

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1210 of 2023

Arising Out of PS. Case No.-66 Year-2018 Thana- Balthar District- West Champaran

Islam Miyan Hajam @ Islam Miyan, aged about 35 years, Gender-Male, Son
of Kuresh Miyan @ Kuresh Miya, R/V- Lakhaura, P.S.- Balthar, District-
West Champaran

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Bimlesh Kumar Pandey, Advocate
For the State	:	Mr. Ramchandra Singh, APP
For the Informant	:	Mr. Naumaan Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 26-07-2024

The present appeal has been preferred against the impugned judgment of conviction and order of sentence dated 11.01.2023 and 18.01.2023 respectively passed by Ld. Additional District and Sessions Judge-VIIth-cum-Special Judge, POCSO Act, West Champaran at Bettiah in POCSO Case No. 201 of 2018, S.G.R. No. 62 of 2018, arising out of Balthar P.S. Case No. 66 of 2018, whereby the sole appellant has been found guilty of offence punishable under Section 376(1) of the Indian Penal Code and Section 4 of the POCSO Act and sentenced to undergo R.I. for ten years under Section 376(1) of the Indian Penal Code and R.I for 10 years under Section 4 of the POCSO



Act. A fine of Rs. 20,000/- payable to the victim has also been imposed upon the Appellant. In case of default to pay the fine, the convict has been ordered to undergo additional S.I. of three months. Ld. Trial Court has also directed the Secretary, District Legal Services Authority, Bettiah, West Champaran to pay Rs.3,00,000/- to the victim towards compensation.

2. The F.I.R. bearing Balthar P.S. Case No. 66 of 2018 has been registered on written report of the victim/informant dated 28.05.2018 addressed to Officer-in-Charge, Balthar Police Station under Section 376, 323, 504, 506, 341 read with Section 34 of the Indian Penal Code, Section 4 of POCSO Act and Sections 66(E)/67 of Information Technology Act against four Accused persons, viz., Islam Miyan, Kuresh Miyan, Motaleek Miyan and Guddu Miyan. The written report was lodged at 5:15 P.M.

3. The prosecution case, as emerging from the written report of the informant is that at 6:00 AM on 20.05.2018, the informant had gone out from her home near Qabristan to answer the call of nature. At that time, her villager i.e. the Appellant herein took her into his hold from back and pushed her on the ground and having a country made pistol in his hand threatened her not to raise *hulla*, otherwise he would kill her and,



thereafter, he untied her Shalwar and pushed her down and forcibly raped on her. When she told him that she would disclose the occurrence to her villagers, the Appellant threatened her with his gun and after opening her clothes and raising it, clicked various photos of her in naked condition and threatened that if she would disclose it anywhere, he would make these photos viral on Mobile. Thereafter, he kept on doing it on whatsapp on his Mobile. Thereafter, she went back to her home and disclosed the occurrence to her mother. Thereafter, she along with her mother, uncle Istekhar and villager Doha Hakim, aged about 38 years, went to the house of the Appellant and asked the Appellant and his father about the occurrence. Then the Appellant, his father Kuresh Miyan, Motaleek Miyan, Mosaheb Miyan and Guddu Miyan got angry and started abusing them and slapped and after beating them, they made them flee away and told to do what she can do and claimed that she cannot harm them. Thereafter, *Panchayatis* were being held in regard to the occurrence and that is why the written report could be submitted late.

4. After lodging of the F.I.R., investigation commenced and after investigation, charge sheet bearing No. 84 of 2018 dated 20.07.2018 was submitted against the sole



accused who is Appellant herein, exonerating all other co-accused named in the First Information Report, under Sections 376 & 506 of the Indian Penal Code, Section 4 of POCSO Act and Sections 36(E)/37 of Information Technology Act. Subsequently, cognizance of the offence against the sole accused, who is Appellant herein, was taken by the Ld. POCSO Court and charge under Sections 376, 506 of the Indian Penal Code, Section 6 of POCSO Act and Section 66E, 67 of I.T. Act were framed against the Appellant and the same were read over and explained to the Accused/Appellant, which he pleaded not guilty and claimed to be tried.

