the parties.

17. Thus, age determination is of paramount importance for ascertaining whether or not an accused comes within the purview of the Act of 2015. It is a crucial aspect since benefits enshrined under the Act of 2015 are available only to a person who has not completed the age of 18 years.

18. Sub-section (35) of the Section 2 of the Act of 2015 defines child. It states that 'child' means a person below the age of 18 years. Under the Act of 2015, the importance of age determination is also vital due to creation of an exception under which a child, who has completed or is above the age of 16 years may be tried as an adult if he is accused of committing a heinous offence.

19. Section 94 of the Act of 2015 lays down a three layered procedure for determination of age to be followed by all Courts, Board or Committee whenever they are required to determine the age of a child in relation to the applicability of the Act of 2015.

20. Sub-section (1) of Section 94 of the Act of 2015 authorizes the Board or the Committee to declare a person before them as a child when from the appearance of the person



it is obvious that such person is a child. In such cases, it must note this fact and record the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36 of the Act of 2015, as the case may be, without waiting for further confirmation of the age. In case, the Committee or the Board has reasonable grounds for doubt as to whether the person brought before it is a child or not, sub-section (2) of Section 94 of the Act of 2015 makes the provisions for determination of the age 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.

21. Sub-section (3) of Section 94 of the Act of 2015 provides that 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 true age of that person.

22. The Act of 2015 provides for giving preference to documentary evidence from the school and birth certificate given by a Corporation or a Municipal Authority or a Panchayat in age determination over medical examination.

23. In absence of the aforesaid documentary evidence, the Act of 2015 specifically provides that the age shall be determined by bone ossification test or any other latest medical age determination test on the orders of the Board or the Committee.

24. As seen above, the Trial Court never determined the age of the appellant in terms of the provisions prescribed under Section 94 of the Act of 2015. It erroneously believed the age disclosed by the appellant at the time of his first production to be the conclusive proof of his age. At that stage, the appellant had no legal assistance. The tentative assessment made by the court merely on the basis of appearance that he was not a child on the date of commission of the offence is again erroneous.

25. At this stage, it would be pertinent to note that on 22.07.2021, when the matter was taken up by us, somehow we were under impression that the appellant had not taken the plea of being a child on the date of commission of the offence before



the Trial Court and such plea was taken for the first time in appeal before this Court.

26. Since it was argued before us on behalf of the appellant that the appellant did not possess the date of birth certificate from the school and he was also not in possession of the date of birth certificate given by a Corporation or a Municipal Authority or by a Panchayat and was also not brought to our notice that the plea of being a child taken by the appellant was rejected by the Trial Court, we thought it proper to put him to ossification test or any other latest medical age determination test as provided under clause (iii) of Sub-section (2) of Section 94 of the Act of 2015 in order to determine his claim of being a child on the date of commission of the offence.

27. Hence, vide order dated 22.07.2021, we directed the Civil Surgeon-cum-Chief Medical Officer, Siwan to constitute a Medical Board for assessment of the age of the appellant. We also directed the Inspector General, Prison, Bihar and the Superintendent, Divisional Jail, Siwan to produce the appellant before the duly constituted Medical Board for assessment of his age by ossification test or by any other latest medical age determination test.

28. Pursuant to the directions made by this Court, the



Jail Superintendent, Siwan requested the Civil Surgeon-cum-Chief Medical Officer, Siwan to fix a date for determination of age of the appellant. Thereafter, the Civil Surgeon-cum-Chief Medical Officer constituted a Medical Board under the Chairmanship of Dr. M.K. Alam (Ortho) of which Dr. Jitendra Kumar Singh (Medical Officer) and Dr. Smiriti (Dental Surgeon) were members to examine the appellant. Thereafter, the Medical Board examined the appellant on 03.08.2021. Subsequently, the Civil Surgeon-cum-Chief Medical Officer, Siwan sent the report of the Medical Board vide Letter No.1867 dated 06.08.2021 to the Superintendent, Divisional Jail, Siwan. The said report has been filed on affidavit by the Superintendent, Divisional Jail, Siwan in the present matter.

29. A perusal of the report would show that on the basis of chemical, radiological and dental examination, the age of the appellant was determined between 19 and 20 years on 03.08.2021.

30. In the present case, the date of commission of the offence is 25.08.2018. Thus, even if we presume the age of the appellant to be 20 years on 03.08.2021, his age on 25.08.2018 would be 17 years 1 month and 8 days.

31. While carefully examining the Trial Court's record,



we have seen that the application filed on behalf of the appellant claiming that he was a child on the date of commission of the offence was rejected on 07.05.2019 and on the next day, i.e. on 08.05.2019, the Trial Court passed the order of sentence against him.

32. Apparently, no opportunity was afforded to the appellant to challenge the order passed by the Trial Court regarding his claim of being a child on the date of commission of the offence. Moreover, the aforesaid order dated 07.05.2019 was passed by the Trial Court in an arbitrary and fanciful manner ignoring the statutory provisions prescribed under Section 94 (2) of the Act of 2015.

33. Under such circumstance, on the basis of the report submitted by the duly constituted Medical Board, we are of an opinion that the age of the appellant was above 16 years of age and less than 18 years of age on the date of the commission of the offence.

34. Accordingly, we set aside the order dated 07.05.2019 passed by the Trial Court whereby the claim of the appellant of being a child on the date of commission of the offence was rejected and declare him a child in terms of sub-section (35) Section 2 of the Act of 2015..



