

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.830 of 2019

Arising Out of PS. Case No.-102 Year-2017 Thana- KATRA District- Muzaffarpur

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RAUSHAN KUMAR Son of Surendra Das Vediya @ Surendra Das Resident
of Village- Nawada, P.S.- Katra, District- Muzaffarpur.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 632 of 2019

Arising Out of PS. Case No.-102 Year-2017 Thana- KATRA District- Muzaffarpur

- =====
1. SAURABH KUMAR Son of Sri Rakesh Kumar Singh Resident of Village-
Nawasa, P.S.- Katra, District- Muzaffarpur.
 2. Ravi Shekhar Son of Sri Rakesh Kumar Singh Resident of Village- Nawasa,
P.S.- Katra, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 692 of 2019

Arising Out of PS. Case No.-102 Year-2017 Thana- KATRA District- Muzaffarpur

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VIR VIKRAM SINGH Son of Jaynandan Singh Resident of Village Nawada,
P.S. Katra, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 767 of 2019

Arising Out of PS. Case No.-102 Year-2017 Thana- KATRA District- Muzaffarpur

- =====
1. ANISH KUMAR Son of Dinesh Prasad Resident of Village - Nawada, P.S.-
Katra, Dist.- Muzaffarpur.
 2. Gagan Kumar Son of Late Krishnadeo Prasad Resident of Village - Nawada,



- P.S.- Katra, Dist.- Muzaffarpur.
3. Sachin Kumar Son of Manoj Prasad Resident of Village - Nawada, P.S.-
Katra, Dist.- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 830 of 2019)

For the Appellant/s : Mr. Radheshyam Sharma, Advocate
Ms. Smiti Kumari, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 632 of 2019)

For the Appellant/s : Mr.Sanjay Kumar @ S.K., Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 692 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate

For the Respondent/s : Mr. Pravin Kumar, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 767 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
Mr. Pravin Kumar, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 24-09-2024

The present appeals have been filed under Section-
374(2) of the Code of Criminal Procedure, 1973 (hereinafter
referred as ‘Cr.P.C.’) challenging the common impugned
judgment of conviction and order of sentence dated 22.05.2019
passed by learned 1st Additional District and Sessions Judge-



cum-Special Judge, POCSO Act, Muzaffarpur, in Trial No. 82/2017, (arising out of Katra P.S. Case No. 102 of 2017), whereby the appellants/convicts Anish Kumar, Raushan Kumar, Sachin Kumar and Gagan Kumar have been awarded rigorous imprisonment for 20 years and a fine of Rs. 10,000/- to each of them and, in default of payment of fine, two months' further R.I. to each of the convict u/S- 376D IPC and 20 years of R.I. and a fine of Rs.5,000/- to each of convict u/S-120B IPC and, in default of payment of fine, one month further R.I. to each of above four convicts has been awarded. Both the sentences of imprisonment have been directed to run concurrently and the period already undergone in this case during the investigation and trial has been set off. Appellants/convicts Saurabh Kumar, Ravi Shekhar and Vir Vikram Singh have been awarded simple imprisonment of 6 months each u/S- 21 of POCSO Act.

2. Heard Mr. Radheshyam Sharma, (in Cr. Appeal (D.B.) No. 830 of 2019), Mr. Sanjay Kumar @ S.K. (in Cr. Appeal (D.B.) No. 632 of 2019), Mr. Ajay Kumar Thakur, (in Cr. Appeal (D.B.) Nos. 692 of 2019 and 767 of 2019), learned counsel for the appellants and Mr. Sujit Kumar Singh, learned A.P.P. for the respondent-State.

3. The brief facts leading to the filing of the present



appeal are as under:

“On 28.09.2017, the victim girl, aged about 14 years, had gone to Nawada, the in-laws’ village of her brother Pappu Sahni at 11:00 a.m. As the younger child of her brother was ill, she was returning home to see him, but four boys began to follow her and after covering some distance they caught hold of her, gagged her mouth and began to drag her upon which she gave a tooth bite to one boy and when she got free, she went to the door of the person having Marshal. The four boys reached there also and told her to go with them, but she replied them that she would go with the old man (Bolerowala), the owner of the house. The old man left the place assuring that he is going to call the Mitauliwali, mother of victim’s sister-in-law. Thereafter, the four boys, gagging her mouth, took her towards the agricultural field and all the four committed rape one after another and two of them recorded video of the same. Thereafter, all the four boys fled away and then she anyhow managed to return home. Out of fear, she did not disclose the incident to anyone. When she felt a bit relaxed, on 30.09.2017, in the evening, she disclosed the whole incident to her sister-in-law and her mother. On 30.09.2017 itself at 08:00 p.m., the mother of her sister-in-law and several other persons in the fair gathered and she narrated



the incident to all present there. At this, the persons present there caught and brought the four boys. At very first sight, she recognized them as the miscreants who had committed rape on her and had recorded video of the same. They were Anish Kumar, son of Dinesh Prasad, Raushan Kumar, son of Surendra Das Bedhiya, Gagan Kumar, son of Kishundeo Prasad and Sachin Kumar, son of Manoj Prasad respectively, all residents of Nawada, P.S. Katra, District- Muzaffarpur. Majority of persons present in fair advised to inform the police as the issue is serious, but Saurav Kumar, Ravi Shekhar, sons of Rakesh Kumar Singh and Vir Vikram Singh, son of Jay Nandan Singh threatened to abduct every girl of Mallah community. They were favouring the accused persons.