5. During trial, the following five witnesses were examined on behalf of the prosecution:

- (1) **P.W.-1** – Anguri Khatoon (bua of the victim)
- (2) **P.W.-2** – Shabana Khatoon (Mother of the victim)
- (3) **P.W.-3** – Victim
- (4) **P.W.-4** – Dr. Akanksha (who conducted medical examination of the victim)

6. The prosecution brought on record the following documentary evidences also:

- (i) **Ext. 1** – Thumb impression of Anguri Khatoon on the written report;
- (ii) **Ext. 2** – written report;
- (iii) **Ext. 2/a** – Signature of the victim on written report;
- (iv) **Ext. 3** – Statement of the victim under Section 164 Cr.PC;
- (v) **Ext. 3/a**- Signature of the victim on Statement



of 164 Cr.PC;
(vi) **Ext. 4** – Medical report;
(vii) **Ext. 4/a** – Signature of doctor on the medical report;
(viii) **Ext. 5** – application filed by the I.O for the medical examination

7. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.PC. confronting him with incriminating circumstances which came in the prosecution evidence so as to afford him opportunity to explain those circumstances. During examination he has stated that he heard the evidence of the Prosecution but he did not explain any circumstances. He has denied the charge and claimed to be innocent.

8. Ld. Trial Court after appreciating the evidence on record and considering the submission of the parties passed the impugned judgment and order of sentence. He found that on the alleged date of occurrence, the victim was 17 years of age and Prosecution has proved his case against the Accused/Appellant under Section 376(1) of the Indian Penal Code and Section 4 of POCSO Act. However, he acquitted the Appellant of all other charges. Accordingly, the impugned judgment of conviction and order of sentence were passed.

9. We have heard Ld. Counsel for the Appellant and Ld. APP for the State as well as Ld. Counsel for the informant.



10. Ld. Counsel for the Appellant has submitted that the impugned judgment of conviction and order of sentence passed by the Ld. Trial Court are not sustainable in the eye of law or on facts. Ld. Court below has not applied its judicial mind and has failed to properly appreciate the evidence on record.

11. To substantiate his claims, he has submitted that the prosecution has failed to prove that the alleged victim was below 18 years of age at the time of the alleged occurrence. He has further submitted that the alleged victim had studied in Bairagya State Upgraded Middle School but the Prosecution has withheld the documentary proof in regard to her age, whereas as per Section 94 of the J.J. Act, 2015, the first preference for determination of the age of the victim is her school certificate. The Prosecution has brought on record only Medical test in regard to the age of the victim and as per it, she has been assessed to be 17-19 years of age. He has further submitted that the Appellant, by way of defence, has brought on record that the date of birth of the victim as per school admission register is 29.05.1997 and as per which the age of the alleged victim on the date of alleged occurrence i.e. on 20.05.2018, comes to 20 years, 11 months and 21 days. Hence, the provisions of POCSO Act do not get attracted in the alleged facts and circumstances.



12. He has further submitted that the allegation of rape is also not supported by medical evidence. It makes the prosecution case highly improbable.

13. He has further submitted that there are material contradictions in the statement of the prosecutrix making the prosecutrix untrustworthy witness. To substantiate the claim, he has submitted that in her *fardebayan*, the prosecutrix had stated that the Appellant after taking her in his hold, she was pushed to the ground and ravished her. But in testimony before the Court, she deposed that the Appellant after taking her in hold, took her to the nearby sugarcane field where he ravished her.

14. He has further submitted that as per medical examination, the doctor has not found even abrasion on the person of the victim, whereas, as per the alleged occurrence, she was bound to receive injury as well as abrasion. As per the allegation, the victim was taken into sugarcane field where crops of 4-5 feet height were standing and it is common knowledge that leaves of sugarcane are so sharp edged that entry into sugarcane field is bound to cause abrasion on uncovered part of the body. But, in the case on hand, admittedly, the victim has not got any abrasion let alone any injury, despite the allegation that she was taken into sugarcane field where she was thrown on the



ground and ravished. Such facts and circumstances make the Prosecution case highly improbable making the Appellant entitled to the benefit of doubt.

