

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-1833-DB-2014 (O&M)

Reserved on : 20.07.2022

Pronounced on : 09.08.2022

Avnish Kumar Sharma @ Avinish

... Appellant

Versus

State of Haryana

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr. Vikram Singh Punia, Advocate, for the appellant.

Mr.Hitesh Pandit, Addl.A.G., Haryana.

G.S. Sandhawalia, J.

The appellant is aggrieved against the order of conviction passed against him by the learned Addl.Sessions Judge, Jind in FIR No.738 dated 10.09.2013 under Sections 376 (2) (f) (i) IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). The sentence awarded to the appellant is to the tune of 14 years of rigorous imprisonment and Rs.20,000/- as fine and in default, 2 years of rigorous imprisonment under Section 376(2)(f)(i) and Section 6 of the POCSO Act whereas under Section 506 IPC, it is for a period of 2 years along with Rs.5000/- as fine and default clause is of one year.

2. The victim in the present case is none else but a child in the school and was a student of 11th class where the appellant was teaching as a Maths Teacher. The Trial Court found that there was medical evidence in support of the case of the prosecution since there was an opinion of PW-5, Manju on seeing the FSL report that the possibility of rape upon the prosecutrix cannot be ruled out. Keeping in view the fact that the date of birth of the victim was 15.03.1998, as per the Admission &

Withdrawal Register and the fact that the victim had been admitted in school by her sister, it was held that the age of the victim had been proved to be 15.03.1998. She being less than 16 years and being a minor at the time of the registration of the FIR and since she had supported the case in affirmative about the sexual exploitation under threat by the accused-appellant and the medical evidence corroborated the same, weighed with the Trial Court. The defence taken qua the dispute of seniority inter-se school teachers and that he had been falsely implicated was rejected since neither the uncle of the prosecutrix who was teaching in the same school nor Ram Niwas Bhardwaj were going to be the Principal for which the appellant was in line for. It was noticed that the victim had reiterated her version which had already been recorded by the Illaqa Magistrate on 13.09.2013 at the initial point of time under Section 164 Cr.P.C. (Ex.PB). Merely because no date of the incident had been mentioned and only the month and year had been mentioned and since nothing in contradiction had come on record to falsify the allegations, by applying the provisions of Section 29 of the POCSO Act, presumption was raised that the accused could not prove to the contrary, while convicting the appellant. The delay of 6 months in lodging the FIR was also brushed aside on the ground that the appellant was Class In-charge of the victim at the time of lodging of the FIR and that he was threatening her that he would get her brother killed and uncle removed from the school and fail her in the subject of Maths. He had also tried to spread rumours against her in school and it was only on that account the incident had come to light and the present case had been registered. Resultantly,

while placing reliance upon the judgment of the Apex Court in **Ashok Surajlal Uike Vs. State of Maharashtra, 2011 (2) RCR (Crl.) 63**, it was held that the delay was of little significance.

3. Mr.Punia has taken us through the records and vehemently contended that the testimony of the victim is not reliable as there are contradictions in her statements, to the extent that neither the appellant was her teacher or directly In-charge of her or her class and neither was teaching her Maths, and neither was the Examination-in-charge and therefore, the reasoning adopted by the Trial Court was not justified. There was discrepancy in the date and time of the occurrence and there was a delay of 6 months in lodging the FIR and no reasonable explanation had been given if such a incident had taken place. There was reason for false implication as some incident had happened in school which was in September, 2013 and she had been sent back on account of the suspicion having been raised of her character. Thereafter, deliberations had taken place and on account of the fact that her uncle was teaching in the school and was close friend of Ram Niwas Bhardwaj who was aggrieved on account of the fact that the appellant was to become Principal after retirement of the incumbent Principal who was already holding the said post, the issue had been raked up. The age of the prosecutrix could not be said to be conclusively proved to be 15.03.1998 since there was no evidence in the form of certificate from the Registrar (Births & Deaths) and no attempt had been made by the Investigating Officer to get the same. The admission in school had been made by her sister and she herself was not in a position to give the exact date of birth

and thus, reliance was placed upon the radiology report and the fact that she was about 16-17 years of age and therefore, the benefit of 2 years was sought to argue that she was not a minor at the time of incident.

4. It was submitted that the medical report was not conclusive proof of rape since admittedly the incident had taken place 6 months earlier and it was highly strange that as per the MLR human semen was detected on the underwear of the victim but no DNA profile had been done. It was accordingly submitted that even the matter had been taken to the Sub-Judicial Magistrate, Jind and the said fact had not been brought before the Court as to what was the background of the incident which had allegedly taken place. The conduct of the victim was held to be strange to the extent that she had never confided even to her uncle who was teaching in the same school and residing along with the victim nor to her friends and parents for a period of 6 months. It was accordingly contended that there were sufficient discrepancies to give the benefit of acquittal and the Trial Court was not justified in convicting the appellant.

5. Mr.Pandit, counsel for the State, on the other hand, justified the reasoning given to point out that the appellant was the Vice-Principal and therefore, overall supervision was there and it could not be said that he was not her teacher. It was pointed out that admittedly she was below 18 years of age and therefore, the consent was also of no value and there was no reason to doubt the veracity of the certificates issued by the school. It is submitted that one of the teachers, Hemlata, PW-7 had also deposed that the appellant was spreading lies about the victim which would go on to show that there was some involvement and there was no

plausible reason as to why she should implicate him and there was nothing to show that he was going to be promoted as Principal and was being falsely involved on that account. It was accordingly contended that the statement of the victim must be treated as an injured witness and there was no reason to disbelieve her and the offence under Section 376 I.P.C. is made out even if the age factor is to be discounted on account of the fact that she had been subjected to sexual intercourse against her will and by coercing her.

