

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1132 of 2019

Arising Out of PS. Case No.-413 Year-2017 Thana- MUFFASIL District- West Champaran

Sudarshan Ram, Son of Bijadhar Ram, Resident of Village - Amwa Majhar,
P.S.- Bettiah Muffasil, Dist.- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1147 of 2019

Arising Out of PS. Case No.-413 Year-2017 Thana- MUFFASIL District- West Champaran

Sujit Ram @ Sujeet Kumar, Son of Prabhu Ram, Resident of Village - Amwa
Majhar, P.S.- Muffasil, District- East Champaran

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1243 of 2019

Arising Out of PS. Case No.-413 Year-2017 Thana- MUFFASIL District- West Champaran

Deepak Ram, Son of Rama Shankar Ram @ Yado Lal Ram, Resident of
Village- Amawa Majhar, P.S.- Bettiah (Muffasil), District - West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1300 of 2019

Arising Out of PS. Case No.-413 Year-2017 Thana- MUFFASIL District- West Champaran

Sanjay Ram, Son of Babulal Ram, Resident of Village - Amawa Majhar, P.S.-
Bettiah Muffasil, Distt- West Champaran.

... .. Appellant/s

Versus

The State of Bihar



... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1132 of 2019)

For the Appellant/s : Mr. Ansul, Advocate
Mrs. Sagrika, Advocate
Mr. Aditya Pandey, Advocate
Mr. Anuj Kumar, Advocate
For the State : Ms. Shashi Bala Verma, APP
For the Informant : Mr. Bimlesh Kumar Pandey, Advocate
Ms. Anjali Kumari, Advocate
Ms. Vanshika, Advocate
Mr. Krishna Kant Pandey, Advocate

(In CRIMINAL APPEAL (DB) No. 1147 of 2019)

For the Appellant/s : Mr. Shashank Chandra, Advocate
Mr. Vatsal Verma, Advocate
Mrs. Kumari Shubham, Advocate
For the Informant : Mr. Bimlesh Kumar Pandey, Advocate
Ms. Anjali Kumari, Advocate
Ms. Vanshika, Advocate
Mr. Krishna Kant Pandey, Advocate
For the State : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1243 of 2019)

For the Appellant/s : Mr. Sanjeev Kumar Shrivastava, Advocate
Mr. Satyapal Singh, Advocate
For the Informant : Mr. Bimlesh Kumar Pandey, Advocate
Ms. Anjali Kumari, Advocate
Ms. Vanshika, Advocate
Mr. Krishna Kant Pandey, Advocate
For the State : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1300 of 2019)

For the Appellant/s : Mr. Sanjeev Kumar Shrivastava, Advocate
Mr. Satyapal Singh, Advocate
Mr. Umesh Chandra Verma, Advocate
For the Informant : Mr. Bimlesh Kumar Pandey, Advocate
Ms. Anjali Kumari, Advocate
Ms. Vanshika, Advocate
Mr. Krishna Kant Pandey, Advocate
For the State : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

CAV JUDGMENT

(Per HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 17-05-2023



Since all these criminal appeals 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.

2. The name and the identity of the victim are being concealed in the present judgment and order and, since she has deposed at the trial as PW-6, she is being referred to as PW-6 herein.

3. By the impugned judgment and order dated 06.08.2019/ 14.08.2019 passed by the learned Additional District & Sessions Judge 1st -cum- Special Judge POCSO, West Champaran at Bettiah in Bettiah (Muffasil) P.S. Case No. 413 of 2017 (CIS No. 12/2018), the appellant has been convicted and sentenced as under:

Cr. Appeal (DB) No. 1132 of 2019				
Appellant's name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sudarshan Ram	363 of the IPC	RI for five years	5,000/-	SI for one year
	366-A of the IPC	RI for 7 years	10,000/-	SI for one year
	376-D of the IPC	RI for 20 years	50,000/-	SI for two years
	6 of the POCSO Act	RI for 10 years	50,000/-	SI for two years
Cr. Appeal (DB) No. 1147 of 2019				
Appellant's name	Conviction under Section	Sentence		



		Imprisonment	Fine (Rs.)	In default of fine
Sujit Ram	363 of the IPC	RI for five years	5,000/-	SI for one year
	366-A of the IPC	RI for 7 years	10,000/-	SI for one year
	376-D of the IPC	RI for 20 years	50,000/-	SI for two years
	6 of the POCSO Act	RI for 10 years	50,000/-	SI for two years
Cr. Appeal (DB) No. 1243 of 2019				
Appellant's name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Deepak Ram	363 of the IPC	RI for five years	5,000/-	SI for one year
	366-A of the IPC	RI for 7 years	10,000/-	SI for one year
	376-D of the IPC	RI for 20 years	50,000/-	SI for two years
	6 of the POCSO Act	RI for 10 years	50,000/-	SI for two years
Cr. Appeal (DB) No. 1300 of 2019				
Appellant's name	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sanjay Ram	363 of the IPC	RI for five years	5,000/-	SI for one year
	366-A of the IPC	RI for 7 years	10,000/-	SI for one year
	376-D of the IPC	RI for 20 years	50,000/-	SI for two years
	6 of the POCSO Act	RI for 10 years	50,000/-	SI for two years