15. He has also submitted that there is inordinate delay of 8 days to submit the written report, which affords opportunity to the informant to think over and lodge a concocted allegations to the Police. He has also submitted that there is enmity between the family of the informant and that of the appellant, in regard to land and both the families are neighbors.

16. However, Ld. APP for the State and Ld. Counsel for the informant defend the impugned judgment of conviction and order of sentence submitting that the victim was 16 years of age on the alleged date of occurrence and prosecution has proved its case as per law against the appellant.

17. As the appellant has been found guilty under the POCSO Act also, it is required to take note of Sections 29 and 30 of the POCSO Act which provide for mandatory presumptions against the accused. Such presumptions are exceptions to the general rule of the presumption of the innocence of the accused in any criminal trial. Sections 29 and 30 of the POCSO Act read as follows:-

"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.

30. Presumption of culpable mental state -

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

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

Explanation - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

18. From the reading of these Sections, it clearly transpires that Section 29 provides for reverse burden on the accused, facing prosecution under Sections 3, 5, 7 and 9 of the Act, to prove his innocence. Section 30 stipulates that if *mens rea* on the part of the accused is required for his prosecution under the Act, the Court is required to presume such *mens rea*. The accused has been, however, given right to rebut the presumptions raised against him.

19. Now the question is what would be the effect of such presumptions. Do these Sections absolve the prosecution to prove its case against the accused beyond all reasonable doubts fastening the accused with burden to prove his innocence?

20. This question is no longer *res integra*.



21. Hon'ble Supreme Court in **Babu Vs. State of Kerala, (2010) 9 SCC 189**, has held that presumption of innocence is a human right, though the exception may be created by statutory provisions. But even such statutory presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution.

22. In **Navin Dhaniram Baraiye Vs. State of Maharashtra, 2018 SCC Online Bom 1281**, **Bombay High Court** has held that the presumption under Section 29 of the POCSO Act operates against the accused only when the prosecution proves the foundational facts against the accused in the context of the allegation made against him under the POCSO Act and the accused has right to rebut the presumption, either by discrediting prosecution witnesses through cross-examination or by leading evidence to prove his defence. Rebuttal of the presumption would be on the touchstone of preponderance of probability.

23. Similar view has been taken by Kerala High Court in **Joy V. S. Vs. State of Kerala, (2019) SCC Online Ker 783** and Calcutta High Court in **Sahid Hossain Biswas Vs. State of West Bengal, 2017 SCC Online Cal 5023**.



24. Allahabad High Court in Monish Vs. State of U.P, Crim. Misc. Bail Application No. - 55026 of 2021 as decided on 09.02.2023, has also held that the provision cannot be read to mean that the accused shall be presumed to be guilty at the lodgement of the F.I.R. or criminal complaint till proven innocent at the trial. The presumption of innocence which is a fundamental tenet of criminal jurisprudence cannot be turned on its head by a faulty interpretation of the provision. The prosecution has to establish primary facts after attaining the required standards of evidence to trigger the presumption of culpable intent.

25. Madras High Court in Marriappan Vs. The Inspector of Police, (Crime No.27/2018) CrI.M.P.(MD) No.1396 of 2023 as decided on 08.09.2023, has also held that only after basic and foundational facts of the prosecution case are laid by adducing legally admissible evidence, the burden shifts on the accused to rebut it. The minority of the age of the alleged victim and allegation of sexual assault by the accused are foundational facts required to be proved by the prosecution before the Court raises presumption against the accused.

26. Gauhati High in Latu Das Vs. State of Assam, 2019 SCC OnLine Gau 5947 has also held that the



presumption under Section 29 of the POCSO Act does not absolve the prosecution of its usual burden to prove the guilt of the accused beyond all reasonable doubts. It only lessens its burden to some extent and put a corresponding burden on the accused. Initial burden in a criminal case is always on the prosecution to bring on record reasonable evidence and materials to prove that the accusation against the accused is true. Once such evidence or materials are brought on record, *prima facie*, establishing the case of the prosecution, only then the Court is obliged to raise presumption against the accused and burden stands shifted on the accused to rebut the presumption and if the accused fails to rebut the presumption, the Court is justified to hold the accused guilty of offence under Sections 3, 5, 7 and 9 of the POCSO Act.