4. After filing of the F.I.R., the investigating agency carried out the investigation and, during the course of investigation, the Investigating Officer recorded the statement of the witnesses and collected the relevant documents and thereafter filed the charge-sheet against the accused.

5. Mr. Radheshyam Sharma, Mr. Sanjay Kumar @ S.K. and Mr. Ajay Kumar Thakur, learned counsels for the respective appellants, at the outset, contended that there is a delay of three days in lodging the F.I.R. in which the appellants



have been falsely implicated. It is contended that, as per the case of the victim, the incident took place on 28.09.2017 during night hours for which the F.I.R. was lodged on 01.10.2017. The victim has not given any explanation for delay in lodging the F.I.R. At this stage, it is further submitted that the victim, P.W. 7, has stated in her examination-in-chief that she had gone to Nawada, the in-laws' place of her brother. From there she had gone to the fair. When she was returning from the fair, at about 10-11:00 p.m., four boys followed her. She went to the old man, owner of the house where a Marshal was parked, to reach her to the mother. The said old man asked her to stay there until he returns with her mother. In the meanwhile, four boys came and thereafter she was forcibly abducted and thereafter four boys committed rape on her. However, during cross-examination, victim has stated that she had gone to the fair with 8-9 ladies and she was returning with 6 ladies. Further, after the four boys committed rape on her, one old lady, whom she had requested to take her to her sister-in-law's house, took her to the house. The victim has specifically admitted during cross-examination that she came to know about the names of the accused persons in *Panchayati* where persons attending the *Panchayati* were taking their names. At this stage, it has been pointed out by the learned



counsel from the deposition of P.W. 1 Shail Devi, that she has stated that she had gone to see the fair and the victim, the daughter of her son's father-in-law, had also gone there and the victim was subjected to rape by the accused persons. The said witness, during cross-examination, has stated that she had gone to see fair at about 09:00 p.m. with the victim and none else. It is further stated by her that she had a stall of fruits in the fair and she remained there and others left. She has further stated that one Vir Vikram informed her that the victim has been raped and the said person disclosed names of the accused. However, P.W. 6 Pinki Devi has stated that the victim is her sister-in-law (*Nanad*). The said witness has stated that the victim had gone to fair carrying meal. While she was returning, few boys named in her deposition had committed rape on her and when the victim returned she informed that four boys had committed rape upon her. During cross-examination, said witness further stated that the victim had disclosed about the incident to her two days later when none else was present there.

6. At this stage, learned counsels have referred the written complaint given by the victim to the police. It is submitted that in the written complaint it has been stated that the rape was committed during night hours on 28.09.2017 and on



30th September, 2017, she informed to her *Bhabhi* and the mother of her *Bhabhi* about the incident and on 30th September, 2017 at about 08:00 p.m., her *Bhabhi*, mother of her *Bhabhi* and village people gathered in the fair where she had disclosed about the incident. At that time, people in the fair brought four boys and she identified the said four boys who had committed rape on her and recorded video of the same.

7. Learned counsels for the appellants, therefore, urged that there are different versions given by the prosecution-witnesses with regard to the manner of occurrence and there are major contradictions, inconsistencies, discrepancies and improvement in the version of the prosecution-witnesses. It is further submitted that the victim cannot be termed as sterling witness and, therefore, relying upon the victim, conviction cannot be recorded. It is also submitted that medical evidence does not support the version given by the victim.

8. Learned advocates for the appellants thereafter submitted that the prosecution has failed to prove the age of the victim. It is contended that it was the duty of the prosecution to prove the age of the victim by leading cogent evidence. In the present case, birth certificate, school leaving certificate or any other documentary evidence was not produced before the Court.



Even from the medical evidence also, it cannot be conclusively said that victim was minor on the date of incident. Learned counsels for the appellants referred the deposition given by P.W. 8, Investigating Officer, P.W. 9, doctor who had examined the victim, and P.W. 11 Dr. Bipin Kumar, who was member of the Medical Board who had examined the victim. It is submitted that P.W. 11 has specifically stated that the age determined by the Medical Board may be two years more or less. It has been pointed out that the said witness, in his examination-in-chief has opined that the age of the victim was 15-16 years. Thus, from the deposition of the aforesaid witnesses, it can be said that the age of the victim can be considered 17-18 years.

