

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.16 of 2023

Arising Out of PS. Case No.-2 Year-2014 Thana- SAMSTIPUR RAIL P.S District-
Samastipur

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Rajendra Singh Son of Ramji Singh R/V- Dobo, P.S.- Chandil, District-
Saraikela Khersawan (Jharkhand)

... .. Appellant/s

Versus

1. The State of Bihar
2. The Informant Son of Bhikha Singh R/V- Dobo, P.S.- Chandil, District-
Saraikela Khersawan (Jharkhand)

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bhaskar Shankar, Advocate
For the Respondent/s	:	Mr. Ramchandra Singh, APP
For the Informant	:	None

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

Date : 20-07-2024

The present appeal has been preferred against the impugned judgment of conviction and order of sentence dated 22.11.2022 and 26.11.2022, respectively passed by Ld. Additional District and Sessions Judge-VIth-cum-Special Judge, POCSO Act, Samastipur in connection with T.R. No. 118 of 2022/R.N. No. 02/2014, arising out of Samastipur (Rail) P.S. Case No. 02 of 2014, whereby the sole appellant has been found guilty of offence punishable under Sections 366 and 376 of the Indian Penal Code and Section 4 of the POCSO Act and sentenced to undergo rigorous imprisonment for five years and a



fine of Rs. 10,000/- under Section 366 of the Indian Penal Code and in default to pay the fine, to suffer additional rigorous imprisonment for three months and rigorous imprisonment for seven years and a fine of Rs. 40,000/- under Section 4 of the POCSO Act and in default to pay the fine, to suffer additional rigorous imprisonment of six months. No separate sentence has been passed under Section 376 of the Indian Penal Code in view of the provision of Section 42 of the POCSO Act. Both the sentences have been directed to run concurrently.

2. The FIR bearing Samastipur (Rail) P.S Case No. 02 of 2014 was registered on 08.01.2014 at 15:00 O'clock on the written report of the informant Bhola Singh against seven accused persons viz, Rajendra Singh, Ramji Singh, Jitni Devi, Rajni, Krishna Singh, Ganesh Singh and Om Prakash for the offence punishable under Sections 363 and 366(A) read with Section 34 of the Indian Penal Code.

3. The prosecution case, as emerging from the written report of the Informant, Bhola Singh, resident of village Dobo, P.S. Chandil, District-Saraikela address to In-charge Kapali O.P. (Chandil) Police Station is that co-village Rajendra Singh, son of Ramji Singh, used to molesting of his 15 years old daughter while going to school and used to put intimidate her to keep this



thing secret. His daughter is a student of 8th class at DAB Girls High School, Sonari, Kagal Nagar, Jamshedpur and during the winter vacation, he sent his daughter to his village on 22.12.2013 by Tata-Chapra train along with his younger son Abhishek Kumar and son of sadu (husband of wife sister) Jitendra Prasad. In the meantime, the said Rajendra Singh was chasing his daughter from Tata itself and he kidnapped his daughter at Samastipur (Bihar) Railway Station with intent to marry her while she was going to the washroom in the train. It was informed by Jitendra Prasad to him by mobile phone. Thereupon, he directed Jitendra Prasad to give information to Samastipur, GRP Police Station. The same day, informant along with his friend hurriedly set for Samastipur and met Samastipur Officer In-charge, Samastipur Police Station and gave him information about the occurrence and requested to lodge FIR. However, the Officer In-charge of Samastipur GRP Police Station asked him to go Kapali O.P to lodge FIR, because the matter comes under its jurisdiction. Thereupon, on 16.12.2013, he went to Kapali O.P and met In-charge and requested to lodge FIR and recover his daughter. In the meantime, on 28.12.2013, Rajendra Singh along with his father Ramji Singh and mother Jitni Devi; sister Rajni; brother-in-law Om Prakash; brother



Krishna Singh and Ganesh Singh came to Kapali O.P along with his daughter in a dramatic way. Rajendra Singh kept the informant's daughter roaming for six days from town to another. The FIR was not lodged on 28.12.2013 and his son and daughter were kept in the Police Station under its supervision till 29.12.2013. He requested the Police to take speedy action and seeks justice to her daughter by taking action against the culprit.