35. It is of salience to note that Section 21 of the Act of 2015 provides that no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of being released for any such offence either under the provisions of the Act or under the provisions of IPC or any other law for the time being in force.

36. As we have already declared the appellant a child in conflict with law on the date of commission of the offence, the reference made by the Trial Court under Section 366 of the CrPC for confirmation of death sentence awarded to him under Section 376 AB of the IPC cannot be allowed in view of the embargo created under Section 21 of the Act of 2015.

37. Accordingly, the reference made by the Trial Court to this Court for confirmation of the death sentence awarded to the appellant is, hereby, rejected.

B. Finding with regard to result of appeal

38. Since the plea of being a child on the date of commission of the offence was taken by the appellant after the pronouncement of the judgment, we would now consider the appeal on merits.

39. The First Information Report (for short the 'FIR')



of Barhariya P.S. Case No. 274 of 2018 dated 26.08.2018 was lodged on the basis of the written report submitted by one Nargis (P.W. 1), the mother of the victim to the Station House Officer (for short 'SHO') Barhariya Police Station. In her written report, she has stated that on 25.08.2018, there was a feast in the house of her neighbour on the occasion of marriage in which apart from her a large number of people had assembled. At that time, her four years old daughter Nazia had gone to play with other children. When she did not return for a long time, she started searching for her. She got an announcement made from the mosque and made inquiry from the people living in the locality. While inquiring about her daughter, she met her nephew Md. Hussain @ Dhannu and Md. Jafar. Her nephew told her that he had seen the appellant playing with Nazia in the evening. She started looking for the appellant. She was told by the labourers working there that a boy aged about 18-19 years was seen taking away her daughter towards the lane. She went towards the lane along with her co-villagers. She saw the appellant coming out of the maize field. Thereafter, along with others she started searching for her missing daughter in that field. They found the body of her daughter buried in the field of Dr. Nizamuddin. She alleged that the appellant took her



minor daughter towards the maize. He killed her after committing penetrative sexual assault on her minor child and tried to conceal her body.

40. On the basis of the aforesaid written report of the informant dated 26.08.2018, Mukesh Kumar (P.W.6), S.H.O. of Barhariya, Police Station instituted Barhariya P.S. Case No. 274 of 2018 under Sections 363, 376AB, 302 and 201 of the Indian Penal Code and Section 4 and 8 of the POCSO Act. He took up the investigation of the case himself.

41. During investigation, the clothes of the victim were seized at the place of occurrence. The clothes and slippers of the appellants were also seized.

42. The investigating officer (for short 'IO') recorded the statement of the witnesses under Section 161(3) of the CrPC and, on completion of investigation, submitted charge-sheet on 26.10.2018.

43. After perusal of the materials on record including the charge-sheet, the Trial Court took cognizance of the offences on 27.10.2018. It framed charges under Sections 363, 376-AB and 201 of the IPC and 4 and 8 of the POCSO Act against the appellant.

44. Since the appellant denied the charges, the trial



commenced.

45. During trial, the prosecution examined ten witnesses in support of its case. They are Nargis (P.W.1), the informant of the case; Md. Hussain (P.W.2); Azad Ali (P.W.3); Shafirul Haque (P.W.4); Dr. Alok Kumar Sinha (P.W.5), the doctor, who conducted the postmortem examination on the body of the deceased; Mukesh Kumar (P.W.6), the IO of the case; Md. Kasim (P.W.7), a hearsay witness; Dr. Sunil Kumar (P.W.8), the Assistant Director, FSL, Muzaffarpur; Nand Lal Mahto (P.W.9), a labourer and Sunil Kumar Singh (P.W.10), Assistant Director, FSL, Muzaffarpur.

46. Apart from the oral testimony of the witnesses, the prosecution has proved the following documents in support of its case:-

Sl. No.	Exhibit(s)	Description
1	1	Signature of the informant.
2	2	Postmortem report.
3	3 and 4	Seizure lists.
4	5	Charge-sheet.
5	6	Confession of the appellant.
6	7	Written statement of the informant.
7	8	Pagination on the written application of the informant.
8	9	Formal FIR
9	10, 11 and 12	Forensic Science Laboratory reports.



47. **Nargis (P.W.1)**, the mother of the victim, has corroborated the prosecution case as narrated in the FIR in her examination-in-chief. Additionally, she stated that the police came and took the body of her deceased-daughter for postmortem examination. She proved her signature on the written report, which was marked as Exhibit-1. In cross-examination, she stated that the appellant himself told her about the place where he had buried the child and the dead body of the victim was taken out in his presence. She stated that after the body of the child was dug out, he went away.

48. **Md. Hussain (P.W.2)**, the nephew of the informant, has also corroborated the prosecution case as narrated in the FIR. He stated that when the informant inquired from her regarding the whereabouts of her daughter, he had told her that he had seen her daughter playing with the appellant. He stated that when the body of the victim was recovered, it was completely naked. In cross-examination, he stated that he had seen the victim with the appellant and that he had seen the appellant fleeing away from the field of Dr. Nizamuddin.

49. **Azad Ali (P.W.3)** is a witness to the seizure list prepared at the place of occurrence, which contained the clothes



of the victim. In his examination-in-chief, he has stated that the daughter of the informant went missing. A search was made for her. During inquiry, a labourer, whose name he did not remember told that one boy was seen taking away a girl aged four years. He further stated that he saw the appellant running away from the maize field of Nizamuddin from where the body of the victim was recovered. He stated that when they checked the clothes of the appellant, they saw mark of blood on his half pant.