6. Thus, what falls for consideration in our lap is whether the sole testimony of the minor would be sufficient to implicate the appellant for the crime which he is alleged to have committed and for which there is a delay of 6 months. It is settled proposition of law that the testimony of the victim is not to be discarded and rather being an injured witness has to be appreciated keeping in mind the principles of probabilities. However, one cannot lose sight of the fact that false allegations of rape can cause extreme distress and humiliation to the accused apart from the consequences of such a conviction which in the present case would be of dismissal from service. Therefore, one has to further carefully examine whether the story set out of the prosecution at the instance of the victim and her parents is improbable and belies logic or not. Necessarily the discussion as to how and in what manner the whole incident has unfolded would have to be considered, more so in the present case where there is 6 months delay in lodging of the FIR and no specific instance has been given as to on which date and time the incidence took place. Though delay is acceptable in lodging of the FIR after it comes to light on

account of the fact that the family might want to protect its prestige as the victim also has to undergo a lot of humiliation but the said delay factor is also to be examined on account of the fact that the medical evidence has totally diminished by then and the Courts are left grappling with only the ocular version of the parties. It is in such circumstances the Courts have heavily led to granting the benefit of doubt if the victim's testimony does not stand the test of judicial scrutiny.

7. A perusal of the paperbook would go on to show that on the statement (Ex.PA) of the victim as stated to be around 15 years of age and had put-forth that she was studying in 12th class in S.D. Senior Secondary School, Jind and the appellant was the Maths Teacher of 10th class and was in-charge of the girls wing. He was reaching out towards her and had tried to give her a watch but she refused and he used to talk with her on one pretext or the other which she felt was on account of the fact that her uncle was also in the same school. She stated that he had offered her to show the paper of mathematics when she was in 10+1 and when she would come to his residence he would introduce her with his wife. Without suspicion she had went to his house in the month of March, 2013 and had found that nobody was there and wanted to leave but he did not let her go by holding out the threat that he would get her brother killed and her uncle removed from the school and would get her failed in the examination. Thereafter, he had sexual intercourse with her and had then let her go by making her sit in the auto. He had been putting pressure upon her to come to his house and when she refused to do the same, he started using unparliamentary language against her

amongst the teachers and students of the school and her honour had been worsted amongst the teachers of the school. The teachers then telephoned her mother that she should come and take her from school. The Accounts Teacher, Mrs.Seema had stated that she would not teach her tuition and on enquiry by her mother as to why she refuse to teach she said that her daughter would tell. Mrs.Hemlata, In-charge of the school told her that her daughter was not feeling well and she should take her from the school and when they reached the house, her mother enquired and then she narrated the entire incident. Being frightened and fearing to go to the school, she was not studying well and her mental balance was spoiled and thus she got lodged FIR No.738 dated 10.09.2013 at 10 PM when she was accompanied by her mother and father.

8. Her statement was recorded by the lady Head-Constable, Geeta in the presence of woman counsel, Pooja Verma and she had signed the same in English. Harjit Singh, Sub-Inspector, PW-14 had given an application of even date i.e. 10.09.2013 to the Medical Officer, Civil Hospital, Jind (Ex.PJ) for medical examination as to whether rape was committed upon the victim or not and the underwear handed-over to the police was made into parcel. Medical examination was conducted in the early morning/ the next day i.e. 11.09.2013 in which her date of birth was mentioned as 17.09.1998 as told by her mother, Veena Rani. The endorsement in the same was that sexual assault was by the school teacher, Avnish Sharma and that the victim knew him since one year and he committed sexual assault with her 3-4 times and the last time in March, 2013 under threat. The physical examination went on to show

that the hymen was not intact and ruptured at 3 o' clock position and healed and admits one finger easily and tip of second finger with difficulty and pain. No congestion and abrasion was present over the hymen and the opinion was to be given after receipt of the chemical examination report. Radiological and dental opinion for confirmation of age had also been advised. The appellant was accordingly arrested on 11.09.2013 on the basis of secret information that he was standing at House No.941, Housing Board Colony and he was sent for medical examination (Ex.PX) after the medical opinion of the victim had been conducted which would be clear from the statement of Harjit Singh. The Investigating Officer thereafter on 13.09.2013 made a request for recording the statement of the victim under Section 164 Cr.P.C. which was accordingly done by Sh.Manpreet Singh, Duty Magistrate, Jind on 13.09.2013 (Ex.PB). A perusal of the same would go on to show that it was stated that he was the Vice-Principal of the school and he had been attracted to her since long and he had gifted her a watch which she refused. One day he had asked her to come to his house on the pretext of showing the maths paper and that he would also introduce her with his wife and on account of her uncle being also a teacher in the school she reached the house of the appellant but his wife was not present. She had asked to go back but he threatened to get her brother killed. She got frightened and then he committed rape upon her and asked her not to tell anything about it and made her sit in the auto. After some days, he spread rumours against her that she had boyfriends and one day, Mrs.Seema had telephoned her mother that she would not teach her

tuition. The In-charge, Mrs.Hemlata told her mother that her daughter was ill and to take her back from the school. When her mother reached the office of the Principal for obtaining permission, both Hemlata and the appellant were sitting there. The appellant told mother of the victim that many boys were following her daughter and the Principal asked her to take the certificate. When the mother had named her uncle, they had permitted her to go with her mother. On reaching home, she had narrated the entire incident to the mother who narrated the same to other members of the family.

9. The Investigating Officer got the radiological and dental opinion from the concerned wards of the General Hospital, Jind on 16.09.2013 (Ex.PM) where the Dental Surgeon opined that the age of the victim was 16-17 years and similar was the opinion of the radiologist. On the investigation being complete, the appellant was charge-sheeted under Sections 376 (2) (f) (i) IPC and Section 6 of the POCSO Act on 08.11.2013 and the charge was amended on 10.10.2014 at the defence stage to the extent that separate charge was specifically framed under Section 376 (2) (f) and Section 376 (2) (i) IPC.