9. Learned counsel for the appellants placed reliance upon the order dated 28.02.2024 passed by this Court in **Cr. Appeal (D.B.) NO. 586 of 2023 (Deepak Kumar Vs. The State of Bihar)** and allied matter. They have also placed reliance upon the order dated 05.09.2023 passed by this Court in **Cr. Appeal (D.B.) No. 1142 of 2019 (Chandan Singh Vs. The State of Bihar)** and allied matters.

10. Learned advocates, therefore, urged that the prosecution has failed to prove the case against the appellants beyond reasonable doubt, despite which the Trial Court has



recorded the judgment of conviction and order of sentence and, therefore, the said judgment and order be quashed and set aside.

11. On the other hand, learned Additional Public Prosecutor Mr. Sujit Kumar Singh has opposed the present appeals. Learned A.P.P. would mainly submit that the victim herself has narrated about the manner in which the occurrence took place. She had also disclosed the names of the accused who had committed rape on her and recorded the video on the mobile phone. It is further submitted that the medical evidence support the version given by the victim. It is also contended that P.W. 10 Dr. Sunil Kumar, Asstt. Director, Regional Forensic Science Laboratory (for short F.S.L.), Muzaffarpur, has also deposed before the Court and pointed out that blood was found on Ext.A, Leggings and Ext.C, Frock. Learned A.P.P., therefore, urged that the prosecution has proved the case against the appellants beyond reasonable doubt. It is also submitted that P.W. 11, the doctor who is a member of the Medical Board who has examined the victim, has also opined that the age of the victim was 15-16 years. Thus, the prosecution has also proved the age of the victim that she was minor on the date of incident. Learned A.P.P., therefore, urged that these appeals be dismissed.

12. We have considered the submissions canvassed



by the learned counsels for the parties. We have also perused the evidence of prosecution witnesses and also perused the documentary evidence exhibited.

13. At this stage, we would like to appreciate the relevant extract of entire evidence led by the prosecution as well as defence before the Trial Court.

14. Before the Trial Court, prosecution examined 11 witnesses. Defence has also examined 6 witnesses.

15. P.W. 1 Shail Devi has stated in her examination-in-chief that the incident took place ten months ago at night. She had gone to see the fair and victim, the daughter of her son's father-in-law had also gone there. She was subjected to rape by Anish Kumar, Gagan, Raushan Kumar, Sachin Kumar, Saurav Kumar, Ravi Shekhar Kumar and Vir Vikram Kumar. They also threatened to abduct all the girls of Mallah community if they raise their voice. She is acquainted with the accused persons.

15.1. In her cross-examination, she has stated that she had gone to see the fair at 09:00 p.m. victim had also gone to see the fair with her and none else. As she had a stall of fruits in the fair, she remained there and others left. She was informed by Vir Vikram that victim has been raped. She has taken the names of accused persons as disclosed by Vir Vikram. As all the



accused persons are from her village, she is acquainted with them. She has denied the suggestion to have given false deposition. She has further stated that a *Panchayati* was held after three days of the incident in which she had not participated.

16. P.W. 2 Umesh Kumar Sah has not supported the prosecution-case and has been declared hostile.

17. P.W. 3 Rajkumar is a seizure-list witness (Ext.1). He has not stated anything about the occurrence. In his cross-examination, he has stated that the police had taken his signature on a plain paper and no seizure had taken place in his presence.

18. P.W. 4 Kumod Sah has also not supported the prosecution-case and has been declared hostile.

19. P.W. 5 Mohan Sahni has also not supported the prosecution-case and has been declared hostile.

20. P.W. 6 Pinki Devi has deposed in her examination-in-chief that the victim is her sister-in-law (*Nanad*). The incident took place a year ago. The victim had gone to the fair carrying meal. While she was returning, a few boys, such as Sachin, Raushan, Gagan and Anish had committed rape on her. When she returned home, she informed that four boys had committed rape on her. Thereafter, Vir Vikram came to her house



and asked to convene a *Panchayati*. When she refused, he threatened to beat them. Saurav and Ravi Shekhar also told to settle the matter at social level and when she refused and said that she would go to Police, they threatened to commit rape upon her too. Before coming to the court to depose, Vir Vikram threatened her to kill if she goes to depose. She has identified the accused present in Court.

20.1. In her cross-examination, she has stated that she has come to depose for the first time. Her victim sister-in-law (*Nanad*) had gone to the fair alone with meal for her mother. She was at her house at that time. The victim had disclosed about the incident two days later when none else was present there. She had disclosed the names of the accused persons before her first and then before the village people. She had not seen the actual incident rather she has stated about the same as disclosed by the victim. She has denied that the present case has been lodged to pressurize Vir Vikram to transfer the land on which they live, in their favour. She has also denied that the present case has been lodged with a view to grab the land of the accused persons. She has further stated that she went to her in-laws' house with the victim on the date of incident itself. She has further stated that the video of the incident was shown to her by Vir Vikram in the



next morning. He had also shown the same to Sushil Sahni, who is her uncle. He has not been examined as a witness in this case.