50. In cross-examination, he stated that he is neither related to the appellant nor to the informant. He admitted that he had not seen the victim during marriage ceremony. He admitted that he had seen the appellant in that ceremony, but the victim child was not with him. He stated that when a labourer engaged for affixing tent disclosed him that a boy had taken away a child towards the lane, they went towards the lane and, at that time, 8-10 persons were present there. He stated that when they reached at the place of occurrence, the appellant was seen fleeing away. He stated that at that time, they did not try to catch hold of him. He denied the defence suggestion that he has deposed falsely before the court.

51. **Safirul Haque (P.W.4)** has also corroborated the



prosecution case as narrated in the FIR. In cross-examination, he admitted that the appellant was not apprehended at the time of the recovery of the body of the victim.

52. **Dr. Alok Kumar Sinha (P.W.5)** was a member of the Medical Board, which conducted the postmortem examination on the body of the deceased. According to him, the victim was raped and her death was caused due to smothering. The postmortem examination on the body of the deceased was conducted on 26.08.2018 at 9:55 am and the time elapsed since death was disclosed by him to be between 6-24 hours.

53. **Md. Kasim (P.W.7)** is a hearsay witness. He stated that he reached at the place of occurrence after hearing *hulla*. He admitted that when he reached at the place of occurrence, he did not see the appellant.

54. **Dr. Sunil Kumar (P.W.8)**, an Assistant Director, FSL, Muzaffarpur stated in his deposition that on 12.09.2018, a parcel consisting of five wooden boxes each enclosed within a cloth cover, which were duly sealed with impressions of seal corresponding with the seal impression was forwarded. The wooden boxes were marked as I, II, III, IV and V respectively in the laboratory. The box marked as I contained one paper packet marked as D. The packet contained some nail cuttings of



accused which bore brownish stains. The box marked II contained two polythenes which were marked as X and Y respectively in the laboratory. The polythene marked 'X' contained one child panty and one child leggings which were further marked as '1' and '2' respectively in the laboratory. The maroon colour panty said to be kachha marked II/X/1 bore reddish brown stains at places. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light. The old dirty cream colour leggings marked II/X/2 bore reddish brown stains at places. It also bore stylish greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light. The polythene marked II/Y contained one cut open old dirty cream-green party wear synthetic frock which bore reddish brown stains at places. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light. The wooden box marked marked as III contained two glass vials which were further marked as 'a' and 'b' respectively in the laboratory. The vial marked III/a contained some pubic hairs said to be of accused. They bore greyish stains which were neither stiff to feel nor did they produce any



characteristic bluish white fluorescence in ultra violet light. The vial marked III/b contained one cotton ball on wooden stick. It bore greyish stains which were neither stiff to feel nor did they produced any characteristic bluish white fluorescence in ultra violet light. The wooden box marked as IV contained two polythenes, which were further marked as 1 and 2 respectively in the laboratory. The polythene marked IV/1 contained one old dirty white-black-pink checked half pants. It bore reddish brown stains over small areas. It also bore greyish white stains which were stiff to feel and which produce characteristic blush white fluorescence in ultra violet light. The pants was said to be of accused. The polythene marked IV/2 contained one old dirty light mehendi colour said to be chi-green T-Shirt. It bore reddish brown stains over small areas. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light. The wooden box marked as V contained three paper sachets marked as A, B and C respectively. The sachet marked V/A contained some earth which bore reddish brown stains practically all over. He stated that the earth was collected by the FSL team from place of occurrence. The sachet marked V/B contained some earth which bore brownish stains only. The earth was collected as control



sample by the FSL team from place of occurrence. The sachet marked V/C contained some earth mixed with tobacco-gutka pieces which bore brownish stains only. The earth mixed with tobacco was collected by the FSL team from place of occurrence. According to him, the result of forensic examination showed that semen was detected in the Exhibit marked IV/1. Blood could not be detected in the Exhibits marked I/D, V/B and V/C. Semen could not be detected in the Exhibits marked II/X/1, II/X/2, II/Y, III/a, III/b and IV/1. Tissue could not be detected in the Exhibit marked I/D. Saliva could not be detected in the Exhibit marked V/C. He stated that the report was typed on his dictation by the typist Rajesh Kumar, which was signed by the then Deputy Director, FSL, Muzaffarpur, Sri Suresh Paswan, who counter-signed his signature, which was put by him after preparation of the report. He stated that he also put his signature over each page of the report. He proved the forensic examination report, which was marked as Exhibit-10.

55. In cross-examination, he stated that the FSL team had collected the nail cuttings of the accused. He stated that he cannot say that semen found on the half pant was of the accused-appellant.

56. **Sunil Kumar Singh (P.W.10)**, an Assistant



Director in the Regional FSL, Muzaffarpur conducted forensic test of the soil sample of the place of occurrence and the nail cuttings of the accused. He stated that on his dictation, the report was typed by Braj Mohan Kumar and after finding it correct, he signed over it. He identified his signature over the forensic report, which was marked as Exhibit-11. He stated that due to insufficient quantity of the soil samples, the comparative examination was not possible. It would be evident from his report that the analysis of soil situated at the place of occurrence and the nail cuttings completely failed.

57. **Nand Lal Mahto (P.W.9)** stated in his deposition that on the date of occurrence he was affixing tent in the village till late in the evening. He stated that he had seen a boy taking away a small girl towards the lane. When *hulla* was raised, several persons rushed towards the maize field, but he did not go as he was busy with his work.