10. A perusal of the FSL report (Ex.PI) dated 12.12.2013 would go on to show that human semen was detected on Ex.1 which was the underwear of the victim whereas semen could not be detected on the rest of the exhibits which were vaginal swabs, pubic hairs and also the underwear of the appellant. The sample had also been taken from the glans penis of the appellant. On the basis of the FSL report, Dr.Manju, Medical Officer, Jind, PW-5 submitted her affidavit (Ex.PK) which has

already been discussed earlier and stated that as per the FSL report (Ex.PI), the possibility of rape upon the prosecutrix cannot be ruled out. In cross-examination, it was put to her that at the time of medico-legal examination, no finding regarding rape could be given and it was only to be given after the receipt of the FSL report which she had done and that the police had never taken any separate opinion regarding the alleged rape. The semen strains on the underwear of the prosecutrix whether they were fresh or old could not be ascertained since they had dried and neither it could be stated as to how old they were. She admitted that she had referred the prosecutrix for age determination. Similarly, Dr.Parveen Kumar Boora, Dental Surgeon proved the application (Ex.PM) for ascertaining the age of the victim that he conducted the medical examination and gave a report as per his opinion as well as of Ortho Surgeon, the victim was found to be aged between 16-17 years. Similarly, PW-15, Dr.Satish Kumar Verma also deposed regarding the ossification test which had been conducted by the members of the board. Dr.Pankaj, Medical Officer, Jind, PW-18 proved the factum of medico legally examining the appellant on 11.09.2013 and stated that smegma was present and that the appellant did not perform sexual intercourse within 24 hours and stated that it could not be ascertained that he had committed sexual intercourse 6 months earlier and no opinion could be given regarding the said fact.

11. The prosecution examined the victim as PW-1 wherein she stood by her stand as given earlier in the complaint and the statement under Section 164 Cr.P.C. and stated to the extent that when she was in

11th class, the accused was the Class In-charge and he used to teach Maths in the 10th class. She reiterated her version and the additional aspect was that when she had told her mother the entire incident after being sent back by the school and her mother had told the same to the father and thereafter they had gone to the office of the SDM who had advised them to approach the police and on the way they met the police at Safidon Gate, Jind and got their statement recorded. She had further stated that the police took her to the house of the accused on the same very day, which would be in total contradiction to which the Investigating Officer would have to say. Thereafter she stated that she had been taken to the Civil Hospital, Jind where she was medico-legally examined. After 2-3 days of reporting of the matter, her statement had been recorded by the JMIC. In the cross-examination, she could not recollect whether she had got recorded her date of birth in her initial complaint and neither the fact that she had mentioned the date and time of occurrence and the fact that the accused was In-charge of the school. She admitted that she did not mention the time of visiting the house of the accused and she did not remember on which date she was brought back from the school by her mother on the asking of the teacher. It was only on the asking of the Court that she had admitted that she had been brought back from the school on 07.09.2013. The said statement does not match with her statement, Ex.PA and Ex.PB since there is no mention of 07.09.2013 before the police and the Magistrate.

12. She admitted that her father was not at home on the said date and they did not report the matter on the said day. He had come back at

night and on the next day, they had gone to the SDM, Jind who advised them to report the matter to the police but the SHO concerned was not present. She did not remember as to on which date they again started for the police station when the police party met them at Safidon Gate, Jind. She did not remember whether when her statement was got recorded (Ex.PA) and whether she had mentioned that they had gone to the SDM, Jind. She did not remember the date of her medico-legal examination conducted in the Civil Hospital. However, it was stated that it was conducted on the same day of reporting the matter to the police and it was done at the night which is in contradiction to the statement of Dr.Manju, PW-5 who stated to have examined her early morning on the next day which would be clear from the MLR (Ex.PL).

13. She stated that she was taken to the house of someone at Safidon Gate where her statement was recorded but she could not tell the name of the owner and the location of the house and the statements of her parents was also recorded which had taken about 1 ½ hours to complete the proceedings in that house. She did not notice as to how many persons gathered on seeing the police there and could not tell the name of the colony where the house was situated. She deposed that her class teacher was Hemlata and at that time she was studying in 10+1 and having various subjects including mathematics and the Maths Teacher was one Sunita Khatkar whereas the Accounts Teacher was Seema and that the appellant used to teach Maths to the 10th class. She admitted that he was not her class teacher. Regarding the incident of March, 2013, she stated that she used to go to school at 8 AM for examination which was over by

11 AM and she used to go by auto-rickshaw. She did not remember the date when the Maths examination was held and neither the distance between her school and the house. Her father was stated to have married twice and she had a step sister namely Nisha and she could not tell the exact age of her parents. There was no entry got done in the Registrar's Office or Municipality records regarding her birth and that she was born at home at Jind. She could not tell the age of any of the brother and sisters and stated that there were 4 brother and sisters alive and the name of her younger brother was Rajesh. She could not confirm whether she was got admitted in S.D. Secondary School by her mother and whether her mother had given birth proof at the time of getting admission and she denied the suggestion that she was more than 19 years of age.

14. It has also come forth that her uncle, Ramesh Bansal was teaching Maths for the students of 8th to 10th class in the same school for the last more than 10 years and was living jointly in the same house and went to school in his own car. She rarely accompanied her uncle to the school in the car and admitted that one Ram Niwas Bhardwaj was a friend of her uncle and on visiting terms with them. It was put to her whether the said teacher was there at the time of reporting the matter which she denied. She feigned ignorance regarding the date of retirement of the Principal Shri Rakesh Kumar in the month of July, 2014. She also denied the fact that her uncle and his friends were inimical towards the appellant and did not want him to be the Principal of the school and that they had hatched a conspiracy and got him booked in the said case. She could not confirm whether the said teacher had been suspended from the school and

she stated that she had passed her 10+1 examination from the said school but did not remember the marks obtained by her in the examination but she had passed all the subjects though it has come on record as Ex.D2 that she had got 67 marks in the subject of Maths as proved by DW-4, Sushil Kumar, Head Clerk. She further admitted that she had attended the school regularly from March, 2013 till the reporting of the matter in September, 2013 but she had never disclosed this fact to the teacher, class-mate and Principal and the co-students or her parents and uncle.

