

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1306 of 2018

Arising Out of PS. Case No.-48 Year-2016 Thana- EAST COLONY District- Munger

Sudeep Vishwakarma, Son of Parsan Vishkarma, Resident of Pashupalan Gali, Choti Daulatpur, Police Station- Jamalpur, District- Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1192 of 2018

Arising Out of PS. Case No.-48 Year-2016 Thana- EAST COLONY District- Munger

Annu Kumar, son of Upendra Mandal @ Upendra Chaurasia, resident of Naya Gaon Mungraura Near Shiv Mandir, P.S. East Colony, P.O. Jamalpur, District Munger Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1218 of 2018

Arising Out of PS. Case No.-48 Year-2016 Thana- EAST COLONY District- Munger

Parsan Vishwakarma, Son of Lae Raghunandan Mistri @ Late Raghunandan Vishwakarma, Resident of Pashupalan Gali, Choti Daulatpur, Police Station Jamalpur, Distt.-Munger

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 1306 of 2018)
For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocates
Mr. Krishna Mohan, Advocates
Mr. Praveen Kumar, Advocates
Mr. Rajnish Kumar, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, Advocate
(In CRIMINAL APPEAL (DB) No. 1192 of 2018)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocates
Mr. Md.Imteyaz Ahmad, Advocates



Mr. Ritwik Thakur, Advocates
Mrs. Vishnavi Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP
(In CRIMINAL APPEAL (DB) No. 1218 of 2018)
For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocates
Mr. Krishna Mohan, Advocates
Mr. Praveen Kumar, Advocates
Mr. Rajnish Kumar, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)
Date : 23-11-2022

By the impugned judgment and order dated 12.09.2018/14.09.2018 passed by the learned Additional Sessions Judge-I- cum- Special Judge, POCSO, Munger in C.R. Case No. 2861 of 2016, arising out of East Colony P.S. Case No. 48 of 2016, G.R. No. 1710 of 2016, the appellants have been convicted and sentenced as under:

Criminal Appeal (DB) No. 1306 of 2018				
Appellant's name	Conviction under Section	Sentence		
		Imprisonment	Fine(Rs.)	In default of fine
Sudeep Vishwakarma	6 of POCSO Act	For life	25,000/-	S.I. for six months
	354-D of IPC	RI for three years	5,000/-	S.I. for one month
Criminal Appeal (DB) No. 1192 of 2018				
Annu Kumar	6 of POCSO Act	For life	25,000/-	S.I. for six months
Criminal Appeal (DB) No. 1218 of 2018				
Parsan Vishwakarma	6 of POCSO Act	For life	25,000/-	S.I. for six months

2. Since all the three appeals preferred under Section



374(2) of the Code of Criminal Procedure, 1973 arise out of the same impugned judgment and order passed by the learned trial court, they have been heard together and are being disposed of by the present common judgment and order.

3. The victim's name has been concealed in the present judgment and she has been referred to as the victim (PW-2) for maintaining privacy of her identity to protect her dignity.

4. Victim's father (PW-1) is the informant, on whose written report submitted to the Station House Officer, East Colony, Jamalpur, the concerned East Colony P.S. Case No. 46 of 2016 came to be registered on 01.10.2016, disclosing commission of an offence punishable under Section 366-A of the Indian Penal Code.

5. To begin with, it would be apt to recount the initial version of the prosecution's case as unfolded in the written report of the informant. The informant (PW 1) alleged in his written report that appellant Sudeep Vishwakarma (Criminal Appeal (DB) No.1306 of 2018) was engaged as a tutor to teach the informant's minor daughter, the victim (PW-2). The appellant was teaching her for last three years. Nearly two months prior to the date of lodging of the complaint, the appellant Sudeep Vishwakarma had attempted to molest her. Upon learning this conduct of Sudeep



Vishwakarma, he was disengaged from the work of giving private tuition to the victim. Despite that Sudeep Vishwakarma used to follow the victim. On 28.09.2016 at about 6.40 a.m., by putting the victim under threat and by enticing her, he (Sudeep Vishwakarma) took the victim to someone's house at a place called Mungraura. Thereafter, certain pressure mounted by the police, Sudeep Vishwakarma, upon dropping the victim near one Path Bhawan School, escaped. In the said occurrence, the father of Sudeep Vishwakarma, namely, Parsan Vishwakarma (appellant of Criminal Appeal (DB) No. 1218 of 2018) was also involved. To avoid ignominy and public shame, the informant did not register any FIR on 28.09.2016. However, Sudeep Vishwakarma continued his misdeeds of molesting the victim even thereafter, which attempt could be neutralized because of the presence of the informant.