58. In cross-examination, he stated that at the time of incident, he did not identify the boy who was taking away the girl. He stated that now he identifies the accused. He stated that after *hulla* was raised, he had also gone to the place of occurrence where he found dead body of the victim.

59. **Mukesh Kumar (P.W.6)** is the IO of the case. He



stated in his deposition that on 26.08.2018, he was posted as the SHO of Barharia Police Station. On that day, he received a written report from the informant Nargis on the basis of which he registered Barharia P.S. Case No. 274 of 2018 dated 26.08.2018 and took up the investigation of the case. He inspected the place of occurrence, sent the body of the deceased for postmortem examination, seized the kachha and full leggings of the victim. He stated that he recorded the statement of Md. Hussain at the place of occurrence. He further stated that on 26.08.2018 the appellant was arrested and his defence statement was recorded on 27.08.2018. He was sent with Chaukidar in custody to be produced before the court on 27.08.2018 at 1:30 p.m. However, he received an information from the chaukidar Ram Bilash Yadav that even before he could be produced before the court, he managed to escape, for which a case was registered at Siwan police station vide Siwan P.S. Case No.543 of 2018. On 28.08.2018, a case was registered under Sections 221, 223 and 120-B of the Indian Penal Code. He stated that the accused was again arrested on 30.08.2018 and his confessional statement was recorded. Thereafter, he was sent in police custody to be produced before the court. He stated that he also seized the half pant, vest and sleeper of the appellant and prepared the seizure



lists. The seizure lists were witnessed by Safirul Haque (P.W.4) and Md. Hussain (P.W.2). He proved both the seizure lists, which were marked as Exhibits-3 and 4. He stated that he collected the postmortem report on 03.09.2018 and got the appellant medically examined. He collected the pubic hair cuttings and penile swab of the appellant and preserved them for being sent to FSL for examination. He stated that the appellant has voluntarily given his confessional statement and had put his thumb impression over it. He proved his confessional statement, which was marked as Exhibit-6.

60. In cross-examination, the I.O. admitted that he had visited the place of occurrence firstly on 25.08.2018 in the night immediately after an information was received regarding the incident in the police station. He stated that when he visited the place of occurrence, he found that the lower part of the body of the victim was badly injured and the upper part of her body was buried under soil. He himself dug out the body of the victim. He admitted that in the night the FIR could not be registered as the villagers were agitated. They were agitating for senior officers to be called at the place of occurrence. He stated that a law and order problem had been created by the agitated mob. He denied the defence suggestion that his investigation was faulty.



61. After closure of the prosecution case the statement of the appellant was recorded under Section 313 of the CrPC when the incriminating materials, which had come during trial against him were explained to him. He stated that he did not commit the offence. According to him, the police arrested him when he came out of his house after taking dinner. He stated that he is completely innocent and has been falsely implicated in the case.

62. After recording the statement of the appellant under Section 313 of the CrPC and hearing arguments advanced on behalf of the parties, the Trial Court convicted and sentenced the appellant in the manner indicated hereinabove.

63. Mr. Ansul, learned *amicus curiae* submitted that in the instant case, the conviction of the appellant has been made only on the basis of suspicion. He contended that there is no witness to the incident of rape and murder. The circumstances on the basis of which suspicion has been created against the appellant are not full proof. He submitted it seems that the witnesses tried to fill up the gaps in the circumstantial evidence by making allegations which do not stand scrutiny. He contended that while convicting an accused on the basis of circumstantial evidence, the circumstances concerned must be



established. He contended that the circumstances which have come against the appellant during trial are:- (i) P.W. 2 saw the appellant playing with the victim; (ii) P.W.9 saw one person moving towards the lane with a child; and (iii) the witnesses saw the appellant fleeing away from the place of occurrence. He contended that these circumstances are not of a definite tendency unerringly pointing towards guilt of the appellant. They collectively do not form such a chain of incriminating circumstances that fasten the guilt on the appellant beyond reasonable doubt. In support of his submission, he has placed reliance on the judgments passed by Hon'ble Supreme Court in *Hanumant son of Govind Nargundkar vs. State of M.P.* since reported in *AIR 1952 SC 343*; *Bhagat Ram vs. State of Punjab* since reported in *AIR 1954 SC 621*; *Sharad Brijhichand Sharda vs. State of Maharashtra* since reported in *(1984) 4 SCC 116* and *Padala Veera Reddy vs. State of Andhra Pradesh and Ors.* since reported in *1989 Supp (2) SCC 706*. He submitted that the evidence of P.W.2 that the victim was seen playing with the appellant independently proves nothing. Further, the deposition of P.W.9 is of no consequence, as he has stated that he saw one person moving towards the lane with a child. He has not pointedly stated that it was the appellant, who



was taking away the victim towards the lane. He contended that so far as the deposition of witnesses that the appellant was seen fleeing away from the place of occurrence is concerned, the same is not corroborated by the informant herself. She has categorically stated in her deposition that it was the appellant, who took her to the place of occurrence, and in his presence, the body of the victim was dug out.