15. Strangely she denied her absence from the school on 01.09.2013 for 4-5 hours or that she was beaten by her parents, which is in sharp contradiction to what DW-2, Seema Singhal, the Commerce teacher has to say. She could not tell the number of the auto-rickshaw on which she went to the house of the accused. She admitted that it was in the main street and surrounded by many other houses. She did not raise any hue and cry as the accused had tied cloth in her mouth which admittedly has not been stated in Ex.PA. It was put to her to which she admitted that she visited the house of the accused 2-3 times but could not recollect the date and time of the visits. She stated that every-time she came back in auto-rickshaw and she did not disclose about the incident even to the auto driver. She admitted that the Principal had asked her mother to take the School Leaving Certificate as her mother was wishing to take her back home.

16. A perusal of the statement of PW-2, the mother of the victim would go on to show that on 07.09.2013, she got a telephonic message from Seema that she would not teach tuition to her daughter and that her

daughter would tell her everything about it. Similarly another message had been received from the teacher, Hemlata that her daughter was not feeling well and she should come to the school and take her back. She had come to the school and was informed by Hemlata that her daughter was not of good character and she had gone to the Principal of the school and he had also advised her to take her daughter back which she had done. Her daughter told her that the accused was threatening her and inviting her to his house for illegal acts and he wanted to have physical relationship with her and then she was informed about what had happened in March, 2013. She admitted that she had informed the same to her husband and they had consulted all other family members and they had gone to the office of the SDM, Jind on 10.09.2013 at about 7.30 A.M. who had enquired into the matter. Thereafter they had come back and received a call from the school that they should reach the Court complex where their statements were recorded. They had met the police in the evening of 10.09.2013 at Safidon Gate and got recorded their statements in the house of someone and thereafter, they had accompanied the police to Civil Hospital, Jind where medico-legal examination of their daughter was conducted.

17. In cross-examination, it was put to her that the date 07.09.2013 had not come forth in Ex.DA which is her statement recorded on 10.09.2013. It was also put to her that in the said statement she had not mentioned that Hemlata had told her mother that her daughter was not of good character and that in the statement it had not been recorded that the Principal had told her to take her home and take her certificate.

Similarly, it was also put to her in her said statement that there was no mention regarding visit to the office of the SDM and the enquiry and neither she could name the teacher who had asked her to reach the Court complex. She stated that the SDM, Jind had enquired into the matter and recorded statements of Hemlata, Seema and one master and also of the factum that her statement was not recorded. From there they had gone to her parental house and then received a telephonic call from the police and reached the Safidon Road, Jind at 9.30 P.M. She did not know the owner of the house where the statements were recorded of herself and her husband. She stated that her daughter was admitted in the school by her uncle, Ramesh Bansal and she did not remember whether the date of birth was recorded in the Municipal records or in the office of the Registrar (Births & Deaths). According to her, the admission was done by the victim's uncle and she did not know as to what documents had been produced. She stated that she had 3 daughters and one son and the eldest one Preeti who had got married 7 years back and after that, Nisha was also married 5 years earlier who was 23 years old. After Nisha was one son who had expired and thereafter the victim had been born. She denied the suggestion that the victim was 19 years of age and admitted that prior to the lodging of the FIR, she had never been told about the incident by her daughter who had neither disclosed the same to her uncle and neither she had disclosed regarding the factum of incident to her teachers, Principal and anyone in the family. She stated that the Class In-charge of her daughter was Hemlata and her daughter used to go to the school in the car of her Jeth, which is again in contradiction to what the victim had

stated. She admitted that Ram Niwas Bhardwaj was a teacher in the same school and a close friend of her Jeth and had brotherly relationship with him. She denied the fact that he was suspended and admitted that Rakesh Kumar was the Principal and the accused was the Vice-Principal of the school and that the Principal was going to retire in the month of July, 2014 but she did not know whether the accused was to become the Principal. She did not know whether there was any enmity between the accused and her Jeth and Ram Niwas Bhardwaj. She stated that she never visited the house of the accused and did not know the location of the house.

18. The date of birth of the victim was proved by the attested photocopy of the secondary examination certificate dated 31.05.2012 (Ex.PF) apart from the admission and withdrawal register which showed the same as 15.03.1998. Apart from the certificate issued by Rakesh Kumar, Principal (PW-4) on 24.09.2013 (Ex.PH) certifying the date of birth. He admitted that he did not know who had got the victim admitted in the school and admitted that the uncle of the victim was a Maths JBT Teacher and Ram Niwas Bhardwaj was also teacher in the primary wing and that he was to retire on 31.07.2014. Avnish Kumar, the appellant was junior to him and that his promotion was due after his retirement. He also admitted that Ram Niwas Bhardwaj was suspended once from the school and that Hemlata was the Class In-charge in 10+2 of the victim as was Sunita the Maths Teacher in 10+1.

19. Thus, it would be apparent that the appellant was not the Maths Teacher of the victim even in the 11th Class when the incident is

stated to have taken place. From the statement of the Principal also, it would be clear that none of the family members including the uncle who was working in the same school as a JBT Teacher had ever approached him regarding any misconduct on behalf of the appellant at that point of time. The Principal also admitted that proceedings were conducted by the SDM and stated that no direct statement of his was recorded before the SDM but the statements of Seema and Hemlata were recorded on 09.09.2013 at 10 A.M. including the father of the victim.