4. After registration of the FIR, the investigation commenced and charge-sheet bearing No. 59 of 2014 dated 09.08.2014 was filed against the Appellant, Rajendra Singh, and other co-accused persons, viz. Rajni Devi and Om Prakash @ Jai Prakash under Sections 363, 366(A), 376, 323 and 120(B) of the Indian Penal Code and Sections 4 and 8 of POCSO Act, 2012; keeping the investigation pending against other co-accused persons. Subsequently, cognizance was taken and charges were framed against the accused persons facing the Trial.

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

- (1) **P.W.-1** – Lakhindra Chaurasia (witness)
- (2) **P.W.-2** – Informant
- (3) **P.W.-3** – Victim
- (4) **P.W.-4** – Abul Kalam (Investigating Officer)
- (5) **P.W.-5** – Dr. Sudha Verma (Doctor)



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

- (i) **Ext. 1** – Fardebayan;
- (ii) **Ext. 2** – Signature of the victim and witnesses on the statement of 164 Cr.PC.;
- (iii) **Ext. 3** – Signature of the victim on medical report;
- (iv) **Ext. 4** – Signature of the SHO on the written application;
- (v) **Ext. 5**- Charge-sheet
- (vi) **Ext. 6** – Signature of the doctor on the medical report.

7. After closure of the prosecution evidence, accused was examined under Section 313 Cr.PC during which he was confronted with incriminating circumstances which had come in the prosecution evidence, so as to afford him an opportunity to explain those circumstances. During examination, the Appellant admitted that he had heard the evidence of the prosecution witnesses against him. However, he did not explain any circumstance, though he denied every charge and claimed to be innocent. However, the Accused/Appellant has not examined any witness in his defence, nor he has exhibited any document to show his innocence.

8. Learned Trial Court after appreciating the evidence on record and considering the submission advanced by both the parties, has passed the impugned judgment and order of sentence.

9. We have heard Ld. Counsel for the Appellant and



Ld. APP for the State. Nobody is present on behalf of the informant.

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

11. To substantiate his claim, he has submitted that the Prosecution has failed to prove the age of the alleged victim below 18 years for application of the POCSO Act. He has further submitted that as per the evidence on record, when the Prosecutrix was being abducted by the Accused/Appellant from the train, she did not raise any alarm on the Platform where many people are generally present and she could have got help of the people. Even during stay with the Accused/Appellant for about 6-7 days and moving from one town to another, she again did not raise any alarm anywhere. It shows that there was no force applied by the Appellant against the Prosecutrix and, as such, no offence of kidnapping or abduction is made out.

12. In regard to allegation of rape, he has submitted that even this allegation is not sustainable as per the evidence on record. Even the medical evidence does not corroborate such



allegation. The prosecution case in this regard is based on the sole evidence of the prosecutrix, who is not truthful and trustworthy. Even her father/informant has not come out with true version of the prosecution case. He refers to the statement of Prosecutrix in regard to her statement before the local police of Kapali Outpost where she had given her statement to the Police and wherefrom she joined her father. The I.O. has also deposed that there was love affair between the Prosecutrix and the Accused/Appellant and they had entered into settlement before the Kapali O.P. in the presence of her father and thereafter she had joined her father. But in her statement under Section 164 Cr.PC or in her testimony before the Court, she has not disclosed this fact. Moreover, the F.I.R. has been lodged by father of the prosecutrix after 15 days of the occurrence after entering into settlement in presence of the Police and coming with concocted allegation suppressing the true facts regarding love affair between the Prosecutrix and the Appellant. He has also submitted that there was also previous enmity between family of the prosecutrix and that of the Appellant.

13. However, Ld. APP for the State vehemently submitted that there is no infirmity or illegality in the impugned Judgment. As per medical evidence, it is clearly proved that the



Prosecutrix is below 18 years of age and she has been subjected to penetrating sexual assault as per evidence of the Prosecutrix. He has also stated that conviction may be based on sole testimony of the Prosecutrix. The Prosecutrix is not accomplice and her evidence is not required to be corroborated and her sole testimony is sufficient for conviction of the Accused/Appellant.