6. The victim's statement was subsequently recorded during the course of investigation and in the light of the nature of accusation made by her, a request was made before the concerned Magistrate to add Sections 376, 354-D read with Section 34 of the Indian Penal Code and Section 6 of the Prevention of Children from Sexual Offences Act (POCSO Act for short). In view of addition of these provisions, the case was transferred to the



learned Special Judge POCSO. Upon completion of investigation the police submitted charge-sheet on 30.10.2017 against the appellant Sudeep Vishwakarma and his father Parsan Vishwakarma for the offences punishable under Sections 366-A, 376, 354-D read with Section 34 of the Indian Penal Code and Section 6 of the POCSO Act, keeping the investigation as against others pending. Cognizance was taken accordingly on 06.12.2017. Subsequently, the police submitted charge-sheet against the appellant Annu Kumar (Criminal Appeal (DB) No. 1192 of 2018) on 09.07.2018. The trial of appellant Annu Kumar was also amalgamated with the trial of other accused persons against whom the cognizance was already taken. After framing of the charge against Annu Kumar, the appellants were put to trial for commission of the offences punishable under Section 366-A, 376/34 and 354-D of the IPC and Section 6 of the POCSO Act. As the appellants pleaded not guilty, the trial commenced against them.

7. At the trial, altogether seven prosecution's witnesses were examined including the victim's father (PW- 1), victim's mother (PW- 3), the victim (PW- 2), the doctors who had examined the victim, both for the purpose of determination of her age, and in the background of accusation of rape (PWs- 4 and 7).



The Investigating Officers were examined as PW- 5 and PW- 6.

8. It is noteworthy that during the course of investigation the victim's statement was recorded under Section 164 of the Cr.P.C., wherein she narrated the conduct of the appellant Sudeep Vishwakarma in detail. She deposed that while giving tuition to the victim one day he had inappropriately caught her hand, reacting to which she had slapped him in the presence of her younger brother. Subsequently, she had joined a coaching center and one day when she was returning from the said coaching center, the appellant Sudeep Vishwakarma stopped his bike in front of her and threatened her to make her morphed photograph viral and thus would spoil her image and future life. He had earlier taken his selfies with the victim and when protested quite the appellant Sudeep Vishwakarma had told her that it was normal to take the photograph. The appellant Sudeep Vishwakarma also told the victim to meet him on Wednesday. Since the photograph taken through selfie was with him, she became apprehensive and frightened and agreed to meet him. On 28.09.2016 (Wednesday), when she came out of her school, Sudeep Vishwakarma was standing outside. The victim enquired from him as to what did he want to say, to which he replied that it would not be proper for him to talk in presence of her (victim's)



friends. He convinced her to come along with him to his friend's house. She thereafter went to a house belonging to Sudeep's friend at Mungraura. When they reached there, Sudeep's friend was present, who subsequently left the room as asked by Sudeep Vishwakarma. Sudeep Vishwakarma thereafter expressed to the victim his deep love for her and told her that he could not live without her. Though the victim told Sudeep Vishwakarma that she had to go to school, Sudeep Vishwakarma did not allow her to leave and thereafter he took out a dagger and after putting off her clothes committed rape upon her. He also took semi-nude photographs of the victim with his mobile phone and raped her. Soon thereafter, Sudeep Vishwakarma received a call from his mother. Responding to his mother's query he replied that he was on his way to Bhagalpur with one of his friends. When, in the meanwhile, Sudeep Vishwakarma started getting calls from the police he rang up his two friends; one whom was the occupant of the house and the other whom she did not know. Both of them subsequently, came to the place where she was raped. Sudeep Vishwakarma sought their advice as to what to do with the victim. On their advice, the victim was asked to leave the place and go to school and give the school administration an explanation that she had gone to purchase 'bio-sheets', in course of which she had