20. The perusal of the statement of English Lecturer, Hemlata Sharma, PW-7 who was the In-charge of 10+2 section and teaching English and was the Class Teacher of the victim would go on to show that another girl Sonu had told her that the victim had taken Rs.800/- from the appellant and he was demanding those from her. He had told Sonu that the victim was not having good character and that she was having many boyfriends and was addicted to intoxicant tablets. Sonu further stated to have told her that the accused was saying that there was something in the stomach of the victim and on hearing this, she had called Seema and Sonu had repeated her version before the teacher. Thereafter, the victim was stated to have come to her weeping and telling that she was unwell and wanted to go home and thus, she had rang up her mother to take her home since there was practice in the school that in case of any child being unwell, the parents are informed and the child was allowed to go home with the parents. The said facts all pertain to the incident of 07.09.2013 and that it was brought to the notice of the Principal who was sitting in another wing and the victim had been taken

back home.

21. The cross-examination also go on to show that she was Class In-charge of the victim for both 10+1 and 10+2 but did not remember who had taught her Maths in 10+1 whereas in 10+2 Sunita Khatkar was the Maths Teacher. Thereafter, she stated that the appellant never taught her Maths both in 10+1 and 10+2. She admitted that before 07.09.2013, there was never any complaint about the act and conduct by any teacher and the victim was regularly attending the school. It was her version that the statement was recorded before the SDM on 09.09.2013 at 10-11 AM and she could not say that the statement of any other person was recorded. She stated that she did not inform the police on 07.09.2013 and could not say whether the Principal informed the police or not. She could not admit or deny that Ram Niwas Bhardwaj was teacher in the school but was unaware of the relationship. She did not recollect whether the victim attended school on 01-02.09.2013 and denied the fact that there was groupism in the school.

22. A perusal of the statement of Harjit Singh, Sub-Inspector, PW-14 would go on to show that on the statement of the victim (Ex.PA), the formal FIR (Ex.PC) had been recorded and the medical of the victim was done on 11.09.2013 by moving an application (Ex.PJ). The accused had been arrested on the basis of the information received from an informer and as per the disclosure statement (Ex.PT), demarcation (Ex.PU) had been done on the same day and the accused was produced in the Court on the next day i.e. 12.09.2013 and sent to judicial custody. The statement of the victim was recorded on 13.09.2013 under Section 164

Cr.P.C. by moving the requisite application (Ex.PY) and the certified copy had been obtained and thereafter the site-plan (Ex.PS) had been prepared on 13.09.2013. The application (Ex.PM) had been moved for getting her age confirmed and the opinion of the doctor had been given vide Ex.PO. In cross-examination, he admitted that the statement of the victim had been recorded at a house between Safidon Gate but he did not know the name of the owner and the house nor the neighbour's name. He stated that he had never visited the office of the SDM, Jind in connection with the case and never collected copy of statement of any of the witnesses from the office of the SDM, Jind nor it was given to him by anyone. He stated that he could not tell the time of going to the General Hospital, Jind for medico-legal examination of the prosecutrix but stated that he reached prior to 12.00 midnight and remained in the hospital till 2.30/3.00 A.M. and thereafter, had gone to the place of occurrence straightway and prepared the rough site-plan at 3.30/4.00 A.M. which apparently is not correct. He admitted that he did not obtain the signatures of any persons on the site-plan (Ex.PW) and denied the suggestion that it had been prepared by him while sitting at the police station. He admitted that he did not know the name of the owner of the adjoining houses of both the sides and he did not join the owner of the house in the investigation of the case. He admitted that he had not verified who is the Maths Teacher of the victim and who was the Class In-charge in both 11th and 12th and who was the examination In-charge. He also admitted that he did not verify when she took her examination in the Maths and on which date and year and whether she had failed in the

said examination or not. He stated that he has not verified the attendance register whether she was present on 01-02.09.2013 and during the whole investigation, no one had told him the date of occurrence. He admitted that he had not obtained the birth certificate of the victim from the office of Registrar (Births & Deaths) and neither verified the siblings of the victim and their age. He admitted that the uncle of the victim was working as teacher in the said school and he had not verified that the accused was the Maths Teacher and he used to teach students upto 10th standard.

23. In the defence, the appellant in his statement recorded on 07.07.2014 under Section 313 Cr.P.C., stated that he has been falsely implicated as the uncle of the victim was inimical towards him and he had hatched a controversy with Ram Niwas Bhardwaj to debar him of his due promotion as Principal of the school after the retirement of Bharat Bhushan.

24. The Principal was also examined again as DW-1 who stated that the appellant was senior-most teacher of the school and was due for promotion after his retirement and had joined on 22.09.1984. Ramesh Bansal was also working in the school as JBT Teacher and was teaching in the higher classes and Ram Niwas Bhardwaj was also in the said school who was suspended once. The 11th class examination was held from 06.03.2013 to 19.03.2013 and the examination of Maths paper had taken place on 08.03.2013. It was stated that Seema was In-charge of 10+1 and Sunita Khatkar used to teach Maths to 10+1 class during the year 2012-13. The appellant was not the teacher of Mathematics of the

said class and Reena Madam was the In-charge of 10+1 examination during the said year. He also deposed in cross-examination that the appellant was teacher upto 10th standard and the victim was student since 9th standard and he might have taken the 10th class but he could not tell whether he had given her tuitions in the house.

25. Seema Singhal, Lecturer in Commerce, DW-2 proved the factum of attendance of the victim till March, 2013 and stated that she was absent on 01-02.09.2013 and she had taught English in 10+1 during the year 2013. She did not know in which class the victim had taken the admission in the school and admitted that she used to teach tuition to the victim in the year 2013. She deposed that she received phone call from the mother of the prosecutrix one or two days after Teacher's Day i.e. 05.09.2013. In cross-examination, she denied the knowledge whether the victim was taking tuition from the accused and stated that due to her personal problems she had refused to teach her.