4. The father (PW-5) of the victim (PW-6) made a written report to the Officer-In-Charge, Bettiah Muffassil Police Station, West Champaran on 03.10.2017 alleging therein that his



daughter (PW-6) aged 16 years had gone to a coaching centre. According to him, the appellant Sujit Ram of Criminal Appeal (DB) No. 1147 of 2019, appellant Sanjay Ram of Criminal Appeal (DB) No. 1300 of 2019, Manju Devi, the mother of appellant Sujit Ram had kidnapped the victim (PW-6), a minor, for marriage.

5. The victim was subsequently recovered and her statement was recorded under Section 164 of the CrPC before the learned Judicial Magistrate Ist Class, West Champaran at Bettiah on 07.10.2017. She narrated in her statement recorded under Section 164 of the CrPC that when the victim was going to the coaching centre at 08:00 A.M., the appellant Sujit Ram took her to a fair and made her consume some water. After having consumed water, she became semi-unconscious. From there, she was taken to the railway station and was made to sit on a train, whereafter, she became unconscious. When she regained consciousness, she found herself in Gorakhpur. When she requested appellant Sujit Ram to take her back to her house, the appellant Sujit Ram again made her drink some liquid. When she came to Bagaha, the appellants Sudarshan Ram, Deepak Ram and Sanjay Ram took her to the room of appellant Sudarshan Ram, whereafter, the appellant Sujit Ram and the



victim were locked in a room. The appellant Sujit Ram, thereafter, committed rape upon her. Subsequently, the appellant Sudarshan Ram also committed rape upon her. Two others were standing in the room at the time of the commission of rape. She had become unconscious and according to her, she did not know what had happened to her when she was in the state of her unconsciousness. The victim was examined by a lady medical officer on 06.10.2017 after she was recovered who, *prima facie*, found the victim's age to be between 17 to 19 years. She opined that according to the pathological, physical and radiological findings, there was no sign of sexual assault on her, nor there was any injury on her internal and external genitalia. The appellants who were apprehended were also examined by a doctor on 06.10.2017. Subsequently, the victim was again made to undergo a medical examination by a medical board of three doctors on 08.10.2017, also for determination of her age.

6. The police, upon completion of the investigation submitted a chargesheet on 10.12.2017 against these appellants giving a clean chit to the other two persons named in the F.I.R., namely Prabhu Ram, father of the appellant Sujit Ram and Manju Devi, mother of the said appellant. After taking cognizance of the offences and commitment of the case to the



court of sessions, charges were framed against these appellants for the commission of the offences punishable under Sections 363, 328, 366-A and 376-D read with Section 34 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act ('POCSO Act' in short). The appellants denied the charges and claimed to be tried.

7. At the trial, the prosecution examined nine witnesses including the IO (PW-9), the Doctor who had examined the victim (PW-5) on 08.10.2017, PW-7 (the Doctor who had examined the victim on 06.10.2017), the victim (PW-6), the victim's father (PW-4), the victim's mother and three uncles of the victim; PW-1, PW-2 and PW-3. The prosecution brought on record by way of evidence the signature of the victim on her statement recorded under Section 164 of the CrPC (Exhibit 2), first and second medical report (Exhibit 3/a, 3), *fardbeyan* (Exhibit 4), the signature of the S.H.O. on the F.I.R. (Exhibit 4/a) and the marksheet-cum-certificate of Xth Class of PW-6 (Exhibit 5).

8. The defence also attempted to bring on record the letter dated 04.10.2017 and the certified copy of the third medical report conducted on 18.01.2019 which was marked as Exhibits A and B but it was not proved by any defence witness



and the same was accordingly tendered by the defence. Upon appreciation of the evidence of the prosecution's witnesses, the learned trial court has held the appellants guilty of the offences punishable under Section 363, 366-A, 376-D of the I.P.C. and Section 6 of the POCSO Act, by the impugned judgment dated 06.08.2019. They have, however, been acquitted of the charge of commission of the offence punishable under Section 328 of the I.P.C. The trial court, while recording findings of conviction has taken aid of Sections 29 and 30 of the POCSO Act which raises a presumption of commission of an offence by an accused facing prosecution under the provisions of the POCSO Act, unless otherwise proved.

9. We have heard Mr Ansul, learned counsel for the appellant Sudarshan Ram, Mr Shashank Chandra, learned counsel for the appellant Sujit Ram, and Mr Sanjeev Kumar Srivastava, learned Advocate for the appellants Deepak Ram and Sanjay Ram. Ms. Shashi Bala Verma, learned Additional Public Prosecutor has represented the State and Mr. Bimlesh Kumar Pandey, learned advocate has appeared on behalf of the informant.