64. Learned *amicus curiae* further submitted that the under garments of the victim were seized and P.W.3 and P.W.4 became witnesses to the seizure lists which were proved by the IO, but P.W.3 and P.W.4 did not utter a word in their testimony regarding the seizure made in their presence. He further contended that the FSL reports are also worthless from the point of view of providing any objective support to the accusation. He contended that a perusal of the FSL reports would make it clear that the samples were collected on 25.08.2018 and 26.08.2018 and were were given to the ASI, Bipin Kumar Mahto, on 04.09.2019, who delivered them in the office of the Forensic Science Laboratory, Muzaffarpur on 12.09.2018. He contended that there is nothing on record to suggest about the custody of the Material Exhibits during the intervening period. He argued that there is no material to suggest that they were in safe



custody. He contended that neither the ASI Bipin Kumar was examined nor the *malkhana* incharge was examined nor the *malkhana* register was produced before the court during trial. He expanded his argument by submitting that the FSL reports are worthless from the evidentiary point of view probably due to such handling only. Moreover, nothing was recovered on any sample except semen on the half pant of the appellant. The half pant was recovered on the next day of the occurrence. There is nothing on record to suggest as to the place from where it was recovered. No one has stated that whether it was recovered from the house of the appellant or it was worn by him. He submitted that in any view of the matter, mere presence of semen on the half pant of the appellant would not connect him with the offence in any manner.

65. While adopting the submissions made by the learned *amicus curiae*, Mr. Bijay Prakash Singh, learned counsel for the appellant submitted that the written report of the informant would make it clear that the incident had taken place on 25.08.2018 before 9:00 p.m. and the police came to know about it in the night on 25.08.2018 itself. He submitted that the IO of the case, who was also the Officer-in-charge of the police station admitted in his deposition that he had reached at the



place of occurrence on 25.08.2018 in the night and he himself recovered the body of the victim at the place of occurrence. He submitted that a perusal of the postmortem report would suggest that the body of the victim was received at 7:55 a.m. on 26.08.2018 in the hospital. Two Choukidars, namely, Subhash Manjhi and Surendra Manjhi were accompanying the corpse and they identified the deceased at the time of the postmortem examination. The postmortem examination had commenced on 26.08.2018 at 9:55 a.m. He further contended that the seizure list (Exhibit-4) would suggest that the same was prepared by the I.O. at 6:15 a.m. on 26.08.2018 and the second seizure list (Exhibit-3) was prepared by the I.O. on 26.08.2018 on 5:35 p.m. He stated that the formal FIR was registered on the basis of written report on 26.08.2018 at 12:30 p.m. He argued that the major part of investigation was done even before the institution of the FIR. He contended that the IO had reached at the place of occurrence, inspected it, recorded the statement of witnesses, sent the body of the victim to the hospital for postmortem examination with two Choukidar and the postmortem examination was conducted even before the registration of the formal FIR. He, thus, contended that a belated FIR was registered after due deliberations and consultations and the FIR



has lost all its credibility.

66. On the other hand, Mr. Abhimanyu Sharma, learned Additional Public Prosecutor appearing for the State submitted that it is a gruesome case of rape and murder of a child. He submitted that there was absolutely no reason for the informant to falsely implicate the appellant. He submitted that no motive can be imputed upon the informant in a case like this where her minor daughter has been subjected to a brutal rape and a gruesome killing. He submitted that the Trial Court has rightly appreciated the evidences adduced before it and convicted the appellant. He submitted that a man may lie but the circumstances do not. The circumstances against the appellant have been proved beyond reasonable doubt. He contended that the evidences adduced by the P.W.2 and P.W.9 would clearly suggest that it was the appellant, who alone was responsible for the commission of the offence. He contended that the forensic examination report also proves the guilt of the appellant. He contended that almost all the witnesses have consistently stated that when the search was being made for the victim, the appellant was seen fleeing away from the maize field of Dr. Nizamuddin from where the dead body of the victim was recovered. The conduct of the appellant also proves his



involvement in the crime. The detection of semen on the half pant of the appellant would also corroborate the case of the prosecution against the appellant. Lastly, he argued that the confession of the appellant (Exhibit-6) would also demonstrate the manner in which he committed the offence.

67. In reply, learned *amicus curiae* submitted that the confessional statement of the appellant (Exhibit-6) would not be admissible in evidence in view of Sections 25 and 26 of the Evidence Act.

68. We have heard learned counsel for the parties and perused the materials on record.

69. The admitted case of the prosecution is that the minor daughter of the informant was taken to the field of Dr. Nizamuddin on 25.08.2018 before 9:00 p.m. and was raped and killed. It has rightly been argued on behalf of the appellant that from the evidence of the IO, it would be evident that he came to know about the incident in the night of 25.08.2018 itself. The IO has admitted in his testimony that he had reached at the place of occurrence on 25.08.2018 in the night. He admitted that he recovered the body of the victim. He further admitted that on 25.08.2018 in the night when he visited the place of occurrence, he found the lower part of the body of the victim in a very bad



shape and her head was covered buried under soil. He stated that he himself dug out the body. He explained that the FIR could not be registered in the night because the mob was agitated. They were putting pressure to call senior police officer to the place of occurrence.

70. When we look at the postmortem report (Exhibit-3) we find that the body of the victim was received in the hospital at 7.55 a.m. on 26.08.2018. The two Chaukidars, namely, Subhash Manjhi and Surendra Manjhi were accompanying the corpse and they identified the deceased in the hospital at the time of the postmortem examination. The postmortem examination did commence at 9.55 a.m. on 26.08.2018. We further notice that the seizure list (Exhibit-4) was prepared by the IO at 6.15 a.m. on 26.08.2018. When we look at the formal FIR, we notice that the same was registered at 12.30 p.m. on 26.08.2018. Thus, the major part of investigation was already done even before the institution of the FIR. The inspection of the place of occurrence, recovery of dead body of the victim, the preparation of the seizure list at the place of occurrence, sending the corpse of the victim to the hospital for postmortem examination along with two Chaukidars and the postmortem examination were done prior to the institution of the FIR.