26. Jai Parkash, DW-3 neighbour of the appellant residing in the Housing Board Colony stated that the wife of the appellant was also residing in the said house and his children also used to take tuition from the appellant including 2 daughters and vouched for his character. The detail marks of passing the 10+1 examination by the victim (Ex.D-2) were also brought on record by Sushil Kumar, DW-4 and the date-sheet (Ex.D1) who stated that no birth certificate from the MC, Jind was produced. In cross-examination he deposed that the appellant was In-charge upto 10th class.

27. Sukhbir Singh, JBT Teacher, Jat Primary School, Jind, DW-5

proved that the victim was admitted on 15.07.2002 in the 1st class and her date of birth was mentioned as 12.03.1998 and in figures it is mentioned as 15.03.1998 and she had been admitted by her sister, Nisha. As per admission No.8481 no birth certificate had been issued by the Registrar of Birth and Death or the Municipal authorities regarding the date of birth and neither any record from the chowkidar had been produced regarding the factum of age.

28. Keeping in view the above circumstances, the first thing which comes to mind of this Court is that there is an unexplained delay of 6 months regarding the incident which is stated to have happened on 13.03.2013 till the lodging of the FIR on 10.09.2013. No plausible explanation has been given regarding this aspect. It is highly improbable that the minor girl who has been sexually abused by her teacher on more than one occasion would not disclose this factum either to her parents or her teacher or any of her class fellows. It has already been noticed that it has come in her cross-examination that it was not a case of solitary abuse on a particular day when she had been called and rather it was her case that it happened on 2-3 occasions when she was called to the house where she had voluntarily gone and returned on an auto. The factum of being disturbed by such incident apparently never showed up at any point of time which is highly strange. The trigger point was only in September, 2013 in the next class where there seems to be some issue raised regarding her conduct or absence in which the appellant was also embroiled being the Vice-Principal and being present as per the statement under Section 164 Cr.P.C.

29. In **Ramdas & others Vs. State of Maharashtra, 2007 (2) SCC 170**, while allowing the appeals, it was noticed that there was 8 days delay and the evidence of the victim was not of such quality to sustain the order of conviction and the delay had to be considered in the background of the facts and circumstances of each case and it was a matter of appreciation of evidence by the Court of fact. Apart from that the Apex Court also dilated on the issue of victim being witness of sterling quality on whose sole testimony conviction could be sustained and therefore, granted the benefit of doubt.

30. Similar view was also taken in **Vijayan Vs. State of Kerala, (2008) 14 SCC 763**, wherein there was a delay of 7 months and there was no explanation given for the delay and it was held that the accused would be totally defenceless and it would be hazardous to convict on the sole oral testimony.

31. In **State of Punjab Vs. Gurmit Singh, 1996 (1) RCR CrL. 533**, the issue of delay was examined by the Apex Court while dealing with the acquittal by the Trial Court for offence under Section 376, 506 IPC wherein it was also noticed that delay in lodging of the FIR in sexual offences can be due to variety of reasons and also reluctance of the victim or family members to go to the police as the honour of the family is at stake.

32. As noticed, in the present case, we are coming across a situation where the delay is not after the incident as narrated to the police for which there can be a plausible explanation since there was a delay of around 5 days from the incident on 07.09.2013 and as to what happened

in the school and the victim narrated the fact to her mother. This delay would thus be covered as per the judgments of the Apex Court mentioned above but there is no explanation as to the delay which occurred on an earlier occasion between March to September, 2013 where the minor had not disclosed the said fact to her mother. Neither her mother at any stage noticed that the minor was facing any trauma or had withdrawn on account of the fact that she had been forced to undergo sexual assault by none other than her teacher on repeated occasions. In such cases, delay would be of paramount consideration and importance.

33. Reliance can be placed upon the judgment of the Apex Court in **Satpal Singh Vs. State of Haryana, (2010) 8 SCC 714**, wherein it was held that the delayed report gets bereft of the advantage of spontaneity. The danger of the introduction of a coloured version or an exaggerated account of the incident or a concocted story as a result of deliberations and consultations which would cast a serious doubt on its veracity would come into play. It was thus held that FIR should be lodged promptly and if there is a delay the prosecution has to satisfactorily explain the same.

34. In the present case, as noticed, the delay is of 6 months and no plausible reason has been given as to why the victim did not disclose these facts to her parents, her teachers and her uncle who was teaching in the same school or her friends regarding the ignominies she had undergone.

35. In **Narender Kumar Vs. State (NCT of Delhi), 2012 (6) SCR 148**, the benefit of doubt was granted while setting aside the

judgments of the Courts below by noting that if the evidence of the victim is considered in the totality of the circumstances, it do not inspire confidence and the true genesis of the crime had not been disclosed by the prosecution. In the said case, there was variation of the fact as to whether the victim knew the accused and there was a contradiction to that and the defence that she wanted him to reside with him in her house which he was not agreeing to and have to have an intimacy which was already going on.

36. In the present case, as noticed, the factum of the family having taken the matter to the SDM, Jind and on a issue arising out of some incident which had happened in the school in which the appellant could be responsible for the discipline in the school as the Vice-Principal and the factum of the victim being reprimanded on her behaviour and on account of the uncle teaching in the school. The jealousy factor of the impending promotions could have been the cause for falsely implicating the appellant apart from the lack of medical evidence which we have been confronted with for which benefit of doubt would necessarily go to him.

37. A Three Judge Bench of the Apex Court in **Parkash Chand Vs. State of Himachal Pradesh, (2019) 5 SCC 628**, acquitted the appellant when there was 7 months of delay in lodging of the FIR while noting that it would be unsafe to convict the appellant on the sole testimony of the victim as there were various circumstances on the basis of which the benefit of doubt had to be granted to him.