10. Before referring to the submissions made on behalf of the parties, it is considered apt, in the facts and



circumstances to notice the evidence of the prosecution's witnesses. To have a holistic view of the prosecution's case, we are noticing the evidence of the IO (PW-9) first. The IO has described the east-facing house of one Ram Darshan Singh on the western side of PCC Road running from *Harivatika Chowk* to *Paschim Chowk* as the first place of occurrence. According to him, he had obtained CDR (Call Detail Report, for short) of the mobile number of the accused and from the tower location he could gather that one of the accused was at Bagaha. The second place of occurrence, according to the IO, is a two-room railway quarter 'No. E-15' at Bagaha with a *verandah* and a kitchen. In the left room of the house, the occurrence of rape was committed. He examined during investigation Kanchan Ram, Shiv Pujan Ram, Dhruv Ram, Jai Prakash Ram. It is noted at this juncture that none of these persons were examined at the trial.

11. He further deposed that he had reached Bagaha Patkhauri Police Outpost on 04.10.2017, where he learnt that the appellants and the victim were recovered from the Bagaha railway quarter premises. It is pertinent to notice at this juncture itself that no police personnel of Patkhauri Police Outpost has been examined at the trial. The IO visited the second place of



occurrence for the first time on 21.10.2017. At Patkhauli Police Outpost, he had searched the appellants but nothing incriminating was recovered from them nor the Incharge of Patkhauli Police Outpost had handed over to him any article recovered from the appellants. It is curious to note that according to the evidence of the IO, the victim was kept at the Bettiah police station from 04.10.2017 to 08.10.2017. The appellants, who were arrested, were produced before the Court on 07.10.2017. According to the IO thus, the victim and the appellants remained at the police station from 04.10.2017 to 07.10.2017. In the meanwhile, the first medical examination of the victim was conducted on 06.10.2017. On 07.10.2017, the IO made an application before the Chief Medical Officer for the constitution of a second medical board. However, no reason was recorded in the case diary justifying requirement of the constitution of a second medical board.

12. Though, in his deposition, the IO testified that the victim's father had made an application to the Superintendent of Police, Bettiah as regards his dissatisfaction with the first report of the medical board and, therefore, a request was made for a second medical examination but the same was not mentioned in the case diary. The IO had not recorded the statement of any



personnel of Patkhauli Police Outpost where the victim and the appellants were found by the IO. It is noteworthy, as has been noted hereinabove, that according to the deposition of IO, he had learnt at Patkhauli Police Outpost about the recovery of the victim and the appellants from the railway quarters. In his cross-examination, the IO reiterated that he had not mentioned in the case diary the reason why the second medical examination of the victim was conducted. According to him, though at the second place of occurrence, he had found a bed sheet, he had not seized the same. He also deposed that the victim did not have the opportunity to bathe between the time of her first medical examination and second medical examination. Further, from the date when the IO had recovered the victim from Patkhauli Police Outpost till she was made to undergo a second medical examination, she was wearing the same dress that she was wearing at the time of occurrence. Neither, the dress that the victim was wearing at the time of occurrence was handed over to him nor he had seized the same. He further deposed that the parents of the victim were not allowed to meet her though they were informed about the recovery of the victim while proceeding to Patkhauli Police Outpost. Further, the victim was not allowed to meet her parents at the time of the first and



second medical examinations, nor they were present. The third medical examination of the victim was conducted under the Court's order. He also deposed that the independent witnesses had told him during the investigation that the appellant Deepak Ram had also gone with the father and mother of the victim for searching the victim after he was informed about the occurrence. After arresting the appellants and prior to their production before the Court they were not given any opportunity to take a bath or change their clothes and they were wearing the same clothes when they were subjected to medical examination. The clothes of the appellants were not seized, and thus there was no question of the clothes being sent for any forensic examination. The appellant Sudarshan Ram was a railway employee but he (the IO) did not investigate the hours during which he was on duty. There was no *Sanha* lodged in Patkhauli Police Outpost about the victim's missing. He did not have any knowledge as to whether the victim was under the influence of any drug or not. Her statement was not recorded by him under Section 161 of the CrPC.

13. After having noticed the evidence of PW-9, the IO, it would be gainful to notice the evidence of two other most important witnesses i.e. the mother of the victim (PW-4) and the



father of the victim (PW-5).

14. PW-4 deposed that the appellant Sujit Ram was a co-villager and once or twice he had visited their residence located at *Harivatika Chowk*. Since the victim had not returned home till 02:00 P.M. from the coaching centre, her husband (PW-5) had started searching for her. When PW-4 informed the younger brother of her husband Ajay Shah (PW-1), he told her that he (PW-1) had seen the appellant Sujit Ram and the victim together near *Meena Bazaar*. She was informed by Bettiah police that all four appellants and the victim were at Bagaha and, accordingly, she went with Bettiah police to Bagaha, wherefrom, the appellants and the victim were brought to Bettiah Mufassil police station.