fainted and was taken to hospital where she was prescribed two tablets; one she had consumed and other was to be taken an hour, thereafter. Sudeep Vishwakarma thereafter dropped the victim in a street near Path Bhawan School which is adjacent to Notre Dam School where the victim studied. When she went to school and the teacher grilled her about her absence. She offered the same explanation as was tutored to her by the appellant Sudeep Vishwakarma since she was frightened as he was in possession of her photographs. On further interrogation, she explained every fact to her teacher in the school. The Principal thereafter called the parents of the victim, apparently to tell them as to what had happened.

9. Dr. Ravindra Gupta, the Medical Officer and a doctor of Medical Board constituted for age assessment of the victim (PW-7) proved the age determination done by a Board of doctors constituted for the said purpose. The victim's age came to be determined as less than 17 years.

10. A lady doctor, who had examined the victim, based on clinical and pathological findings reported that rape could not be confirmed but instance of intercourse could not be avoided.

11. PW-1, the father of the victim supported the prosecution's case. He deposed that while giving tuition, once the



appellant Sudeep Vishwakarma had caught the victim's hand whereafter the victim had slapped him. That being the situation, the appellant Sudeep Vishwakarma was disengaged from the work of giving tuition to the victim whereafter the victim was put in a different coaching center. He supported the prosecution's case that one day Sudeep Vishwakarma had taken a selfie with the victim and he used to blackmail her by threatening to make her morphed photographs viral. He also disclosed that appellant Sudeep Vishwakarma had, under threat and enticement taken the victim to the house where she was forcibly asked to say 'I love you' and subsequently under the threat of making her photographs viral, he committed rape on the victim multiple times. From the evidence of PW 1, it appears that the learned trial court has noted the demeanor of PW-1, who had started crying while deposing and only after he was consoled by the court and the learned advocates that he regained poise and resumed deposition. In response to a query, during the cross-examination, the informant stated that he had learnt about the entire occurrence of 28.09.2016 after it was narrated to him by the victim on 01.10.2016. He declined the suggestion of any love-affair between the appellant Sudeep Vishwakarma and the victim.

12. PW-2 is the victim herself. She deposed that Sudeep



Vishwakarma used to give her tuition from Standard-VI and in that course, one day he had caught her hand with ill motive. She had become infuriated and had slapped him. Thereafter Sudeep Vishwakarma was disengaged from teaching the victim, by her mother (PW-3). Subsequently, she joined tuition at a coaching center viz., NDSC. She further deposed that one day in the evening after she was returning from the coaching center, Sudeep Vishwakarma came and stopped his motorcycle in front of her. She reiterated the facts in her deposition as was narrated by her in her statement under Section 164 of the Cr.PC that Sudeep Vishwakarma had threatened her of making her photographs viral on social media, viz., facebook and whatsapp etc. because of which, she had become frightened. Sudeep Vishwakarma had asked her to meet him at the school gate on the next day. On the next day, when she went to the school, she found him standing on the gate on a bike. He disclosed that he wanted to discuss something with her. When she enquired as to what did he want to tell, he asked her to come to a house one of his friends where he would converse with her. She was so frightened that she agreed to go with Sudeep Vishwakarma. In the said house, his friend Annu [appellant of Criminal appeal (DB) No. 1192 of 2018] was also there. Sudeep Vishwakarma and Annu talked with each other for



sometime and thereafter Annu left the room. Thereafter Sudeep Vishwakarma started talking in a weird way and despite the victim's plea that she should be dropped at school, he did not buzz and started touching her body here and there. At this stage, the trial court has noticed the demeanor of the victim of feeling uncomfortable and attempting to recover from emotional trauma, whereafter she resumed her deposition, while crying. She further disclosed that despite her resistance, the appellant Sudeep Vishwakarma raped her. She also reiterated that in the meanwhile, Sudeep's mother called him on his mobile phone and the police had also called him. This made Sudeep Vishwakarma call his friends. Two of his friends came and all of them decided to release the victim. Sudeep Vishwakarma is said to have told her to go to school and tell the people in school that she had gone to purchase bio-sheets and in that course she had felt giddiness because of which she was taken to the railway hospital. Sudeep Vishwakarma thereafter dropped the victim near the school. In the school when the 'sisters' asked about the reason for the delay, she narrated them the same thing as was suggested to her by Sudeep Vishwakarma. She identified Sudeep Vishwakarma and Annu Kumar, who were present in the dock. During the course of her cross-examination on behalf of appellant Sudeep Vishwakarma