21. P.W. 7, victim, has stated in her examination-in-chief that the occurrence took place a year ago. She had gone to Nawada, the in-laws' place of her brother. From there she had gone to the fair. When she was returning from the fair at 10-11 p.m., four boys followed her. She went to the old man, owner of the house where a Marshal was parked and requested him to reach her to the mother residing at Misrauli. He asked her to stay there until he returns with her mother. In the meantime, the four boys came there. Three boys asked as to who she is at which the fourth replied that she belongs to *Mallah* caste. The three boys asked to abduct her, commit rape upon her and record a video. All the four boys gagged her mouth and took her to the field. All the four boys committed rape upon her one after another. By turn, while one committed the rape, the other one recorded the video. She became unconscious and all the four boys fled away. First she says that she does not know their names, but can identify them by face. Again she says that the names of the boys are Raushan, Gagan, Anish and Manish. When she regained consciousness, she saw an old lady and requested her to take her to her sister-in-law's house. The old lady took her to that place.



The next day, her sister-in-law went to her mother's house. She has further stated that she disclosed about the incident the next day to all at which a *Panchayati* was convened. In the *Panchayati*, accused Vir Vikram, Shekhar and one person, whose name is not known to her, created a scene and threatened the villagers to abide by the decision of the *Panchayati*, otherwise lady members of their families would also be abducted. She asked her sister-in-law to go to the police. They went to the police station and lodged the case. She has further stated that Lal Chacha had drafted the written application which bears her signature and she has identified the same (Ext.2).

21.1. In her cross-examination, she has stated that she had gone to the fair with 8-9 ladies and had reached there at 08:00 p.m. and remained there for three hours. She was returning with six ladies. When they were half way, the boys started chasing her. The house of her sister-in-law was 10 to 15 steps away from that place. On way, she met the old man having a Marshal at his door, who name she does not know. She does not know that he is the uncle of Lal Chacha. She had told the old man that four boys are after her. By that time, she did not know the names of the boys, which she knew at the time of *Panchayati*. She does not know the name of the old lady whom



she had requested to take to her sister-in-law's house. She had gone to file the case with her sister-in-law, mother of her sister-in-law and her father. The written application was drafted by the Head Clerk. It was not read over to her and she had put her signature without verifying the contents. Her statement was recorded by *Daroga* of Mahila P.S. also. Out of fear she disclosed the name of only one accused before the *Daroga* of Mahila P.S. as the miscreant who committed rape upon her. She has denied the suggestion that she was having love affair with the boy whose name she had disclosed and she had come to the fair to meet him only. The boy cheated her and, with a view to earn money, committed such act with her. She has also denied the suggestion that no rape was committed upon her, but, as she was caught in the company of that boy, she had concocted a false case and implicated him. She has denied that Anish had done photography and videography on the occasion of her brothers' marriage by going to her house where she came in contact with Anish and she used to meet Anish off and on. She came to know the names of the accused persons in *Panchayati* where persons attending the *Panchayati* were taking their names. The old man whom she requested to take to the house was not present in the *Panchayati*. She has denied the suggestion that rape was not



committed upon her and she was used by the *Mallah* community for filing of the present false case as they wanted to grab the land on which her sister-in-law's house is situated. She had gone to her house the next day of the incident and had returned to her sister-in-law's house for attending the *Panchayati* which was convened at 02:00 p.m. She was interrogated by the police after the *Panchayati*.

22. P.W. 8 Ratan Kumar Yadav has deposed in his examination-in-chief that on 01.10.2017 he was posted as S.H.O., Katra. A written complaint was filed by the victim on that day. He registered the case, paginated the same in his pen and signature (Ext.4). The formal F.I.R. is in the pen of Shashi Kumar upon which he has put his signature (Ext-5). The 1st place of occurrence is the cow-shed of Ravi Shekhar and Saurav Kumar where Anish Kumar, Dadan Kumar, Sachin Kumar and Raushan Kumar attempted to commit rape. The 2nd place of occurrence is the field of Kundan Kumar. This is the place where Anish Kumar, Gagan Kumar, Sachin Kumar and Raushan Kumar are alleged to have committed rape upon the victim and recorded video. He has further stated that in course of investigation he recorded the statements of witnesses Raj Kumar, Birju Sahni, Umesh Kumar, Kumod Sah, Lal Babu Sah and Mohan Sahni, all



of whom supported the prosecution-case. On his instruction, the statement of the victim was recorded at Mahila P.S. and her clothes were seized, sealed and he had sent the same for examination on 10.10.2017. He had arrested four accused persons. He had also got the statement of the victim under Section-164 recorded in the Court. He had also got the victim medically examined, which confirms gang-rape. He had found the allegations to be true against seven accused persons and had submitted charge-sheet against them under Sections-376D and 120B I.P.C., Section-6 of POCSO Act and Section-67 of I.T. Act. Rest accused persons had been released on bail by the Court.