15. PW-5, the father of the victim, deposed at the trial that he and his wife (PW-4) were taken by Bettiah Mufassil police to Bagaha Patkhauri Police Outpost, where, these appellants and the victim were present. From Patkhauri Police Outpost all the accused persons and the victim were brought by Bettiah Mufassil police. He deposed that the victim had told him that the appellants had committed rape on her. He also deposed that her daughter was a student of Intermediate (Ist Year). It is noteworthy to mention that he deposed at the trial that he had



gone to register F.I.R. on 04.10.2017. Though, in the written report, the date has been mentioned as 03.10.2017, it appears from the formal F.I.R. that the information regarding the occurrence was received by the Bettiah police station at 09:00 AM on 04.10.2017. On 04.10.2017, Bettiah police station informed that the victim was in a police station, whereafter, he had gone with his wife and police personnel of Bettiah Mufassil police station to Bagaha Patkhauli Police Outpost, where the victim was present. The statement of the victim was not recorded. He denied the suggestion that the victim was in love with the appellant Sujit Ram with whom she wanted to marry, which was opposed by the informant because the appellant Sujit Ram belonged to a Scheduled Caste. He also deposed that after the recovery of the victim, he got an opportunity to talk to the victim on 05.10.2017 in the morning when his wife (PW-4) was also there. He further testified that the appellant Sujit Ram happened to be the uncle of other accused persons/appellants.

16. We proceed to examine next the evidence of the most important witness i.e. the victim (PW-6) herself. In her examination-in-chief, while reiterating what she had stated in her statement under Section 164 of the CrPC, she deposed that she had found herself at Gorakhpur Railway Station and



subsequently at Bagaha Railway Station. At the instance of appellant Sudarshan Ram, she had gone to the quarter of Sudarshan Ram, where Sudarshan Ram had put the victim and the appellant Sujit Ram in a room and had shut the door from the outside. She deposed that despite her dissuasion holding the feet of the appellant Sujit Ram, Sujit Ram committed rape upon her when the appellants Deepak Ram and Sanjay Ram were standing in the room. She also deposed that she had not met appellant Sujit Ram before 03.10.2017. On the date of occurrence, she had not reached the coaching institute. The appellant Sujit Ram had persuaded her to visit the fair. They talked with each other at the Chowk for five minutes and thereafter the appellant Sujit Ram took her to the fair. It took two and a half hours for them to reach the fair from *Harivatika Chowk*. She also deposed that when they were about to reach the fair and she could see the fair from that point, the appellant brought water for her, though she had not asked for any. From where had he brought the water, she was not able to say. She only remembered that after having consumed water, she had come to Bettiah Railway Station but she was not able to say how was she brought to the railway station using which conveyance. When she reached Gorakhpur, she regained



consciousness in the night. She was not able to say as to what had happened to her bicycle in which she had come to *Harivatika Chowk*. Though there was a rush at the platform of the Gorakhpur Railway Station, she did not raise any alarm. The appellant Sujit Ram had gone to bring water for her and returned with water after 5 to 7 minutes. In the meanwhile, she did not raise any alarm, nor talked to anyone, though she had seen one policeman also in the meanwhile. She came from Gorakhpur to Narkatiyaganj but she could not say when the train had left Gorakhpur. She had gone on foot from the platform to the railway quarter. She also deposed that on 04.10.2017 in the evening, the police had apprehended her along with these appellants. From the tenor of the deposition of the victim, it appears that according to her, she was caught by the police and taken to the police station on the evening of 04.10.2017 along with these appellants. Contrary to the evidence of the Investigating Officer, the victim deposed that her parents used to meet her at the police station where she had remained from the date she was recovered till the date her second medical examination on 08.10.2017 was conducted. In her cross-examination, she also deposed that when she was at Gorakhpur, she was knowing that the appellant Sujit Ram had



made her elope with him after intoxicating her. She also deposed that at Gorakhpur, the appellant Sujit Ram did not misbehave with her.

17. PW-1, the uncle of the victim, deposed that he had seen the victim with appellant Sujit Ram at 10:00 AM on 03.10.2017 at *Meena Bazaar*. According to him, he learned in the evening that appellant Sujit Ram, Sanjay Ram and Deepak Ram had taken the victim to Gorakhpur and thereafter, she returned to Bagaha and also learned that she had gone to the quarter of Sudarshan Ram. According to him, he had informed Patkhauri Police Outpost and along with him, the police had gone to the quarter of the appellant Sudarshan Ram from where the victim was recovered with the appellants Deepak Ram, Sudarshan Ram, Sujit Ram and Sanjay Ram. According to PW-1, the victim had disclosed to him the misdeeds committed by these appellants. In his cross-examination, he deposed that he had not told his brother (the informant) that he had seen the victim loitering in *Meena Bazaar* with the appellant Sujit Ram. He also deposed that on the next day at 07:00-08:00 PM, he had gone to Patkhauri Police Outpost with Deepak Kumar Shah, Pramod Kumar Shah and another person. With him, the parents of the victim had not gone to Patkhauri Police Outpost. At about



09:00 PM, they had gone to the railway quarter along with 4-5 police personnel. Whereas PW-1 and his companions stayed outside the quarter, the police entered the quarter and about 5-7 minutes thereafter, they came out with the victim and these appellants. The statement of PW-1 was not recorded by the police at Patkhauli Police Outpost. The Police from Bettiah had reached at 11:30 PM. The statement of PW-1 was not recorded even by Bettiah police. PW-1 was not examined during the investigation and for the first time, he was deposed at the trial.