14. 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."

15. 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.

16. 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?

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

18. 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.

19. 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.

20. 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.**

21. 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.

22. 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.

23. 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.

24. 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.

25. 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

26. Now, coming to the case on hand, I find that the **informant** has been examined as **P.W.-2**. Supporting the prosecution case, he deposes that it was 10 O'clock in the morning on 31.12.2013. At that time, he was at home. He got phone call from Jitendra Prasad (son of sadu) that his daughter, aged about 15 years, has gone somewhere and he is not able to trace despite efforts to search her. Thereupon, he asked him to give information to GRP Police Station. Thereafter, he came to Samastipur to know that his daughter that his daughter has been kidnapped by Rajendra Singh. Then on 06.01.2014, he gave application to Chandil Police Station, the same copy of which



reached there on 08.01.2014. Kapali Police Station is O.P of Police Station. Kapali O.P handed over is daughter to him after recovering her. Upon inquiry by him, his daughter told him that the accused person had kidnapped her. He gave typed application to In-charge of Kapali O.P Police Station. He has identified his application which has been exhibited as Ext. 1. His daughter has given statement under Section 164 Cr.PC. She has been subjected to rape by Rajendra Singh. He identifies the Accused standing in the dock. In his **cross-examination**, he has deposed that his daughter had been recovered by Kapali Police Station and he was called at that Police Station. He went to Chandil Police Station on 28.12.2013. His daughter was forced to take signature and thereafter, he brought his daughter to his home on 29.12.2013. He had given application to S.P, Saraikela which was sent to Police Station. Thereafter, the same came to Kapali O.P Police Station. Since, he has brought his daughter from Chandil O.P, he has been living with her. From 23.12.2013 to 28.12.2013, she was not with him. During this period where his daughter went and with whom she lived was told by his daughter to him and as per the information given by the daughter, he has lodged the case. His daughter was studying in school and he is not aware whether medical test has been conducted upon his daughter and doctor has



assessed her age as 17.5 years. He is not aware where his daughter was moved during the period of occurrence. He denied the suggestion of no occurrence had taken place against her.

27. The victim has been examined as **P.W.-3**. Supporting the prosecution case, she has deposed in her **examination-in-chief** that the occurrence is of the year 2013. It was 10:30 AM. At that time, she was going to Chapra by Tata-Chapra train. At Samastipur Railway Station, she was going to washroom in the train, then two boys came and threatening by way of knife. They got her came down from the train. One boy had covered his face and another was one Rajendra Singh, whom she knows. She was taken to bus stand wherefrom she was taken to Patna. Again from Patna Railway Station to Buxar Railway Station where she was kept in a house where she was subjected to rape by Rajendra Singh. The boy, who had covered his face, had gone away and she is not aware where he had gone. She was kept at Buxar for two days, thereafter, she was taken to Delhi. Again, from Lucknow Railway Station, they came to Dimna Chowk by train where sister and sister-in-law of Rajendra Singh are living. The sister and brother-in-law of Rajendra Singh asked him to take all responsibilities upon her and Rajendra Singh should not be alleged to be guilty. Dimna Chowk is in Tata. Thereafter, she



came to Samastipur with his father. She has given her statements under Section 164 Cr.PC before Ld. Magistrate. She identifies her statement under Section 164 Cr.PC and the same has been exhibited as **Ext.2**. Thereafter, she had requested for medical examination by application and she identifies the application which has been exhibited as Ext.3. Thereafter, she came to her home along with his father and mother. She has further deposed that if Rajendra Singh wants to compromise, she is ready for compromise, because she has got married and she does not want people of her matrimonial home come to know about the occurrence, otherwise her home will get destroyed. She also faces economic and mental difficulties to come and go. She has further deposed that if Rajendra Singh gives in writing that he will never harass her further and he will not lodge any case against her family members and seeks apology, she can compromise. She has also identified Rajendra Singh, who is standing in the dock. In her cross-examination, she has deposed that she has stated under Section 164 Cr.PC. Her date of birth is 15.11.1999. She was studying at DAB Girls High School. She is not remembering the name of the Headmaster of that time. She was moved from one town to another from 6-7 days. She did not raise *hulla* anywhere. She did not approach Police Station because she was afraid. She



has denied the suggestion that there is land dispute between her family and father of the accused Rajendra Singh. She also denied the suggestion that the age written in the medical as 17 years is right. She had also denied the suggestion that she was above 18 years of age and she has gone with the Accused with her own consent and she had come down from the train on her own consent.