22.1. In his cross-examination, he has stated that he had not got any incriminating articles at either of the places of occurrence nor any trampling of the ground was found. He was informed about the incident on 30th date of the month. The victim had submitted the written complaint by coming to the police station with her brother and other agnates. He had recorded the statements of the victim and her agnates at that very time. Thereafter, he had gone to the place of occurrence. The names of the accused persons were disclosed to him by the victim. Though the clothes of the victim were seized and sealed by Mahila P.S., but he does not have the clothes or the report with him. The



report had not come during the course of investigation. He has further stated that the distance between the place of occurrence and the place of fair is $\frac{1}{2}$ kilometres. The house of the victim's sister-in-law and the place of fair are linked with a road. The victim has stated about an old man, but the statement of the old man is not recorded in the case diary. He had not taken the statement of any old lady either. The written complaint was drafted and submitted at the police station itself. The written complaint bears the signatures of the victim and five witnesses. He has stated that it is not that the written complaint was got drafted by Lalbabu Sah. He had submitted the video in the Court. He has admitted that the house of the victim's sister-in-law is situated on the land of Vikram. He has denied the suggestion that the accused persons are innocent and that his investigation is faulty.

23. PW-9 Dr. Tripti Sinha has deposed that on 01.10.2017, she was posted as an Assistant Professor at S.K.M.C.H. Muzaffarpur. She examined the victim at 01:30 p.m. on 01.10.2017 and noted the following:-

“Multiple scratch marks on front of chest on and around breasts specially right side (approximately 2 to 5 days old).

Per abdominal examination – No abnormality detected.

Per Vaginal examination – Normal clitoris, labia minora and majora, post. fourchette torn with slight bleeding.



Hymen torn posteriorly with slight bleeding.

No bleeding from inside vagina.

Advice 1. Swab for spermatozoa examination from vagina and vulva – spermatozoa not found: Red blood cell present. Pus cell present, epithelial cells in large numbers, bacteria present.

2. Patient was referred to forensic medicine department, Sri Krishna Medical College, Muzaffarpur for age determination and further examination and opinion.

3. This report has been written in her pen and bears her signature (Exhibit-6).”

23.1. In her cross-examination, she has further deposed that:-

“4. Spermatozoa was not found during the examination of vagina. Although inside vagina no injury was found at the entrance of vagina a tear on the posterior fourchette and also on the hymen with slight bleeding.

7. During external body examination, she had found multiple scratch marks on and around breasts, specially on the right side which can also be caused by use of nails.

8. As per abdominal examination no abnormality was found.

9. Rape can be determined only if the victim is examined within 24 hours.”

24. PW-10 Dr. Sunil Kumar has deposed that he was posted as an Assistant Director, Regional Forensic Science Laboratory, Muzaffarpur on 07.12.2017. He found a total of three exhibits in three paper packets inside the wooden box in the form of leggings, *dupatta* (scarf) and frock which were marked as Exhibits A, B and C respectively. All the three articles



were examined for presence of blood and semen.

Result of examination -

Blood was found on Exhibit A leggings and Exhibit C frock.

No blood was found on Exhibit B *dupatta*.

No semen was found on any of the Exhibits.”

24.1. In his cross-examination, he has deposed that he did not find any semen on any exhibit. He found blood only on two exhibits, Exhibit A leggings and Exhibit C frock. He did not mention in his report as to on which part of the said two clothes, he found blood. He has further stated that it is not clear from the report as to whose blood it was.

25. PW-11 Dr. Bipin Kumar has deposed that on 05.10.2017, he was posted as an Assistant Professor at FMT S.K.M.C.H., Muzaffarpur. On that day, a Medical Board was constituted vide letter no. 1990/17 by the Principal, S.K.M.C.H., Muzaffarpur for the determination of the age of the victim. Based on the physical, dental and radiological findings, the members of the Board opined that the age of the victim was between 15 to 16 years.

25.1. In his cross-examination, he has stated that the age determined by the Medical Board may be two years more or less.



26. D.W. 1 Niranjan Kumar Sah has deposed in his examination-in-chief that the accused persons are known to him as they are his villagers. He also knows Pinki Devi and her sister-in-law (*Nanad*). He is not aware about any incident regarding them. There is a land dispute between the families of Pinki Devi and the accused persons for which a *Panchayati* was also held. Accused persons have been falsely implicated in this case due to the land dispute. He has denied the suggestion to have given false deposition.