18. PW-2, another uncle of the victim also deposed that he had seen the victim and the appellant Sujit Ram loitering together in Bettiah Town when he was going to *Hospital More* to purchase medicines. In the evening, on enquiry from his elder brother, he had told him that he had seen the victim moving with the appellant Sujit Ram at *Hospital More*. Upon further enquiry, they learned that they were hiding in the railway quarter and accordingly they had gone to the police station and then to the railway quarter. From the railway quarter, the appellants and the victim were caught by the police. The victim is said to have disclosed to the police that the appellants had committed rape upon her.

19. PW-3, Pramod Sah, another uncle of the victim,



deposed that he had seen the victim and the appellant Sujit Ram together, talking to each other at about 09:00 AM on 03.10.2017 and subsequently, he learned from Ashok Sah (PW-5) that the victim had eloped with the appellant Sujit Ram. Later, he learned that they were in Bagaha. Accordingly, they went to Bagaha Patkhauli Police Outpost. According to him, the victim was recovered jointly by Bettiah Mufassil Police and Bagaha Patkhauli police from the railway quarter, where the appellants and the victim were 'caught'.

20. Coming to the medical evidence of Dr Akansha (PW-7), who had examined the victim on 06.10.2017, deposed that the victim was menstruating at the time of examination and no injury was present on her internal or external genitalia. She was referred to Radiology Department for X-ray. According to her, there was no recent sign of sexual assault. The age of the victim was between 17-19 years. She deposed that she had not found any sign of violence or injury on the person of the victim and especially the private parts of the victim. Regarding the age of the victim, she deposed that the same was solely based on the finding of the radiological examination recorded by the Radiologist.

21. PW-8, Dr Manu Priyadarshini, was a member of



the Board which had examined the victim four days after she was recovered, on 08.10.2017 at 06:30 PM. She proved the following opinion recorded by the medical board upon examination held on 11.10.2017:-

"1. On the basis of physical, dental and radiological findings, the age of the victim is 16 years $\pm$ 1 year (Sixteen years plus minus one year)

2. The condition of the hymen and presence of blood clots suggest that a hard blunt cylindrical object (e.g.) penis was entered through her private part.

3. The culture report of vaginal swab suggests that the victim has been infected with grave negative organisms and requires treatment with amikacin or azithromycin.

M.I. (i) linear scars marks dorsum of left hand.

(ii) Scar mark above right eyebrow."

22. In the report, it was not mentioned as to under whose order, the second medical board was constituted. Though a letter was received from the office of the Civil Surgeon, Bettiah in this regard, the same was not available on record at the time of trial. Based on the culture report of the vaginal swab of the victim, PW-8 opined that the victim was infected with the "gram-negative organism" and required treatment with medicine. In response to a question during the cross-



examination, PW-8 further deposed that she was not sure whether penis was inserted into the private part of the victim and that the injury as mentioned in the report could be caused by masturbation with an external object.

23. Mr. Ansul, learned counsel appearing on behalf of the appellant Sudarshan Ram, has argued that the victim does not appear to be truthful in her deposition at the trial and her version of the occurrence is full of absurdities. He has submitted that according to her deposition, she was made to move from one crowded place to another. To justify the reason why she did not raise any alarm, she developed a case that she was intoxicated by the appellant Sujit Ram because of which she had become semi-unconscious/ unconscious and was thus unable to raise any protest against the appellant Sujit Ram. He has argued that the charge against the appellant of having made the victim consume an intoxicant has not been proved at the trial and, accordingly, the appellant Sujit Ram has been acquitted of the charge of commission of an offence punishable under Section 328 of the IPC. There is no scientific evidence nor any other evidence than the oral evidence of the victim herself to prove that she was seen by anyone in an unconscious state, at any point in time. He has relied on the Supreme Court's decisions in