38. The delay as such has also led to a lack of any medical evidence in the form of proof of seminal strains from the swabs taken

from the body of the victim. Though PW-5, Dr.Manju has only opined regarding the aspect that the possibility of rape upon the prosecutrix could not be ruled out on seeing the FSL report. The medical examination report also goes on to show that though the hymen is ruptured but there is no connection with the accused and it could not be said as to whether it had happened on account of sexual interaction with the appellant due to the time-lag which has occurred of 6 months. It is highly strange that the minor girl's underwear would contain semen strains after the expiry of said period which were also not connected by the prosecution through the forensic lab as it admittedly had dried. The report of the FSL would also go on to show that though there was human semen exhibited but it could not be detected on the rest of the exhibits and neither there was any comparison made that the same could be correlated from the smegma samples taken from the appellant. In such circumstances, there is nothing on record in the form of medical evidence that the appellant could be connected with sexual assault upon the victim.

39. It is to be noticed that the victim has not specified either the date and time of the occurrence in the month of March and the allurement is only of showing of the examination paper of which it has come on record that he was not her teacher in the 11th class and therefore, the allurement also seems to be without any basis. It has also come in her statement that she had gone not once but 2-3 times to the house of the appellant and always came back in an auto. It is highly strange as it has already come in evidence that the wife was also living in the house and whether rape could have been committed upon the minor child in the

presence of the wife. It has come on record in the form of statements of the victim and her mother and other school teachers including the Principal that some proceedings had taken place before the SDM on 07.09.2013. The same has not been brought before the Court to show as to in what circumstances some incident had happened. Admittedly, the first incident happened on 07.09.2013 and the FIR had been lodged only on the 10.09.2013 late in the evening. Apparently, there was a trigger point as to some incident which had happened in the school regarding the conduct of the victim due to which her mother had been summoned and due to which the Principal had told her to take the School Leaving Certificate. Apparently, on account of the uncle working with the school at that point of time, extreme steps of expulsion had not taken place which eventually led to the lodging of the FIR 3 days later.

40. Another aspect on which no light has been thrown is that admittedly the first statement of the victim was recorded at 10 PM at Safidon Gate, Jind and the same was in the presence of a lady counsel, Ms.Pooja Verma who had been called telephonically at that point of time. As per the statement of both the victim and her mother, they had started for the police station and the police party had met them at the said place. The recording had been done at somebody's house as would come from the cross-examination and even the statements of the parents were also recorded. It is highly strange as the complainant was proceeding to the police station since as per their own case admittedly the SHO was not present on an earlier occasion. Even the mother in her cross-examination-in-chief stated that she met the police party at Safidon Gate

and her statement was recorded in the house of someone and then accompanied the police to Civil Hospital, Jind. The Investigating Officer, Harjit Singh, PW-14 also deposed to the same extent that the victim along with her mother had met them there in the presence of the lady counsel, Ms.Pooja Verma. In cross-examination, it has come that the police party had left the Police Station at 8.15 AM and reached the Safidon Gage at 8.30 AM and recorded the statement in somebody's house whom the Investigating Officer did not know. No explanation has been given as to how the lady advocate also reached the said place which only go on to show that the FIR had been registered after due deliberations.

41. These aspects have not been examined in proper perspective by the Trial Court which in our considered opinion has led to casting a doubt upon the whole case in the manner in which the appellant has been implicated. The deliberations which have taken place and the factum that the appellant was the Vice-Principal and was part of the disciplinary proceedings on account of which he has been roped in as it was stated by the victim that he was present on 07.09.2013, in her statement under Section 164 Cr.P.C. It is thus apparent that lot of deliberations took place before the lodging of the FIR after the incident of 07.09.2013 and the father had also been taken into confidence later. However, the FIR apparently was not lodged for almost 3 days and it was only on 10.09.2013 in the evening at 10 P.M., the FIR was lodged which gave sufficient time to implicate the appellant. It is also highly strange that the uncle was teaching in the school and on one hand, the statement of the

mother is to the extent that the victim used to go to school with her Jeth in the car whereas the statement of the victim is that she used to go on her own and not with her uncle. The factum of uncle teaching Mathematics at lower level and having a friend who was under suspension are all grounds to show that school politics could be the basis to falsely implicate the appellant who was in his way to succeed the outgoing Principal.

42. The argument raised by Mr.Punia that even the age of the victim has not been proved to be below 18 years is also one to be taken into consideration as admittedly, it would be apparent that 15.03.1998 was taken as to be the correct date to come to a finding that the victim was a minor. The statement of DW-5 would go on to show that the victim was earlier studying in another school namely the Jat Primary School, Jind. It is on that basis her date of birth has been mentioned as 15.03.1998 which got incorporated while she joined the subsequent school. There is nothing to show that there was any certificate issued by the Registrar (Births & Deaths) or the Municipal office regarding the date of birth. The statement of the mother is also to the extent that the admission was done by the uncle who was admittedly teaching in the school and therefore, it is only on the basis of the earlier entry made. Apparently, the date of birth has been accepted as 15.03.1998. In such circumstances, the finding which has been recorded on the said basis that the victim was below 18 years of age is also a mere presumption in the absence of unimpeachable evidence in the form of certificate from the Registrar (Births & Deaths).