27. D.W. 2 Satish Kumar has deposed that he is not aware about the present incident. The case is palpably false. He is hard of hearing and has been brought to depose by Phulpari Devi whose son Sachin Kumar is an accused in this case.

28. D.W. 3 Ram Ratan Prasad has deposed that he is acquainted with the accused being a co-villager. No incident had taken place. They had a land dispute due to which this false case was got lodged. The *Panchayati* was held to resolve the land-dispute and not the incident in question. He has denied the suggestion that the accused persons had sexually abused the victim and in collusion with the accused persons he was giving false deposition.

29. D.W. 4 Suryanandan Singh is an attesting



witness to the certificate issued by the Mukhiya of his *panchayat* namely Sheela Devi (Ext.A) and the certificate of genealogical table issued by *Sarpanch* Devki Devi (Ext-B). He has stated that the said certificates were not written in his presence, but he identifies the signatures of *Mukhiya* and *Sarpanch* as he occasionally goes to them.

30. D.W. 5 Ranjan Kumar has deposed that he knows his villager Ram Ekbal Sahni, grandfather of Pinki Devi. He has constructed his house on the land of Prabhu Nandan Singh, grandfather of Vikram. Ram Ekbal Sahni wants to grab the land of Vir Vikram on which his house is situated. Accused persons Anish Kumar, Gagan Kumar, Sachin Kumar, Raushan Kumar, Vir Vikram, Ravi Shekhar and Himanshu Shekhar are his villagers. He has denied the suggestion that he is concealing the real fact and has deposed falsely.

31. D.W. 6 Ishwar Chandra Vidyasagar has deposed that he was a priest in the fair which continued from 27.09.2017 to 30.09.2017. No untoward incident had taken place during the fair. He had come to depose on the request of Vir Vikram who happens to be his brother. He has denied the suggestion that the case is genuine and he has deposed falsely.

32. We have considered the arguments canvassed by



the learned counsels appearing for the parties, re-appreciated the entire evidence led by the prosecution as well as defence and perused the typed copy of the depositions of the prosecution-witnesses supplied by the learned counsel for the appellants.

33. From the evidence led by the prosecution, it would emerge that the alleged incident took place on 28.09.2017 at about 11:00 p.m. Admittedly, for the said incident the injury report was given on 01.10.2017 at about 09:30 a.m., i.e. after more than two days. In the written complaint, no reasonable explanation has been given by the victim for the delay in lodging the F.I.R. It further transpires that in the written complaint the victim has stated that four boys gagged her mouth and forcibly took her away and thereafter and thereafter two boys committed rape on her and two other boys were recording video of the incident. It is further stated that on 30.09.2017, during evening hours, she disclosed about the incident to her Bhabhi and thereafter all of them went to the fair at about 08:00 p.m. where village people gathered. She narrated about the incident in question to the village people and from the fair itself some of the persons brought four boys and she identified said four boys as the miscreants who had committed rape on her and prepared video of the same.



33.1. If her statement under Section-164 of the Code is examined, it is revealed that in the said statement the victim has alleged that all the four boys committed rape on her and all the four boys recorded the video. In that statement, she has also referred one old lady who reached her to her house in the morning.

34. Keeping in view the aforesaid, if the deposition given by the victim before the Court is examined, the victim, P.W. 7, has stated in her examination-in-chief that all the four boys committed rape on her one after another and when one boy was committing rape, the other boy was recording the video. She became unconscious and all the four fled away from the place. She had further stated in her examination-in-chief that she did not know the names of the accused persons. However, she can identify them by their face. She has immediately stated that the names of the accused are Raushan, Gagan, Anish and Manish. She had also stated that on the next date, she had narrated about the incident to the village people and thereafter a *Panchayati* was held. Further, the victim has stated during cross-examination that she had gone to the fair with 8-9 persons and she was returning from the fair with 5-6 women. Thus, when there were 5-6 women accompanying the victim while returning from the fair, it



is not believable that four boys forcibly took her and thereafter committed rape on her. She had also admitted in para-18 that her statement was initially taken before the *Daroga* of Mahila P.S. and she has stated at the Mahila P.S. that one person has committed rape on her.

35. Thus, from the aforesaid version given by the victim in the written complaint given by her to the police, in her statement recorded under Section-164 of the Code before the learned Magistrate and in her deposition recorded before the Court during the course of trial, it can be said that there are major contradictions, inconsistencies and improvement in the version of the victim. We are of the view that the victim, P.W. 7, cannot be termed as a sterling witness and, therefore, simply relying upon her version, conviction cannot be recorded.