71. The FIR is an important document. A prompt FIR prevents possibility of coloured version being put by the informant. The explanation given by the IO for not registering the FIR as the mob was agitated does not seem to be plausible. It is not understandable as to why in a charged atmosphere if the police could do all other formalities, the FIR could not be registered in the night of 25.08.2018. Even if no one was willing to register the FIR, the IO having come to know about the incident of rape and murder ought to have recorded his self-statement at the place of occurrence and instituted the FIR and proceeded with the investigation of the case. The non-registration of FIR in the night on 25.08.2018 and in the morning of 26.08.2018 was definitely a gross dereliction of duty on his part.

72. In *Thulia Kali vs. State of T. N.*, since reported in *AIR 1973 SC 501*, the Supreme Court had observed that the FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. It further observed that the delay in lodging the FIR often results in embellishment which is a creature of afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger creeps in of the



introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the FIR should be satisfactorily explained.

73. In *State of A.P vs. Punati Ramulu*, since reported in *1994 Supp (1) SCC 590*, the Supreme Court observed: “*the investigating officer has deliberately failed to record the first information report on receipt of the information of a cognizable offence of the nature, as in this case, and had prepared the first information report after reaching the spot after due deliberations, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation, as one would not know where the police officer would have stopped to fabricate evidence and create false clues.*”

74. In *State of Punjab vs. Ramdev Singh*, since reported in *(2004) 1 SCC 421*, the Supreme Court held : “*Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if*



any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version....”

75. It is true that there is no hard and fast rule that the delay in lodging the FIR would automatically render the prosecution case doubtful. However, the delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not.

76. In the present case, the explanation submitted by the IO for the delay caused in lodging the FIR does not seem to be satisfactory. However, only on the ground of delay in lodging the FIR, we do not consider it proper to disbelieve the entire prosecution case.

77. From the evidence on record, it would be evident that there is no eye witness to the incident of rape and murder. The case is based on circumstantial evidence.



78. It is not in dispute that the absence of any eye witness to the homicide cannot come in the way of the conviction of the accused persons and even a sentence of death may be passed in such cases where the crime has to be inferred from the surroundings and relevant circumstances.

79. However, the parameters and principles within which circumstantial evidence is to be assessed by the court to conclude guilt or otherwise has been time and again deliberated upon by the Hon'ble Supreme Court in *Hanumant son of Govind Nargundkar vs. State of M.P. (supra)*; *Bhagat Ram vs. State of Punjab (supra)*; *Sharad Bridhichand Sharda vs. State of Maharashtra (supra)* and *Padala Veera Reddy vs. State of Andhra Pradesh and Ors. (supra)*.

80. Precisely, to sustain a conviction on circumstantial evidence, the factual circumstances should be so established that the only inference the said circumstances allow must be that of the guilt of the accused, incompatible with any other hypothesis. The circumstances on record should form a complete and consistent chain of events, which rule out every other hypothesis except the guilt of the accused.

81. It has rightly been pointed out by the learned *amicus curiae* that the three circumstances which have come



against the appellant during trial are:-

- (i) That P.W.2 saw the appellant playing with the victim;
- (ii) That P.W.9 saw one person moving towards the lane with a child; and
- (iii) that the witnesses saw the appellant fleeing away from the place of occurrence.

82. The first circumstance that P.W.2 saw the appellant playing with victim in a case where a public function was going on does not in itself connect the appellant with the alleged offence. There is no other witness who had seen the victim playing with the appellant.

83. The second circumstance that P.W.9 saw one person moving towards the lane with a child also does not prove the culpability of the appellant in the alleged offence. P.W.9, a labourer affixing tent, was a stranger to the village. He admitted in his deposition that he was not previously acquainted either with the child or the appellant. No T.I. Parade was held during investigation to identify the appellant as the person who was seen taking away the victim towards the lane. Even in court, P.W.9 did not state that it was the appellant who was seen by



him taking away the victim towards the lane. On the point of taking away the victim towards the lane, P.W.9 is the sole witness. His deposition is also of no use to the prosecution.

84. So far as the third circumstance that the witnesses saw the appellant fleeing away from the place of occurrence is concerned, when we look at the testimony of the informant, the mother of the victim (P.W.1), we find she has given a completely different story. She has admitted in cross-examination that it was the appellant, who assisted her in recovery of the body of the victim.

85. Thus, there is an utter confusion as to whether the appellant was seen fleeing away from the place of occurrence or he was present at the place of occurrence and assisting the search operation.

86. When we look at the two seizure lists prepared by the IO, we find that P.W.3 and P.W.4 were witnesses to the seizure. Though, the IO has proved the seizure lists as Exhibits 3 and 4, the two seizure list witnesses examined during trial did not utter a word regarding the seizures made in their presence.

87. The FSL reports are also of no use from the point of view of providing any objective support to the prosecution case. They would suggest that the samples were collected on



25.08.2018 and 26.08.2018 and were given to the ASI, Bipin Kumar Mahto (not examined) on 04.09.2018, which was received in the office of FSL on 12.09.2018. There is nothing on record to suggest about the safe custody of the Material Exhibits during this period. It is not known where the Material Exhibits were kept and who all handled them between the period 25/26.08.2018 and 04.09.2018. Moreover, nothing incriminating in samples could be detected except the semen on the half pant of the appellant. The half pant of the appellant was recovered a day after the incident had taken place. There is nothing on record to show as to the place from where it was recovered. There is no evidence that the semen found on the half pant of the appellant was matched with semen found on the clothes of the victim or on any part of her body.