and Parsan Vishwakarma, she deposed that her date of birth in the school admission register was 12.05.2002, which was entered at the instance of her father. On the date of occurrence she was studying in Class-IX. She also deposed that she had never gone to Mungraura earlier. She had shown to her parents the place of occurrence on the next day where she was confined for 2½ -3 hours. There was no injury on her other parts of the body except that the skin of her left hand had turned red because of her hand having been tightly held by Sudeep Vishwakarma. She also deposed that on the date of occurrence, the victim's father had informed the police whereafter the police had come in the evening next day. She denied the suggestion of false implication of the appellant Sudeep Vishwakarma because of certain dispute between her father and Sudeep Vishwakarma in relation to monetary transaction between them. She denied the suggestion that in 2011, father of the victim had taken loan from Sudeep's father Parsan Vishwakarma [the appellant of Criminal Appeal (DB) No. 1218 of 2018] for which a *panchayati* was held and because of that dispute a false case had been lodged against him. She also denied the suggestion that the informant and the appellant Sudeep Vishwakarma were on visiting terms since 2010.



13. Dr. Manjula Ranai Mandal (PW-4) in her deposition, while proving her medical report dated 04.10.2016, deposed in her cross-examination that she was not sure as to whether rape was committed or not.

14. The Investigating Officer in his deposition proved the place of occurrence as was disclosed by the victim. The said house belonged to Ayodhya Mandal. Ayodhya Mandal is said to have disclosed the police that Annu [appellant of Criminal Appeal (DB) No. 1192 of 2018] is son of one Upendra Kumar Chaurasia. The Investigating Officer, however, during the cross-examination on behalf of Annu Kumar, admitted that the victim had not disclosed the name of Annu Kumar in her statement under Section 164 of the Cr.P.C nor, subsequently, during the course of investigation. He further deposed that it was enquired from the victim as to who was the friend of appellant Sudeep Vishwakarma present at the place of occurrence and she had disclosed that his name was Annu because his name was taken by Sudeep while talking to him at the place of occurrence. He admitted that the informant had not stated in his restatement anything about rape or sexual assault and, therefore, it was not recorded in the case diary. He also deposed that mother of the victim upon enquiry from her (the victim) had told the police that no misdeed was committed



with the victim after having been kidnapped. The clothes of the victim were not examined by him and the mother of the victim had not shown to him the clothes which the victim was wearing. The fact that Sudeep Vishwakarma had caught the victim's hand was not stated by her in her restatement but it was recorded in the case diary that Sudeep Vishwakarma had attempted to outrage her modesty.

15. After the examination of the prosecution's witnesses, complying with the requirement under Section 313 of the Cr.P.C., the circumstances emerging based on the evidence of the prosecution's witnesses against the appellants were explained to them by the learned trial court. They, however, denied all the materials which were against them, in their response.

16. The defence thereafter examined four witnesses. DW-1 Pradeep Kumar, uncle of the appellant Annu deposed that he had an ancestral house at Mungraura in which he was residing with his wife and children. The appellant Annu also resided with him in the same house and no house of his brother was under construction near that place. He further deposed that the police had never raided his house. Dhiraj Kumar was examined as DW-2, a next-door neighbour of appellant Annu Kumar. He deposed that Annu Kumar resided in his ancestral house and there was no



house under construction at Mungraure and that the allegation of commission of rape in the said house was false. Kamli Devi, DW-3 in her deposition stated that there was dispute of loan of Rs. 2 lakhs between the parties from before, which the informant had taken in 2012 from the father of appellant Sudeep Vishwakarma due to which he had threatened the informant of institution of a false case. The dispute in respect of repayment of loan was the reason behind lodging of the false case by the informant. She further deposed that father of appellant Sudeep Vishwakarma was, at the relevant point in time, working at Jamalpur workshop of the 1306 Railways and the appellant Sudeep Vishwakarma was appearing in competitive examinations to get a good job and was a boy having good character. She further deposed that the informant and the victim were not the persons of good character.