36. At this stage, we would like to refer the order dated 28.02.2024 passed by this Court in **Cr. Appeal (D.B.) No. 586 of 2023 (Deepak Kumar Vs. The State of Bihar)** and allied matter. The Division Bench of this Court has observed in para-12 as under:-

“12. At this stage, we would like to refer the decision rendered by the Hon’ble Supreme Court in the case of **Rai Sandeep vs. State (NCT of Delhi)**, reported in **(2012) 8 SCC 21**. The Hon’ble Supreme Court has



observed in para 22 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.”

37. At this stage, we would also like to refer the deposition of P.W. 1, Sushila Devi, and P.W. 6, Pinki Devi, who are near relatives of the victim. P.W. 1 has stated that at about 09:00 p.m., she had gone with the victim to see the fair. At that time, no other person had accompanied them. She further stated that Vir Vikram informed her that the victim has been raped. P.W. 6 has stated that victim had gone to fair carrying meal. When the victim returned home, she informed that four boys have committed rape on her. However, the said witness, during cross-examination, has stated that the victim had disclosed about



the incident two days later when none else was present. The victim had disclosed the names of the persons before the said witness first and then before the village people.

38. At this stage, we would also like to refer the deposition of P.W. 8, Ratan Kumar Yadav, who was posted as S.H.O. and who had carried out the investigation. The said witness has stated that there are two places of occurrence and during cross-examination he has admitted that he had not got any incriminating articles at either of the places of occurrence nor any trampling of ground was found. The said witness has further stated that he had not recorded the statement of the old man nor he had recorded the statement of the old lady. Thus, aforesaid two witnesses have not been examined by the prosecution.

39. Thus, from the aforesaid deposition given by the prosecution-witnesses, we are of the view that there are major contradictions, inconsistencies and improvement in the depositions of the prosecution-witnesses with regard to the manner in which the occurrence took place and how the victim has disclosed about the names of the accused who have committed rape. It is further required to be observed at this stage that the investigating agency did not seize the mobile phone of any of the accused. Even the so called video recorded by the



accused has not been seized and produced before the Court. Further, it is required to be observed that the victim has initially given statement before the Mahila Police that one boy committed rape on her, whereas in the written complaint which was given after a period of more than two days, she has alleged that two boys had committed rape on her and two other have prepared the video and thereafter, in her statement under Section-164 of the Code and while deposing before the Court, she has alleged that all the four boys committed rape on her.

40. Keeping in view the aforesaid, the deposition given by P.W. 9, the doctor who had examined the victim, is also required to be scrutinized. No doubt, the doctor found multiple scratch marks on front of chest on and around breasts specially right side, with regard to the rape, the said witness has stated that rape can be determined only if the victim is examined within 24 hours. Thus, the said doctor has not given any definite opinion that rape has been committed on the victim or not.

41. P.W. 10, Dr. Sunil Kumar, who was posted as Asstt. Director, Regional F.S.L., Muzaffarpur, has deposed that blood was found on Ext.A leggings and Ext. C frock. However, he has specifically stated that no blood was found on Ext. B Dupatta and no semen was found on any of the exhibits. He has



specifically admitted during cross-examination that it is not clear from the report as to whose blood it was.

42. Thus, from the aforesaid evidence led by the prosecution, it can be said that the prosecution has failed to establish beyond reasonable doubt that the appellants/accused committed rape on the victim.

43. At this stage, we would like to examine the contention taken by the learned counsels for the parties with regard to the age of the victim. The prosecution has projected that the victim girl was aged about 14 years and tried to prove that she was minor at the time of incident. The prosecution has examined P.W. 11, Dr. Bipin Kumar, who was posted as Asstt. Professor at F.M.T., S.K.M.C.H., Muzaffarpur. The said witness has stated that a Medical Board was constituted for determination of the age of the victim and based on the physical, dental and radiological findings, the members of the Board opined that the age of the victim was between 15-16 years. However, the said witness, during cross-examination, has specifically admitted that the age determined by the Medical Board may be two years more or less.

44. At this stage, it is also relevant to note that the prosecution has failed to produce any documentary evidence to



prove the age of the victim such as birth certificate, school leaving certificate or any certificate issued by the Panchayat. Thus, the only evidence, i.e. the evidence of P.W. 11, is required to be considered with regard to the age of the victim.

45. At this stage, we would like to refer the order passed by the Division Bench of this Court on 28th February, 2024, passed in **Cr. Appeal (D.B.) No. 586 of 2023 (Deepak Kumar Vs. The State of Bihar)**, and allied matter. The Division Bench has observed in para-17, 18, 18.1, 19, 19.1 and 19.2 as under:-

“17. At this stage, we would like to refer the decision rendered by the Hon’ble Supreme Court in the case of **Jarnail Singh (supra)** wherein the Hon’ble Supreme Court has discussed in detail with regard to the provisions contained in Juvenile Justice (Care and Protection of Children) Rules, 2007 and the Rules framed thereunder. However, the Hon’ble Supreme Court has observed in paragraph-22 and 23 as under:

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as “the 2007 Rules”). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

“12.*Procedure to be followed in determination of age.*—(1) In every case



concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

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

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare



the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate



or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively



determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.”