27. Hence, it clearly emerges that despite statutory provisions of Sections 29 and 30 of the POCSO Act, the prosecution is not absolved of its burden to prove that the alleged victim is a child i.e. below 18 years of age and he/she has been subjected to sexual assault by the accused and such foundational facts have to be proved by the prosecution beyond reasonable doubts and once the presumption is raised against the accused, the accused can rebut such presumption either by



cross-examination of the prosecution witnesses or by leading evidence in his/her defence, on the touchstone of preponderance of probability. The presumptions are bats in law. They fly in a twilight, but vanish in the light of facts.

28. Now question is what is proof beyond reasonable doubts. This issue is also well discussed by the Hon'ble Supreme Court on several occasions. It is settled position of law that the proof beyond reasonable doubts is not necessarily a perfect proof to mathematical precision. All that it requires is the establishment of such a degree of probability that a prudent man may on, its basis, believe in the existence of the facts in issue. The accused are entitled to get benefit not of all doubts, but only of reasonable doubts. Every hesitancy, hunch or doubt are not reasonable doubts. The following Authorities may be referred in this regard:

- (i) **Collector of Customs Vs. D. Bhoormal**, (1972) 2 SCC 544,
- (ii) **Kali Ram Vs State of HP**; (1973) 2 SCC 808,
- (iii) **Dharm Das Wadhvani Vs. State of U.P.**
(1974) 4 SCC 267,
- (iv) **Shivaji Sahabrao Bobade Vs. State of Maharashtra**,
(1973) 2 SCC 793
- (v) **Dilavar Hussain Vs. State of Gujarat**, (1991) 1 SCC 253
- (vi) **Narender Kumar Vs. State (NCT of Delhi)**,
(2012) 7 SCC 171

29. Now coming to the evidence on record, I find that the victim has been examined as **P.W.-3**. In her **examination-in-chief**, she has supported the prosecution case by



reiterating her statement as made in her written report. However, it is worth noting that in her written report, she had stated that the appellant after taking her in his hold from back, he had pushed her on the ground and raped upon her. However, in her examination-in-chief, she has deposed that appellant after taking her in his hold from the back, he took into the nearby sugarcane field where he pushed her down on the ground and raped her. She has also deposed that she was 17 years old at the time of occurrence. She has also identified her statement under Section 164 Cr.PC which has been exhibited as Ext.-3. During her cross-examination, she has deposed that the sugarcane were of the height of five feet standing in the field. She has also deposed that she did not get any scratch or abrasion when the appellant pushed her down on the ground and committed rape upon her. She has also deposed that at the time of the occurrence her clothes did not get any stain of blood. She has deposed that she has never studied at Bairagiya School. She has denied the suggestion that she had studied at Bairagiya School upto 8th class. She has also denied the suggestion that at the time of the occurrence she was not minor. She has also denied the suggestion that she has falsely implicated the appellant on account of land dispute between her family and that of the



appellant.

30. Mother of the victim has been examined as **P.W.-**

2. She is not an eye-witness to the occurrence because as per her deposition, the victim was alone at the time of occurrence, she was not with her. However after the occurrence, she had gone with the victim to the home of the appellant to complain about the occurrence and thereafter she had taken the victim to the police station. In her **cross-examination**, she has deposed that her house and that of the appellant are situated at the adjacent to each other. However she has denied that there is any dispute regarding land and any litigation is going on between her family and that of the appellant. She has also deposed that at the time of the occurrence the victim was wearing green *Salwar* and pink *Samij*. *Salwar* was torn on the front side. However she has deposed that *Salwar* and *Samij* were not having any blood stain and the clothes were handed over to the police. She has also deposed that there was no scratch or abrasion on the person of the victim. She has also deposed that the victim was not examined by doctor. She has also deposed that no naked photo of her daughter had come on her mobile.