17. Mr. Baxi S.R.P. Sinha, learned Senior Counsel appearing on behalf of the appellants assailing the impugned judgment and order of the trial court has submitted that it is evident from the evidence adduced at the trial that the case in hand was maliciously planted in order to digest a sum of Rs. 2 lakhs which was given by the father of appellant Sudeep Vishwakarma to the informant. He has submitted that though the alleged date of occurrence constituting offence punishable under



Section 376 of the IPC is of 28.09.2016 for which the belated FIR was registered on 01.10.2016 without any plausible explanation. He has argued that though the statement of the victim was recorded under Section 164 of the Cr.P.C. on 04.10.2016 itself, the said statement was deliberately not brought on record by the prosecution which makes the prosecution's case doubtful. He has contended that it is apparent from the FIR itself that the appellants are said to have allowed the victim to leave the place of occurrence under the pressure mounted by the police, which is indicative of the fact that the police had information on 28.09.2016 itself about the occurrence. However, neither any Station Diary Entry was made nor an FIR was registered on 28.09.2016 itself. He has also contended that even the written information dated 01.10.2016 does not disclose any allegation of rape or of outraging the modesty of the victim. He has further contended, referring to the evidence of the prosecution's witnesses, that according to the prosecution's case the Principal of the school had written a letter to the parents of the victim but the said letter, which was written to the parents, was also withheld by the prosecution. He contends that the circumstances indicate that a tutored version was brought by the victim against the accused persons, at the trial. According to him, the place of occurrence has



not been established or proved by the prosecution. He further contends that the first place of occurrence i.e. the house of the victim was not inspected by the Investigating Officer. The second place of occurrence i.e. near Notre Dam School and third place of occurrence i.e. Path Bhawan School have also not been established by any independent witness nor did the Investigating Officer visit those places during the course of investigation. The fourth place of occurrence where the rape is said to have been caused has also not been properly investigated and has not been duly mentioned by the informant in his written information. He has further submitted that non-examination of the witnesses i.e. the victim's aunt and her younger brother at the instance of the prosecution during the course of trial also casts serious doubt and accordingly the appellants are entitled to get benefit of doubt. He has submitted that truthfulness and trustworthiness of the deposition of the victim becomes doubtful from the evidence of the doctor (PW-4) who has ruled out a case of rape and has found absolutely no sign of rape or any mark of violence on private part of the victim. He has submitted that PW-7, in collusion with the prosecution, gave an untrustworthy examination report of the victim regarding her age to be less than 17 years. He has further argued that the prosecution failed to establish its case that the



victim was a minor as on the date of occurrence beyond all reasonable doubt and for the said reason the impugned judgment passed by the trial court recording conviction of the appellants deserves interference. He has drawn our attention to the evidence of appellants recorded by the court below under Section 313 of the Cr.P.C. to submit that such circumstances which were not explained to them could not have been taken into account by the trial court for recording finding of conviction. He has submitted that the trial court has taken into consideration such aspects also while recording the finding of conviction which were not explained to the appellants in the examination under Section 313 of the Cr.P.C. He has relied on the Supreme Court's decision in case of *State of U.P. vs. Mohd. Iqram* (AIR 2011 SC 2296) and a Division Bench decision of this Court in case of *Jagat Prasad vs. State of Bihar* reported in 2022(1) PLJR 568 to bolster his contention.