the cases of *Krishan Kumar Malik vs. State of Haryana* reported in *(2011) 7 SCC 130* and *Santosh Prasad vs. State of Bihar* reported in *(2020) 3 SCC 443* to contend that a sterling witness should be of very high quality and calibre, whose version should be unassailable and that there should be consistency in the statement right from the starting point till the end and the same should also be a natural statement. He has further argued that medical opinion does not corroborate the allegation of rape. He has further argued that in the background of the fact that there were conflicting medical opinions, a third medical board was constituted under the orders of this Court passed in a bail matter. The third medical board, after having considered the contradictory reports, opined that no sexual assault had been committed upon the victim and that the discrepancies regarding the findings between the two examinations could be on account of injury caused by some other means between the two medical examinations. He has submitted that the victim was made to stay in the police station from the date of her recovery on 04.10.2017 till at least her second medical examination conducted on 08.10.2017. The age of the victim in the first medical examination has been found to be between 17-19 years, whereas, the second report opined her



age to be 16 plus-minus half years. According to him, the doctors have not given a definite opinion that the victim was subjected to any sexual assault, that too by four adults. He has further argued that the second place of occurrence i.e. the railway quarter at Bagaha has not been proved by the prosecution at the trial for the reason that the IO had recovered the victim from Patkhauri Police Outpost and there is no evidence that any occurrence had taken place in the said railway quarter No. E-15. Accordingly, he contends that the prosecution failed to prove the commission of rape by not proving the second place of occurrence. Further, no scientific investigation was conducted after the victim and all these appellants were apprehended together by the police, in the wake of the accusation by the victim that she had been raped by all four persons. The victim (PW-6) deposed that her leggings contained blood-stained marks. The clothes, neither of the victim nor the appellants were sent for forensic examination. He has also submitted that in all fairness, the police ought to have resorted to the provision under Section 53A of the CrPC, there being an accusation of commission of rape and the appellants, according to the prosecution's case, were apprehended by the police with the victim. He further submits that the ingredients essential to



make out an offence of kidnapping a minor, punishable under Section 363 of the IPC are absent and, therefore, the conviction of the appellant under the said Section is unsustainable. He has argued that the offence punishable under Section 366-A of the IPC is also not proved and that the case of the prosecution, as set up at the trial of commission of the offence of kidnapping and subsequent rape, is highly improbable, which is evident from close analysis of the evidence adduced at the trial.

24. Dealing with the statutory presumption under Sections 29 and 30 of the POCSO Act, he has submitted the statutes which create a reverse burden of proof proceed on the basis that if a particular state of facts exists then it is on the accused to prove the existence of such facts as improbable or not existing at all. He has argued that Section 29 of the POCSO Act cannot be looked at as a mandatory presumption of guilt as an essential element of the offence, and to apply such mandatory presumption, it is important to ascertain the basis of facts on which it rests is established. Placing reliance on the Supreme Court's decision in the case of *Noor Aga vs. State of Punjab and another* reported in *(2008) 16 SCC 417* he has submitted that whether the burden on the accused is a legal burden or a evidentiary burden would depend on the extant statute. He



contends that proof of a basic fact or foundational fact is necessary for the existence of presumption of another fact i.e. the guilt of a person facing trial for the commission of an offence punishable under the relevant provisions of the POCSO Act.

25. The arguments advanced by Mr. Ansul have been adopted by learned counsel representing the appellants in Criminal Appeals (DB) No. 1147 of 2019, 1243 of 2019 and 1300 of 2019.

26. Ms. Shashi Bala Verma, learned Additional Public Prosecutor has submitted that the victim has been found to be a minor. In the present case, there is overwhelming evidence to the effect that the appellant Sujit Ram had persuaded the victim to come along with him to visit a *Mela* and had thereafter taken her to the railway quarter i.e. the second place of occurrence where she was sexually assaulted by all these appellants. According to her, the prosecution has been able to establish the prosecution's case of abduction/kidnapping of the victim by the appellant Sujit Ram within the meaning of Section 361 of the IPC punishable under Section 363 thereof. The essential ingredients to establish the commission of an offence punishable under Section 366-A are available, there being a definite case of



the prosecution that after the victim was brought by the appellants to the railway quarter, she was sexually assaulted by the appellant Sudarshan Ram. Two other appellants actively participated in the commission of the offence of kidnapping and subsequent rape of the victim. She accordingly submits that the impugned finding of conviction recorded by the trial court does not require interference.

27. Mr. Bimlesh Kumar Pandey, learned counsel appearing on behalf of the informant has also submitted that the finding of conviction does not require any interference as the prosecution was able to prove at the trial that the victim was minor as on the date of occurrence, based on the date of her birth recorded in matriculation certificate. Applying the presumption of guilt envisaged under Section 29 of the POCSO Act, the trial court has rightly convicted these appellants and imposed appropriate sentences accordingly. He has relied on the Supreme Court's decision in the case of *Vijay@ Chinee vs State of Madhya Pradesh* (AIR 2010 SCW 5510). He has also submitted that even if the investigation is found to be defective on certain aspects the same should not be the basis for acquitting the convict.