31. Bua of the victim has been examined as **P.W.-1.**

She is also not an eye-witness to the occurrence. However, in her



cross-examination, she has deposed that the victim was a student of Bairagiya Urdu School but much prior to the occurrence, she had left the school. She had denied the suggestion that there was any land dispute between the family of the victim and that of the appellant. She has also deposed that at the place of the occurrence sugarcane were broken in the area of five hands. She has also deposed that string of the pajama was broken and *Salwar* was torn. She has denied the suggestion that no occurrence has taken place to the prosecutrix nor was any naked photo taken by the appellant.

32. P.W.-4 is Dr. Ankasha who had examined the victim on 30.05.2018. She had found hymen of the victim ruptured and old tag present but no injury was found on her private part internally or externally. She had also referred to Pathologist Department for vaginal swab and as per the pathologist, no spermatozoa was seen. She had also referred the victim to Radiologist Department for X-ray and as per the medical test, her age was found to be 17 to 19 years. She has also deposed that as per the medical examination, there was no sign of recent sexual assault was found. She has also not found any sign of violence on the person of the victim.

33. The Appellant has also examined one witness



namely Khushbun Nisha as **DW-1**. She in her examination-in-chief has deposed that she is working as *Pradhan Shikshak* (Principal teacher) in Vairagya State Upgraded Middle School. She had come to the Court along with Admission register on the order of the Court and as per Sl.No. 42, the victim was admitted to Class-III on 25.05.2008 to her school and as per the admission register, her date of birth is 29.05.1997 and the entry has been made in the writing and signature of the then Headmaster Md. Samiullah. In her **cross-examination** she has deposed that she is not Headmaster but *Pradhan Shikshak* (Principal teacher). Presently there is no Headmaster in the School. She has been posted in the school since 2005. However, she does not remember when Samiullah was posted there. She has denied the suggestion that she has neither posted as Principal teacher in the school nor is she ware about Md. Samiullah and his writing and she has deposed in connivance with the accused.

34. Now the **first and foremost question** is whether the prosecution has proved that the alleged victim was child i.e. below 18 years of age on the date of occurrence in terms of Section 2(1)(d) of the POCSO Act. It is one of the foundational facts to be proved by the prosecution, as it is a prerequisite for application of the POCSO Act against the Appellant.



35. Now question is what is the procedure to determine the age of the alleged victim. In the POCSO Act, there is no such procedure. Section 34 (2) of the POCSO Act only provides that if any question arises whether a person is a child or not, such question is required to be determined by the Special Court after satisfying itself about the age of such person and to record in writing its reason for such determination.

36. However in landmark judgment of **Jarnail Singh Vs. State of Haryana, (2013) 7 SCC 263**, which is still holding the field and being followed by all Courts, Hon'ble Apex Court has held that procedure provided for determination of age of a juvenile in conflict with law should be adopted for determination of the age of the victim of a crime also, because there is hardly any difference, in so far as issue of minority is concerned, between the child in conflict with law and the child who is the victim of a crime.

37. Similar view has been taken by Hon'ble Apex Court in recent case of **P. Yuvaprakash Vs. State, 2023 SCC onLine SC 846** referring to Section 34 of the POCSO Act and Section 94 of the J.J. Act, 2015.

38. Section 94 of the J.J. Act, 2015, which deals with presumption and determination of age, reads as follows:

“94. Presumption and determination of age.-



(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

39. Hon’ble Apex Court in P. Yuvaprakash Case

(supra), has held as follows:

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the



matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

(Emphasis supplied)

40. As such, the age of the victim is determined on the basis of birth certificate from the school or matriculation or equivalent certificate, if available. In other words, if the victim was a student of school, the aforesaid certificates have precedence over other mode of proof regarding the age. In the absence of such certificate, birth certificate given by Municipal Authorities or Panchayat is required to be considered for determination of the age of the victim. In the absence of the aforesaid certificates, the age of the victim is required to be determined by ossification test or any other latest medical test. Any other proof is impliedly excluded from consideration for age determination of the victim.