18. Ms. Shashi Bala Verma, learned Additional Public Prosecutor representing the State, on the other hand, has submitted, with reference to the evidence of PW-7, the doctor that the victim as on the date of occurrence was found to be less than 17 years of her age, based on the ossification test which is confirmatory test to determine the age of the victim. She has



submitted that the chain of events as appearing from the evidence of the prosecution's witnesses goes to suggest that the victim, a minor, was taken to a house by the appellant Sudeep Vishwakarma. The victim in her deposition has clearly narrated the instance of sexual assault caused by appellant Sudeep Vishwakarma. She contends that considering the minority of a female child and the explanation said to have been given by her to the Principal of the school for the delay in reaching the school would not have required further proof by requiring presence of the Principal of the school to depose as a witness at the trial. She has submitted that non-examination of the Principal or any teacher of the school or non-production of the letter written by the Principal of the school to her parents cannot vitiate the finding recorded by the trial court.

19. We have carefully perused the impugned judgment and order of the trial court, the prosecution's evidence, both oral and documentary adduced at the trial. We have also perused the evidence of the defence witnesses. We have given our thoughtful consideration to the rival submissions made on behalf of the appellants.

20. To begin with, we consider it apposite to deal with the submission made by learned senior counsel appearing on



behalf of the appellant on the point of non-compliance of the provision under Section 313 of the Cr.P.C. in the light of the Supreme Court's decision in case of ***Mohd. Iqram*** (supra) and the division bench of this Court in case of ***Jagat Prasad*** (supra). It is pertinent to mention though various grounds have been taken on behalf of the appellant in the memo of appeal to assail the impugned judgment and order of the trial court, no ground has been taken that the appellants were not present during the course of examination of the prosecution's witnesses. The prosecution's witnesses were cross-examined also by the defence. The appellants were thus fully aware of the circumstances emerging against them based on the deposition of the prosecution's witnesses. On perusal of the examination of the appellant Sudeep Vishwakarma under Section 313 of the Cr.P.C., it is easily seen that there were four questions were put by the trial court, the first being as to whether he had heard the evidence of witnesses. In the second question the trial court sought the explanation of the appellant Sudeep Vishwakarma in response to the evidence that the appellant had molested the victim on 28.09.2016 while giving her tuition and that he used to give her tuition. He simply denied and did not offer any explanation than simple denial. The trial court further asked the appellant Sudeep Vishwakarma to explain



the circumstance emerging from prosecution's evidence that he had intimidated the victim and had threatened her of making her photograph viral, on an evening when the victim was returning after tuition, because of which the victim had become frightened. Thereafter, the appellant had asked her to wait for him at her school gate and when she was waiting as per direction the appellant Sudeep Vishwakarma took her to his friend's house and committed rape on her. The appellant's answer again was complete denial and nothing else in the form of explanation to the third question. Finally the trial court put a question as to whether the appellant had to say something in his defence. The only explanation which the appellant Sudeep Vishwakarma offered before the trial court was that his father had given the informant a sum of rupees 2 lakhs on loan in 2011 and the informant was making lame excuses on demands made by his father to repay the loan. As father of the appellant Sudeep Vishwakarma mounted pressure for return of the loan amount, a false case had been lodged, he said. No other explanation was offered by the appellant Sudeep Vishwakarma.

21. In respect of the appellant Parsan Vishwakarma the trial court informed him the circumstance based on evidence that he had supported the appellant Sudeep Vishwakarma when the



parents of the victim had complained to him about the incident of molestation dated 28.09.2016. In response he denied any knowledge of such incident. He further answered that the case was instituted because he was repeatedly making demand for repayment of the money.

22. In respect of appellant Annu Kumar, the trial court told him that there was evidence to the effect that he made available his house for the appellant Sudeep Vishwakarma to commit sexual assault on the minor victim girl and had left both of them in the room which was made available by him. After commission of the offence he again came and helped the offender escape. While denying the circumstances stated that he did not even know the appellant Sudeep Vishwakarma. Further, the house where the rape was allegedly committed did not belong to him.

23. On careful reading of the of examination of the appellants under Section 313 of the Cr.P.C. by the trial court, we are satisfied that the appellants were questioned on circumstances which appeared against the appellants so as to enable them to explain the circumstances. Further, the appellants were present during the course of trial at the time of deposition and the gist of the circumstances appearing in the evidence were duly explained to them by the trial court with an opportunity to them to make



statements in their defence. There is thus, no non-compliance of Section 313 of the Cr.P.C., in the given facts and circumstances of the present case. In our opinion, therefore, the Supreme Court's decision in case of ***Mohd. Iqram*** (supra) and ***Jagat Prasad*** (supra) do not come in aid to the appellants' cases.