88. Under such circumstances, the presence of semen on the half pant of the appellant alone cannot be treated as an evidence which may prove the prosecution case.

89. We have seen that the FSL report of soils seized from the place of occurrence and the nail cuttings of the appellant failed due to insufficient quantity.

90. The circumstances emanating from the oral and documentary evidences adduced during trial do not find



unerringly towards the guilt of the appellant.

91. In that view of the matter, we are of the opinion that the prosecution has failed to prove its case beyond reasonable doubt.

92. Accordingly, the impugned judgment of conviction dated 24.04.2019 and the consequent order of sentence dated 08.05.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Siwan, in G.R. No.4949 of 2018, Trial No. (POCSO) 104 of 2019 arising out of Barharia P.S. Case No.274 of 2018 are, accordingly, set aside.

93. The appeal is allowed.

94. The appellant, namely, Taslim (name changed) is acquitted of the charges levelled against him. He shall be released from the jail forthwith unless required in any other case.

C. Finding with regard to compensation

95. Though, we have answered the Death Reference in negative and allowed the appeal preferred by the appellant, a duty is cast upon us to the question of awarding adequate compensation to the victim as there is no dispute to the fact that a minor girl aged four years was brutally raped and killed in the



incident.

96. The provisions relating to compensation to the victims are contained in Section 357(1), (2) and (3), 357-A(1), (2), (3), (4), (5), 357-B, 357-C, 358 and 360 of the CrPC.

97. Section 357 of the CrPC specifically empowers the Court imposing a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, in its discretion, *inter alia*, order payment of compensation out of the fine recovered, to a person for any loss or injury caused to him by the offence. However, such compensation to the victim can be awarded only when substantive sentence is imposed of which fine forms part and not in case of acquittal. Sub-section (3) of Section 357 of the CrPC further enables the court to order the accused person to pay compensation even in cases where the punishment prescribed does not include payment of fine. There is also no limit to the amount that may be awarded and is left entirely to the discretion of the court to decide in each case depending on its facts and circumstances.

98. The provisions prescribed under Section 357 of the CrPC make it evident that the compensation can be awarded to the victim only if the accused is identified, prosecuted and convicted. The compensation to the victim would not be



available under this provision if the prosecution case is not proved beyond reasonable doubt or if the case is found true during investigation but the police failed to get any clue of the perpetrators of the crime. In such circumstances, the court cannot apply Section 357 of the CrPC to order compensation to the victim.

99. It appears that in order to overcome the situation a new Section 357-A was inserted by Act 5 of 2009 with effect from 31.12.2009 in the CrPC.

100. Sub-section (1) of Section 357-A provides that every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

101. Sub-section (2) of Section 357-A requires the District Legal Service Authority or the State Legal Service Authority, as the case may be, to decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1) whenever a recommendation is made by the court for compensation.

102. Sub-Section (3) of Section 357-A provides that at



the conclusion of the trial, if the Trial Court is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

103. Thus, it would be evident that Section 357-A was inserted by Act 5 of 2009 to give effect to the victim compensation schemes by every State in co-ordination with the Central Government for institutionalized payment of compensation to the victim by the State for any loss or injury caused to him by the offender. The responsibility has been imposed on the States to create and maintain a fund for the purpose of compensating the victims of the crime in case where compensation made by the accused is inadequate or no such compensation is payable on account of acquittal or discharge of the accused or the offender not being traced or identified. Such payments are to be made by the State or the District Legal Services Authority as the case may be on the specific recommendation of the Court in cases falling under Section 357-A (2) and (3). However, recommendation of the Court is not required under Section 357-A (4), (5) or (6) of the Cr.P.C.

104. In compliance with the legislative mandate, the



State of Bihar formulated “Bihar Victim Compensation Scheme, 2011”. Subsequently, in the light of the observations made by the Supreme Court in the case of ***Laxmi Vs. Union of India***, since reported in ***(2014) 4 SCC 427***, Bihar Victim Compensation Scheme, 2014 (for short ‘2014 Scheme’) was implemented by amending erstwhile Scheme of 2011.

105. The preamble of the 2014 Scheme reads as under :

“PREAMBLE - Whereas, regarding The Victim Compensation Scheme of The Home Ministry, Government of India and sale of Acid etc. and in the case of Laxmi (minor). The Hon'ble Supreme Court has directed that under section-357A of the Code of Criminal Procedure all States should prepare a scheme. Bihar Victim Compensation Scheme, 2011 had been framed in that light, but certain amendment is felt necessary in the light of the observation of the Hon'ble Supreme Court. Therefore in lieu of amendment Bihar Victim Compensation Scheme, 2014 is necessary to be notified.

Now, therefore in exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Bihar is hereby pleased to make the following scheme, superseding The Bihar Victim Compensation Scheme, 2011 for



purpose of granting compensation to the victims or their dependents who sustain damage or hurt due to offences and who are in need of rehabilitation. ...”

106. The terms “Dependents”, “Family” and “Victim” have been defined in para 2(d), (f) and (g) of the 2014 Scheme, which read as under :

“2(d). “Dependents” means wife/husband, father, mother, unmarried daughter, minor children, widow daughter, divorcee daughter, son and daughter-in-laws and includes other legal heir of the victim who, on providing sufficient proof, is found fully dependent on the victim by the District Legal Services Authority.