41. Coming to the case on hand, it is found in regard to the age of the victim that the victim was a student of Bairagiya Urdu School as per P.W.-1. However, the prosecution has not filed any school certificate in regard to age of the victim. Withholding such documentary proof regarding age of the victim



by the prosecution gives rise to adverse inference against the prosecution in regard to age of the victim. The initial burden of proof regarding the age of the victim lies on the prosecution despite Section 29 of the POCSO Act because it is foundational fact to be proved by the prosecution for application of the POCSO Act and raising presumption against the accused/Appellant. On the other hand, the prosecution has examined **D.W.-1 Khushbun Nisha** who was Principal teacher of Bairagiya State Urdu upgraded middle school. On summons from the Trial Court she had come to the Court with admission register and as per serial no. 42 in the register, victim was admitted to class three on 25.05.2008 to her school and as per the admission register, her date of birth is 29.05.1997. As such, the age of the victim on the date of occurrence i.e. 20.05.2018 comes to 21 days 11 months and 20 years.

42. As such, it is found that the victim was above 18 years of age on the date of occurrence and hence, the provisions of POCSO Act do not apply against the appellant.

43. Now, only question is whether the prosecution has proved the charge framed under Section 376 of IPC against the Appellant.

44. From the perusal of the evidence on record it



emerges that as per the *fardebayan* when the victim had gone to answer the call of nature in the early morning, she was taken into hold by the Appellant from the back all of a sudden. She was pushed to the ground and raped upon. However, in her Examination-in-chief she has deposed that after taking into his hold, the Appellant took her into nearby sugarcane field where she was pushed to the ground and raped upon. As per the evidence of the prosecution, sugarcane crops of the height of 5 feet were standing in the field, but admittedly no scratch or abrasion or any injury on the person of the victim was caused, whereas the sharp-edged leaves of sugarcane are bound to cause abrasion on uncovered part of the body like hands and even face. More so when someone is pushed down on the ground in a sugarcane field, it is bound to cause scratch or abrasion on the back or other part of the body. However, as per the prosecution evidence, there was no scratch or abrasion on the person of the victim. Moreover, the allegation of rape is also not corroborated by medical evidence. No injury was found on private part of the victim. Though, hymen of the victim was found to be ruptured, it is not conclusive proof of rape. There may be various reasons for rupture of hymen.

45. The Court is conscious of the law that on the sole



testimony of prosecutrix, accused may be convicted without corroboration of her testimony because she is not an accomplice and stands on the footing of an injured witness. But for such conviction, the prosecutrix is required to be trustworthy, inspiring confidence of the Court. She must be sterling witness. But in the case on hand, it is found that the prosecutrix does not appear to be truthful and trustworthy. She has lied regarding her having studied at Bairagiya School. She had deposed that she had never studied at any school, whereas it has been proved by D.W.-1 that she was a student at Bairagiya School. She has also improved her statement in Court regarding place of occurrence. In the *fardebayan*, he had stated that she was pushed to the ground by the Appellant after taking her into his hold, whereas, in her testimony in the Court, she has deposed that she was taken into sugarcane field where she was pushed to the ground and raped upon. It is also highly improbable that she was raped in a sugarcane field and she would not get any scratch or abrasion by sharp edged leaves of sugarcane..

46. In view of the aforesaid facts and circumstances, reasonable doubts are created in the prosecution case against the Appellant. The Appellant, therefore, deserves to be acquitted giving benefit of doubts. Accordingly, the impugned judgment



of conviction and order of sentence against the appellant are not sustainable in the eyes of law.

47. The appeal is allowed. The appellant stands acquitted of the charges levelled against him.

48. Since the appellant/Islam Miyan Hajam @ Islam Miyan is in jail, he is directed to be released forthwith, if he is not required in any other case.

49. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

50. The records of the case be returned to the Trial Court forthwith.

51. Interlocutory application/s, if any, also stand disposed of accordingly.

(Jitendra Kumar, J.)

S.Ali/Shoaib/
Chandan

AFR/NAFR	AFR
CAV DATE	12.07.2024.
Uploading Date	26. 07.2024
Transmission Date	26. 07.2024