24. As noted hereinabove, a submission has been made on behalf of the appellants that delay in lodging of the F.I.R. casts serious doubt on the prosecution's case. It is true that in a given situation delay can raise suspicion on the genuineness of implication of an accused. This principle, however, depends on the facts and circumstances of each case and cannot be a general Rule. When a plea is taken by the defence to doubt the veracity of the prosecution's case on the ground of delay in lodging of an F.I.R. in cases involving commission of the sexual offences under the provisions of Indian Penal Code or under the POCSO Act, the Courts are supposed to be more cautious, careful and sensitive in scrutinizing evidence keeping in mind the social circumstances which have great bearing in such matters. The Courts cannot ignore the social reality that if a sexual offence is committed constituting an offence punishable under the provisions of POCSO Act, there is normal and natural tendency of the victim's family to conceal that occurrence to safeguard interest of the



family prestige avoid vilification and in the interest of the future of the victim, as well.

25. In the present case the witnesses are consistent in their deposition that appellant Sudeep Vishwakarma was giving tuition to the victim. In his examination under Section 313 of the Cr.P.C. he did not furnish any explanation by saying that in fact he was not giving her tuition. The occurrence had taken place on 28.09.2016 the F.I.R. was lodged. Three days thereafter on 01.10.2016. There is an explanation given in the F.I.R. itself for such delay by saying that to avoid ignominy and public shame, the F.I.R. was not registered on 28.09.2016. Further as the appellant Sudeep Vishwakarma continued with his behaviour even after the occurrence on 28.09.2016, the informant had no other option than to register the F.I.R.. Possibly, no F.I.R. would have been registered despite the occurrence constituting offence under the provisions of the POCSO Act had the appellant Sudeep Vishwakarma not continued with his misdeeds, if the version of the victim's father is to be accepted and analyzed. We accordingly rejected the submission advanced on behalf of the appellants that the prosecution's case is doubtful because of delay in the registration of the F.I.R.

26. Before proceeding to examine and analyze the



evidence adduced at the trial, we need to notice the provisions under Sections 29 and 30 of the POCSO Act which reads as thus:-

‘29. Presumptionas 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.

30. Presumption of culpable mental state.-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purpose of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.’

27. The Section 29 of the POCSO Act casts a reverse burden on a person accused of an offence punishable under



Sections 3, 5, 7 and 9 of the Act, in view of the statutory presumption of commission of offence by such person under the said provision. In the present case the prosecution, based on medical evidence proved that the victim was a minor (17 years) as on the date of occurrence. The appellants were prosecuted for commission of offence of aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act. The only defence is of institution of a false case as father of appellant Sudeep Vishwakarma had given to the informant a sum of rupees 2 lakhs in 2011. The trial court, on the scrutiny and analysis of the evidence adduced at the trial has recorded its finding that appellant Parsan Vishwakarma failed to establish at the trial, his defence of giving a loan of rupees 2 lakhs to the informant. The evidence of defence PW-3 Anjali Devi has been considered by the trial court wherein she accepted that no transaction of money between the informant and appellant Parsan Vishwakarma had taken place.

28. In our opinion, PW-2 in her evidence before the trial court has explained the circumstances in which she was taken by the appellant Sudeep Vishwakarma from her school gate to the place of occurrence where appellant Annu Kumar was also present. The appellant Annu Kumar, according to her had left the



place on being asked by the appellant Sudeep Vishwakarma. She has deposed in her testimony that she was raped by Sudeep Vishwakarma in the said room thrice. She has also narrated that he was having dagger with him and that she was frightened. It has come in the evidence that after the occurrence when the victim reached the school she had to offer an explanation to the Principal of the school and the Principal had in turn, informed the parents of the victim about her late arrival in the school and the explanation which she had given to the Principal for her late arrival. We are of the considered view that with minor exaggeration in the evidence of PW-2, she appears to be trustworthy in her evidence to the extent that she was sexually assaulted by the appellant Sudeep Vishwakarma. The circumstances emerging from the evidence of her parents i.e. PW-1 the informant supported the prosecution's case as against the appellant Sudeep Vishwakarma. The place of occurrence of 28.09.2016 has been duly proved by the Investigating Officer, in our view, the evidence of the victim PW-2 appears to be creditworthy to the extent that appellant Sudeep Vishwakarma had taken her to a room where she was sexually assaulted by him. The defence of false implication for non-refund of the loan amount by the informant as the reason for lodging a false case of



rape does not appear plausible.