28. We have carefully perused the impugned



judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

29. There are certain glaring aspects which have emerged from the evidence of the witnesses and other materials on record that we consider beneficial to refer to at the beginning of our discussion. According to the prosecution's case, these appellants and the victim were found in the premises of Bagaha railway quarter by the officials of Patkhauli Police Outpost. With the police personnel of Patkhauli Outpost PWs. 1, 2 and 3, the uncles of the victim, had gone to the railway quarter. Whereas the police personnel of Patkhauli Outpost had gone inside the said railway quarter, these witnesses remained outside. The expression used by PW-2 and PW-3 is to the effect that the victim and these appellants were caught (*pakri gayi*) in the railway quarter by the police. PW-1 in his deposition, however, stated that the victim was recovered with these appellants. From the railway quarter, the victim and all these appellants were brought to Patkhauli Outpost. The criminal case was registered with Bettiah Muffasil Police Station. After they were brought to Patkhauli Outpost, the Bettiah Muffasil Police and the parents of the victim had also come to Patkhauli Police



Outpost. The statement of no police personnel of Patkhauri Police Outpost, who had found the victim and other persons present in the railway quarter, was ever recorded by the Investigating Officer. Possibly, they would have been the best witnesses to explain the circumstance and situation in which the victim and these appellants were found in the railway quarter. The statement of the victim was not recorded by the IO when he found the victim for the first time at Patkhauri Police Outpost on 04.10.2017. The IO deposed that there was no *Sanha* recorded with the Bagaha Patkhauri Police Outpost regarding the victim's missing. In this connection, it is the evidence of PWs 1, 2 and 3 that they had got information that the victim was 'hiding' with the appellants in the railway quarter and accordingly they had approached Patkhauri Police Outpost whereafter the officials of Patkhauri Police Outpost had gone to the second place of occurrence and brought these appellants and the victim to Patkhauri Police Outpost. There is, however, no evidence other than the evidence of PWs. 1, 2 and 3 as to what had made Patkhauri Police personnel go to the railway quarter to recover the victim and apprehend these appellants. The failure on the part of the prosecution to justify the non-examination of the police personnel of Patkhauri Police Outpost, who, according to



the prosecution's case, had gone to the second place of occurrence and brought the victim and the appellants to Patkhauri Police Outpost, goes to the root of the matter on the point of commission of sexual assault at the second place of occurrence.

30. In quick succession, we take note of the evidence of the IO (PW-9) who deposed at the trial that he had visited the second place of occurrence 17 days after the arrest of these appellants. He had found nothing incriminating in the railway quarter nor had he seized the bed-sheet. Whether the quarter from where these appellants were arrested and the victim, according to the prosecution was recovered, was locked by Patkhauri Police Outpost or whether someone else was also staying there in that quarter? There are a number of other questions which have remained completely unanswered as regards the place of occurrence, given the evidence of PW-1, PW-2 and Pw-3 that they were asked by the police to keep waiting outside the quarter.

31. We accordingly find substance in the submission made on behalf of the appellants upon overall analysis of the evidence adduced at the trial that the prosecution failed to establish the second place of occurrence where, according to the



prosecution, the victim was sexually assaulted.

32. The next glaring aspect is the conduct of the police in keeping the victim (a minor according to the prosecution) and these appellants at the police station till 10.04.2017. Further, in the wake of the accusation made by the victim of commission of rape by the appellants Sujit Ram and Sudarshan Ram, what prevented the police from seizing the clothes which they were wearing at the time of occurrence and sending them to forensic examination, is a mystery. In the Court's opinion, in view of the specific case of the victim of sexual assault, soon before the appellants were apprehended, forensic examination of the clothes, they were wearing, would have been crucial for the prosecution and defence both. Such failure could be deliberate or unintentional but it has certainly caused prejudice to the appellants.

33. Thirdly, the first medical examination of the victim was done on 06.10.2017. As has been noted hereinabove, no sign of any sexual assault was found during the first medical examination. After the first medical examination, the victim was made to stay at the police station. The second medical examination was done on 08.10.2017. In the meanwhile, the victim was neither allowed to take a bath nor change her



clothes. In the first medical examination the victim was found to be menstruating and two days thereafter she was made to undergo a second medical examination. The evidence of PW-8 is not conclusive to the extent that the victim was sexually assaulted. The submission made on behalf of the appellants that something might have happened at the police station itself with the victim, cannot be totally brushed aside.

34. We are mindful of the settled legal principle that the solitary evidence of a victim of rape is sufficient to hold an accused guilty for the commission of the offence of rape, provided such evidence inspires confidence and appears to be trustworthy, unblemished and of sterling quality. Who can be termed as a 'sterling witness' has been laid down in the case of ***Rai Sandeep vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***, paragraph 22 of which reads as under:-