28. P.W.-1, Lakhindra Chaurasia is a co-villager of the Informant, Bhola Singh supporting the prosecution case. In his **examination-in-chief**, he has deposed that the occurrence is of the year near about 2000. He is not aware of the time. He was not at his home at that time. He had gone for work. He came to here that Rajendra Singh had enticed away the daughter of Bhola Singh. He is not aware of the age of the girl. He identified the accused person in the dock. In his **cross-examination**, he has deposed that he is a co-villager of Bhola Singh and there is land dispute between guardian of Bhola Singh and Rajendra Singh. The present case has been lodged on the pressure of that land dispute. Rajendra Singh has not taken away any girl in this occurrence. He has taken the name of victim of this case and had deposed that he has not taken away. He has come to depose on summons.



29. P.W.-4 is Abul Kalam. In his **examination-in-chief**, he has deposed that on 06.01.2014, he was posted at Railway Police Station, Samastipur as Sub-Inspector. On that day, one typed application was given by Informant, Bhola Singh, to the then Officer In-charge Railway Police Station, Samastipur whereupon the SPJ (Rail) Police Station Case No. 02/2014 was lodged. He identified the endorsement on the application by the Officer In-charge of the Police Station, the same has been exhibited as Ext. B. Thereafter, he got the charge of investigation in this case. Thereafter, the content of the application of the informant was written in the case diary and thereafter, restatement of the informant was also recorded. He also recorded the statement of the victim of this case. He also verified the age of the victim by school certificate as per which, date of birth is 15.11.1999. Thereafter, he proceeded to the place of occurrence, i.e. Railway Platform No. 9, Stall No. E/6. The place of occurrence is surrounded by boundary and factory to the north; Platform No. 9 to the south. He also recorded the statement of the witnesses who supported the prosecution case. He also got statement of the victim recorded under Section 164 Cr.PC and he also got the victim medically examined. Thereafter, charge-sheet bearing no. 59 of 2014 dated 09.08.2014 was submitted against



the Accused Rajendra Singh, Rajni Devi and Om Prakash @ Jai Prakash. In his **cross-examination**, he has deposed that he had talked with In-charge of Kapali O.P Police Station. He has further deposed that there was love affairs between the victim and the Accused Rajendra Singh since earlier and Kapali O.P had mediated between the victim and the Accused and they were handed over to their parents. Such statement were also given by the girl and the Accused in their statement for recording the statement of the victim under Section 164 Cr.PC. The girl was taken by her parents after 10-12 days of the occurrence. He has further deposed that only victim and her parents had supported the prosecution case before him. School certificate of the victim was also given by her parents. However, he had not visited the school to verify the school certificates. He had denied that his investigation is defective. To Court question, this witness has deposed that he found the complicity of the Accused in this case on the basis of the statement of the victim and her statement under Section 164 Cr.PC and medical report.

30. P.W.-5 is Dr. Sudha Verma, who conducted medico legal examination of the victim. In her **examination-in-chief**, she has deposed that on 09.01.2014, she was posted as a Medical Officer at Samastipur. A medical board comprising D.K.