43. Another aspect which also has to be noticed is that it has come on record that there were other siblings also who were far older than the victim. Rather in the first school, i.e., Jat Primary School, she had been admitted in the 1st class by her sister, Nisha in the year 2002, as has come on record by Sukhbir Singh, DW-5. The mother had admitted that Nisha was 23 years of age and had married 5 years earlier and in the intervening period, there was one son was born who had expired and thereafter, the victim had been born. Therefore, the finding that the age of the victim was proved to be 15.03.1998 and that she was less than 16 years and thus, by applying the provisions of Section 29 of POCSO Act also, the Trial Court was not justified while placing reliance upon the Secondary Examination Certificate as there was no official record of the State which has been produced regarding the age of the victim. As noticed, even the board of Doctors have opined that her age could be between 16-18 years and the principles which have to be kept in mind is that there can be a great variation on the said basis and the finding which has been recorded by the Trial Court that she was below 16 years of age has not been proved to the hilt by the prosecution on the basis of which presumption under Section 29 of the POCSO Act could be raised against the appellant.

44. It has also come on record that the father of the victim was married earlier and was having a child from the first marriage namely Nisha. As per the statement of the prosecutrix she had 4 brother and sisters alive including the daughter from the earlier marriage whereas the mother had stated that she had 3 daughters and one son and the son next

to Nisha had expired. Thus, there is contradiction between the number of siblings and also the argument that there was a threat perception to the brother that he would be got killed by the appellant as admittedly nothing has been brought on record to show that whether he was alive at that point of time the incident happened.

45. These are sufficient instances in the gaps of the statements and the contradictions which have come forth from the statement of the victim herself. It is settled principle that though the victim's statement could be the sole basis of conviction but if there is some doubt then corroboration is required and if the statement is not of sterling quality which in the present case does not inspire that much of confidence as it should have. The factum of delay in the FIR is another factor which has led to the absence of medical evidence to connect the appellant with the crime beyond a shadow of doubt. The delay in lodging of the FIR has wiped out all the evidence. These infirmities are of such nature which persuade us to take a view that the benefit of doubt must go to the accused. In such circumstances, merely because the medical of the prosecutrix goes on to show that her hymen was absent would not conclusively lead to the presumption that she had undergone sexual intercourse and that also with the appellant. Another aspect which also troubles this Court is presence of semen on the underwear of the prosecutrix after 6 months, which shows the over-anxiety of the prosecution somewhere but the strings were not connected with the FSL which also does not show that the semen strains were that of the appellant.

46. In similar circumstances, in **Santosh Prasad @ Santosh Kumar Vs. State of Bihar, AIR 2020 SC 985**, there was dispute going on between the parties who were closely related, allegations of rape were levelled against the brother-in-law. The Apex Court interfered with the concurrent orders of conviction passed by the Courts below by noting that except the deposition of the prosecutrix which had to be corroborated by the medical evidence, the manner in which the occurrence had taken place was held not to be believable. Resultantly, the solitary version of the prosecutrix was held not to be taken as gospel truth in the absence of any substantive evidence and the conviction which has been recorded solely on account of the evidence of the victim was set aside.

47. In **Md.Ali @ Guddu Vs. State of U.P., (2015) 7 SCC 272**, while allowing the appeals, the issue of delay was considered while noticing that the victim was missing from the house for almost 11 days. Resultantly, it was held that where there is a mark of doubt and the testimony of the victim is not natural, truthful and does not inspire confidence and not of such quality which could be relied upon and there is also delay in lodging of the FIR, then there is requirement to search for direct and circumstantial evidence which would lead assurance to the testimony. The said principles would also be applicable to the facts and circumstances of the present case.

48. Reliance can also be placed upon the judgment in **Rajesh Patel Vs. State of Jharkhand, (2013) 3 SCC 791** and **Rai Sandeep @ Deepu Vs. State of NCT of Delhi, (2012) 8 SCC 21** wherein it has been held that if the said principles are to be kept in mind, the solitary version

of the victim cannot be taken as gospel truth for its face value in the absence of any supporting evidence.

49. In the present case also, we are of the considered opinion that the conviction is based solely on the statement of the victim. It is strange to notice that even the father was given up by the prosecution on 21.01.2014 and he could have thrown some light as to what had transpired before the SDM, Jind. It is also to be noticed that the entire motive was the allurement to show the maths paper to the victim and nothing has come on record to show that she was poor in her studies or in that subject which would warrant her to be tempted by this allurement. Rather it has come on record that she obtained good marks in her 10+1 class examination which would be clear from the details of the marks (Ex.D-2). A perusal of the marks obtained in her secondary examination would also go on to show that she was a bright student and got 406 out of 500 with the grade point of 7.40 and her marks in the mathematics subject was not wanting in any manner which might have been the cause for allurement for a weak student. The factum that the teacher would call her home when other family members were present is also highly unlikely and all these aspects do not inspire confidence in the manner in which the allegations have been held to be proved by the Trial Court. Thus, we are of the considered opinion that there was something more than what has been put-forth which was not investigated and looked into by the investigating agency and neither brought on record by the victim and her relatives, for which the benefit has to go to the appellant. The fact that it could not be brought on record that the appellant was teaching her at the

relevant point of time which could have lead taking into confidence the victim to have gone to the house of the appellant, which is without even disclosing these facts to her parents or other friends and that also sitting in an auto on her own. These are various discrepancies which do not inspire any confidence in her statement. In view of the above glaring discrepancies, the sole deposition of the prosecution would not be of sterling quality that could be safely relied upon. Since the conviction is based solely on her statement and the medical evidence at that point of time being not available to corroborate the same, we cannot confirm the judgment of learned Trial Court in such circumstances.

50. In such circumstances, we are of the considered opinion in the cumulative circumstances that the appellant who has already undergone 8 years, 4 months and 25 days of sentence as per the custody certificate is entitled for the benefit of doubt as the prosecution has not been able to prove its case beyond the shadow of doubt. Resultantly, the present appeal is accepted and the appellant is acquitted of the charges forthwith. Since it is pointed out that there is no other case pending against him and he is ordered to be released from custody.

Accordingly, the present appeal is allowed.

(G.S. SANDHAWALIA)
JUDGE

August 9, 2022
sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No