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be



natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

35. In the present case, the victim (PW-6) cannot be termed as a sterling witness for more than one reason. In paragraph 6 of her evidence, she deposed that she had not met



the appellant Sujit Ram at any point of time before 03.10.2017. The mother of the victim (PW-4) deposed that the appellant Sujit Ram had come to their residence once or twice, being a co-villager. She had not objected to the appellant Sujit Ram visiting her residence. The father of the victim (PW-5) also deposed that the appellant Sujit Ram had come to his house and his visit was not objected to by him. The depositions of PWs. 4 and 5 go to suggest that the appellant Sujit Ram had visited the house of the victim before 03.10.2017. On the date of occurrence i.e. 03.10.2017 the victim had left her house for going to the coaching centre on a bicycle and, in the meanwhile, according to her, she met the appellant Sujit Ram who pestered her to come along with him to visit a fair. According to her own deposition, it took them two and a half hours to reach *Meena Bazar* where the fair was held. She was a student of 1st year Intermediate course. She was loitering with appellant Sujit Ram, absenting herself from the coaching institute for which she had left her house. She did not raise any objection to being in company with the appellant Sujit Ram for two and a half hours. According to her, she was intoxicated by appellant Sujit Ram who had given her water to drink. She was totally clueless as to wherefrom he had brought water to fetch her. From Bettiah to



Gorakhpur and then to Bagaha she travelled in trains. At Gorakhpur Railway Station the victim had asked the appellant Sujit Ram to bring water, whereupon he had gone to bring water for her. The victim was alone for 5-7 minutes at Gorakhpur Railway Station, according to her own deposition which was populated. She did not raise any alarm though she had regained consciousness by then. She had seen police personnel too, but even then she did not say anything to him. At Narkatiyaganj Railway Station also she did not raise any alarm and according to her, she came to the railway quarter.

36. On closer scrutiny of the evidence of PW-6, we are of the view that the victim of alleged sexual assault in the present case cannot be treated to be a sterling witness on whose solitary evidence it can be said that the prosecution was able to establish primary facts at the trial to hold the appellants guilty of the offence punishable under Section 6 of the POCSO Act.

37. Let us now consider the rival submissions advanced on behalf of the appellants, the State and the informant concerning Section 29 of the POCSO Act. Section 29 of the POCSO Act reads as under :-

"29. Presumption as to certain offences.
Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that



such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

38. The provision under Section 29 of the POCSO Act has been made to protect a child from further victimization at the trial, who has already been victimized. We, however, cannot shut our eyes when the prosecution fails to prove primary facts laying a foundation in support of the charge of commission of sexual assault in the manner and at the place as set out by the prosecution. In our opinion, Section 29 of the POCSO Act cannot be read in a manner that it is the person who has been charged with the commission of the offences punishable under Sections 4, 6, 8 and 9 of the POCSO Act has to prove his innocence at the trial.

39. Such statutory presumptions akin to Section 29 of the POCSO Act carve out an exception to the general rule of presumption of innocence available to an accused facing a criminal trial. Only after the foundation of the prosecution's case is laid by legally admissible evidence at the trial, an accused charged with such offence is required to establish his innocence.

40. It is pertinent to mention that, on the one hand, the victim deposed at the trial that the appellant Sudarshan Ram had locked her with Sujit Ram in a room and Sujit Ram had sexually



assaulted her. Subsequently, she deposed that Sudarshan Ram also sexually assaulted her in the same room in which the other two appellants, namely, Deepak Ram and Sanjay Ram were standing. There are patent contradictions in the evidence of the IO, *vis-a-vis* the evidence of PWs. 4, 5 and 6. The IO (PW-9) in his evidence deposed that the parents of the victim were not allowed to meet the victim at Bettiah Police Station. PW-5 (the informant) in his evidence deposed that he had got an opportunity to talk to the victim on 05.10.2017. Further, the victim could not answer the question during cross-examination as to where had she left her bicycle before going with the appellant Sujit Ram.

41. In the present case, from the facts noted above, we find that the prosecution failed to establish by leading cogent evidence at the trial, the second place of occurrence where, according to the prosecution's case, the victim was sexually assaulted, by not examining the police personnel of Patkhauri Police Outpost who had caught the victim with the appellants.

42. In our considered opinion, the case of the prosecution is full of contradictions and improbabilities. The charges against the appellant cannot be said to have been conclusively proved. The foundational facts to establish the case



of sexual assault are missing. In such circumstances, we do not find it safe to uphold the conviction of these appellants for the offences punishable under Sections 363, 366-A, 376-D of the Indian Penal Code and Section 6 of the POCSO Act.

43. Accordingly, the impugned judgment of conviction and order of sentence dated 06.08.2019/ 14.08.2019 passed in Bettiah (Muffasil) P.S. Case No. 413 of 2017 (CIS No. 12/2018) are set aside. The appellants are acquitted of the charge of commission of the offences punishable under Sections 363, 366-A, 376-D of the Indian Penal Code and Section 6 of the POCSO Act.

44. These appeals are accordingly allowed.

45. The appellants are in jail custody. Let them be released forthwith, if they are not required in any other case.

(Chakradhari Sharan Singh, J)

**I agree.
Chandra Prakash Singh, J**

(Chandra Prakash Singh, J)

Rajesh/Sachin

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