(f) “Family” means parents, children and includes all blood relations living in the same household.

(g) “Victim” means victim as defined under section 2(wa) of the Code of Criminal Procedure, 1973 (2 of 1974).

107. The term “Victim” has been defined in Section 2(wa) of the Cr.P.C as under :

“2(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused



*person has been charged and the expression
“victim” includes his or her guardian or
legal heir.”*

108. In the year 2018, certain amendments were made in the 2014 Schemes vide Bihar Victim Compensation (Amendment) Scheme, 2018 (for short ‘2018 amendment’).

109. Again in compliance with the directions made by the Supreme Court in *Nipun Saxena v. Union of India*, since reported in **(2019) 2 SCC 703**, the Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2019 (for short ‘2019 Amendment’) was added as part-2 in the 2014 Scheme.

110. The object of the schemes is to provide fund for compensation to the victims or their dependents, who have suffered loss or injury as a result of crime and require rehabilitation. The aim of the schemes is to provide psychological, medical and legal assistance to the victim. The definition of victim as given under Section 2(wa) of the CrPC has been incorporated in order to grant compensation to the victim and included dependent family members or guardians or legal heirs. The aforesaid schemes have been framed under the ambit of Section 357-A of the CrPC. The Schemes framed by the State of Bihar make it clear that a victim can file an



application during trial or at the conclusion of trial before the Trial Court for recommendation of compensation on the basis of injury received and the Trial Court has to give its finding that the applicant is the victim as defined under Section 2(wa) of the CrPC. The Trial Court can grant interim or final recommendation under Section 357-A(2) or (3) of the CrPC only for the offences mentioned in the Schedule appended to the 2014 Scheme and the Schedules mentioned in the 2018 Amendment and 2019 Amendment. The only exception mentioned in the 2019 Amendment is that the Special Court POCSO Act shall make a recommendation mentioning specific quantum of compensation. The aforesaid exception has been made keeping in mind the provisions prescribed under the POCSO Act and the rules made therein.

111. Sub-section (8) of Section 33 of the POCSO Act provides that in appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

112. In exercise of powers conferred by Section 45 of the POCSO Act, the Central Government framed Protection of



Children from Sexual Offences Rules, 2020, which came into force on 9th March, 2020. Rule 9 of the aforesaid rules deals with compensation to be paid by the Court in appropriate cases on its own or on an application filed on behalf of the child. The rule provides that while making a direction for awarding compensation to the victim, the Court shall be required to take into account all relevant factors relating to loss and injury caused to the victim including type of accused, gravity of offence and severity of the mental or physical harm or injury suffered by the child, relationship of the child with the offender and other relevant factors.

113. Schedule 1 of the 2014 Scheme was substituted by Schedule 1 of the 2018 Amendment. In case of rape where the victim is a minor, the schedule prescribes minimum and maximum amount of compensation as Rs.3 lakhs and Rs.7 lakhs respectively. Similarly, Schedule 1 of the 2018 Amendment prescribes minimum and maximum amount in case of death as Rs.2 lakhs and Rs.3 lakhs respectively. The note attached to Schedule 1 of the 2018 Amendment stipulates that if the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified in the Schedule.

114. The instant case is the case of rape and murder of a



minor child aged four years. The trial was held by the Special Court POCSO Act, Siwan, While convicting the accused and awarding penalty, the Trial Court did not pass any order of compensation in favour of the “victim” as defined under Section 2(wa) of the CrPC, which means a person, who has suffered any loss or injury caused by the reason of the act or omission for which the accused person has been charged and the expression “Victim” includes his or her guardian and legal heir. The mother of the victim was informant of the case. She would naturally come within the definition of the expression “Victim” in terms of Section 2(wa) of the CrPC.

115. Though, we have set aside the impugned judgment passed by the Trial Court as the prosecution failed to prove its case beyond reasonable doubt, the plight of the victim cannot be overlooked. The guardian of the deceased victim has a right to get justice to remedy the harm suffered as a result of crime. In the given facts and circumstances of the case, awarding compensation is also necessary to reassure the guardian of the deceased victim that she is not forgotten in the criminal justice system.

116. In that view of the matter, keeping in mind the relevant factor relating to the loss and injury caused to the minor



child aged four years as also the compensation admissible to her guardian under the 2014 Scheme and its amendments, we direct the District Legal Services Authority, Siwan to pay Rs.10,00,000/- (Rupees ten lakhs) to the guardian of the deceased victim by way of compensation from the fund under the 2014 Scheme and its Amendments within 30 days from the date of receipt of the order.

117. We, thus, sum up Death Reference and the Appeal by holding as under :

- (A) The reference made by the Trial Court to this Court for confirmation of the death sentence awarded to the appellant is rejected.
- (B) The appellant, namely, Taslim (name changed) is acquitted of the charges levelled against him. He shall be released from the jail forthwith unless required in any other case.
- (C) The District Legal Services Authority, Siwan is directed to pay Rs.10,00,000/- (Rupees ten lakhs) to the guardian of the deceased victim by way of compensation from the fund under the 2014 Scheme and its Amendments within 30 days from the date of receipt of the order.



118. Registry is directed to send back the lower court records to the Trial Court forthwith. Registry is further directed to communicate a copy of the order to the District Judge-cum-Chairman, District Legal Services Authority, Siwan forthwith.

(Ashwani Kumar Singh, J.)

(Arvind Srivastava, J.)

sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.10.2021
Transmission Date	12.10.2021