18. In the case of **P. Yuvaprakash vs. State Rep. By Inspector of Police**, reported in **2023 SCC OnLine SC 846**, the Hon’ble Supreme Court has observed in paragraph 14 to 17 as under:

“14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred



in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “*an ossification test*” or “*any other latest medical age determination test*” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in



Rishipal Singh Solanki v. State of Uttar Pradesh,³ this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in *pari materia*) with Section 94 of the JJ Act, and held as follows:

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.”

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act,



this court held in *Sanjeev Kumar Gupta v. The State of Uttar Pradesh*⁴ that:

“Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i) and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a) (i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2) (i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.

17. In *Abuzar Hossain @ Gulam Hossain v. State of West Bengal*⁵, this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of



preference.

18.1. From the aforesaid decision rendered by Hon'ble Supreme Court, it can be said that the burden of proof that someone is juvenile (or below the prescribed age) is upon the person claiming it. In the present case, the prosecution has claimed that the victim is minor girl, therefore, it was the duty of the prosecution to prove that the victim was minor on the date of occurrence.

19. At this stage, we would also like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Jaya Mala (supra)** wherein the Hon'ble Supreme Court in paragraph 9 observed as under:

“9. Detenu was arrested and detained on October 18, 1981. The report by the expert is dated May 3, 1982, that is nearly seven months after the date of detention. Growing in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. Even on normal calculation, if seven months are deducted from the approximate age opined by the expert, in October 1981 detenu was around 17 years of age, consequently the statement made in the petition turns out to be wholly true. However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side. Undoubtedly, therefore, the detenu was a young school-going boy. It equally appears that there was some upheaval in the educational institutions. This young school-going boy may be enthusiastic about the students' rights and on two different dates he marginally crossed the bounds of law. It



passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people, may be immature, may be even slightly misdirected, may be a little more enthusiastic, with a sledge hammer. In our opinion, in the facts and circumstances of this case the detention order was wholly unwarranted and deserved to be quashed.”

19.1. From the aforesaid decision, it can be said that a judicial notice can be taken that the margin of error in age ascertained by radiological examination is two years on either side.

19.2. In the present case, as discussed hereinabove, except the radiological report, there is no material produced by the prosecution with a view to prove the age of the victim. Even as per the radiological report, the age of the victim appears to be between 14-16 years and, therefore, it can be safely said that the age of the victim can be treated to be between 16-18 years. Even PW-6, the doctor has specifically stated that there is no evidence of recent sexual assault and there is no physical or chemical injury on the body including private part of the victim.”

46. Keeping in view the aforesaid observation made by this Court after considering various decisions rendered by the Hon’ble Supreme Court, if the facts of the present case as discussed hereinabove, are examined, we are of the view that prosecution has failed to prove by leading cogent evidence that the victim was minor on the date of occurrence. Even from the decision rendered by the Hon’ble Supreme Court in the case of **Jaya Mala vs. Home Secretary, Government of Jammu and**



Kashmir & Ors., reported in **AIR 1982 SC 1297**, it can be said that judicial notice can be taken that the error of margin to be given in the age of the victim is two years on either side. In the present case, as per the Medical Board, the age of the victim was 15-16 years and, therefore, it can be safely said that the age of the victim can be treated to be between 17-18 years.

46.1. Thus, from the aforesaid deposition of the prosecution-witnesses, we are of the view that there are major contradictions, inconsistencies and improvement in the deposition of the prosecution-witnesses.

47. In view of the aforesaid facts and circumstances of the present case, we are of the view that the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, despite which the Trial Court has recorded the impugned judgment of conviction and order of sentence. As such, the same are required to be quashed and set aside.

48. Accordingly, the common impugned judgment of conviction and order of sentence dated 22.05.2019 passed by learned 1st Additional District and Sessions Judge-cum-Special Judge, POCSO Act, Muzaffarpur, in Trial No. 82/2017, (arising out of Katra P.S. Case No. 102 of 2017) is quashed and set aside. The appellants are acquitted of the charges levelled against them



by the learned Trial Court.

49. Appellant Raushan Kumar (in Cr. Appeal (D.B.) No. 830 of 2019) and appellants Anish Kumar, Gagan Kumar and Sachin Kumar (in Cr. Appeal (D.B.) No. 767 of 2019) are in custody. They are directed to be released from jail custody forthwith, if their custody is not required in any other case.

49.1. Rest of the appellants are already on bail. They are discharged from the liabilities of their respective bail-bonds.

50. All the appeals stand allowed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

K.C.Jha/-

AFR/NAFR	A.F.R.
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