29. We reiterate that the prosecution proved minority of the victim based on medical evidence. The victim in her deposition testified that her date of birth in the school admission register was 12.05.2002 entered at the instance of her father. As on the date of occurrence she was studying in class 9. The prosecution thus, established at the trial that the victim was a minor. The defence miserably failed to rebut the presumption under Section 29 of the Act to the extent the same relates to the appellant Sudeep Vishwakarma. Even for a moment it is presumed that the victim had accompanied the appellant Sudeep Vishwakarma and the narration to the effect that at the point of dagger he had committed rape is doubted, she being a minor, an offence under Section 6 of the POCSO Act is made out read with Section 5(l) thereof which states that whoever commit penetrative sexual assault on the child more than once or repeatedly is said to commit aggravated penetrative sexual assault under Section 5 of the Act.

30. Situated thus, on careful scrutiny of the evidence of the victim PW-2 she appears to be truthful on the point of the sexual assault committed by appellant Sudeep Vishwakarma.

31. In such circumstance, we are of the opinion that the



finding of guilt recorded by the trial court in respect of appellant Sudeep Vishwakarma does not require any interference.

32. Coming to the case of appellant Parsan Vishwakarma, on close scrutiny of the evidence on record we do not find any evidence at all justifying his conviction by the trial court. The only evidence concerning him is that he had been supporting the appellant Sudeep Vishwakarma when the informant had complained to him about the conduct of the appellant Sudeep Vishwakarma. The finding of conviction of appellant Parsan Vishwakarma, thus, cannot be upheld. Accordingly, the finding of the trial court to the extent the same relates to conviction of the appellant Parsan Vishwakarma is hereby set aside.

33. Coming to the appellant Annu Kumar, we find that the only evidence which has come against him is that he had provided a room to the appellant Sudeep Vishwakarma and the victim and subsequently he had suggested them to leave the place. There is no evidence to the effect that the said space was provided by him for appellant Sudeep Vishwakarma to commit sexual assault on a minor girl. The prosecution failed to make out any case of commission of offence punishable under Section 6 of the Act based on the evidence adduced at the trial against the



appellant Annu Kumar. In such view of the matter, he deserves to be given benefit of doubt. The prosecution cannot be said to have proved against the appellant Annu Kumar of commission of offence under Section 6 of the Act.

34. Resultantly, the of Cr. Appeal (DB) No. 1306 of 2018 (Sudeep Vishwakarma) is dismissed. The conviction recorded by the trial court of commission of offence under Section 6 of the POCSO Act and Section 354D of the Indian Penal Code is upheld. The imposition of sentence in terms of the imprisonment and fine in case of appellant Sudeep Vishwakarma stands thus, upheld.

35. The Cr. Appeal (DB) No. 1218 of 2018 (Parsan Vishwakarma) is allowed in the absence of any evidence justifying his conviction under Section 6 of the POCSO Act. The impugned order and judgment of the trial court to the extent it relates to Parsan Vishwakarma is hereby set aside.

36. Further, in view of the aforesaid discussions Cr. Appeal (DB) No. 1192 of 2018 (Annu Kumar) is allowed. His conviction under Section 6 of the POCSO Act is hereby set aside.

37. The appellants of Cr. Appeal (DB) No. 1218 (Parsan Vishwakarma) and Cr. Appeal (DB) No. 1192 of 2018 (Annu Kumar) are on bail. They stand discharged of their



liabilities of bail bonds and sureties, if any, consequent upon their
acquittal by the present judgment and order.

(Chakradhari Sharan Singh, J)

(I agree)
Khatim Reza, J :

(Khatim Reza, J)

Rajesh/Anand/-

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