Verma as Chairman and A.B. Sahay as a member was constituted to examine the victim and as per examination of the board, the finding were as follows:

“M.I. - mole on right cheek
Height 4' 11" feet
Teeth 7x7/7x6=27
Secondary sexual character- breast Auxiliary and pubic hair developed
No mark of injury on her external part of body
Hymen- old healed ruptured
vagina admits two fingers
No external injury on private part
Vaginal swab was taken for microscopic examination
X-ray of Pelvis Epiphysis of both iliac crest completely appeared and fused started
X-ray of wrist joint- Epiphysis A birth joint A radius and alone completely fused.
Xray elbow joint: Epiphysis of upper end of radius and alna fused completely.
USG lower abdomen -normal.
Vaginal swab report shows-Spermatozoa not found.
Opinion regarding age- 17-17x1/2 years
regarding rape-Sign of rape could not be found but sign of sexual contact was found to have been established in past
This medical report in under any pen and writing and I identify all the signatures on this report Exhibited as Ext-6/PW5.”

31. 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.



32. No procedure has been provided in the POCSO Act for determination of the age of the victim. Section 34 (2) of the 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.

33. 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.

34. 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.

35. 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.”

36. 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)

37. However, it is settled position of law that the ossification test gives only a broad assessment of the age. It cannot give an exact age. There is always possibility of errors of one to two years on higher as well as lower side. Hence, it is required to be considered along with the attending circumstances. It is also settled principle of law that benefit of doubt always goes to the accused. The following authorities may be referred to in this regard:

- (i) **Karan @ Fatiya Vs. State of M.P. (2023) 5 SCC 504**
- (ii) **Rishipal Singh Solanki Vs. State of U.P., (2022) 8 SCC 602**
- (iii) **Rajak Mohammed Vs. State of H.P. 2018 SCC Online SC 1222**
- (iv) **Mukarrab Vs. State of U.P., (2017) 2 SCC 210**
- (v) **State of M.P. Vs. Anoop Singh, (2015) 7 SCC 773**
- (vi) **Abuzar Hossain Vs. State of W.B., (2012) 10 SCC 489**

38. In the case on hand, it is found that despite the victim studying in DAB Girls High school, the prosecution has not brought on record school certificate to prove the age of the victim giving rise to adverse inference against the prosecution in regard to the age of the victim. Hence, benefit of possibility of



error in determination of age by ossification test would be given to the accused. As per the ossification test, the age of the victim has been assessed as 17-17½ years. Hence, giving benefit of two years, the age of the victim is determined to be 17 ½ years plus two years i.e., 19½ years.

39. Hence, it is found that the victim was not a child at the time of alleged occurrence. Hence, the application of the POCSO Act is not attracted.

40. Hence, now only question to be determined by this Court is whether the Prosecutrix was abducted by the Accused/Appellant and she was subjected to rape by the Appellant.

41. In this regard, it is found that allegedly the Prosecutrix was forced to step down from the train by the Appellant along with another companion by showing knife to the Prosecutrix and, thereafter, she has been kept by the Appellant for about 6-7 days taking her from one town to another. As per the evidence on record, it is found that at the time of forcing the Prosecutrix to step down from the train, she had not raised any alarm. There was no reason to keep quite while someone was abducting her. It is common knowledge that there might be so many people present on the Platform and had she raised alarm, many



people could have come to rescue her. But despite such possibility of getting help from the public, she had not raised any alarm against the abduction. Such facts and circumstances make a serious dent in the prosecution case, creating serious doubts. It is further found that after abduction, she was taken from one town to another for about six days. But, admittedly, the Prosecutrix did not raise any alarm even during this tour and transit, despite the fact that she must have opportunity to raise alarm during travel by train or any other conveyance. Hence, again reasonable doubt is created in the prosecution case against the Appellant. As far as allegation of rape is concerned, it is found that except the testimony of the Prosecutrix, there is no other corroborative evidence on record. Even the medical evidence does not corroborate the allegation of rape because there is no injury, internal or external, found by the doctor on the private part of the Prosecutrix. Even hymen has been found to be old ruptured and healed. It has been opined by the doctor that there is possibility of sexual contact in the past, but no sign of rape has been found by the doctor at the time of the alleged occurrence.

42. The Court is conscious of the fact that as a proof for commission of rape, finding of semen or any injury on private part is not required and the testimony of the prosecutrix is



sufficient to base conviction of the accused. But the testimony of the Prosecutrix in such cases must be trustworthy, inspiring confidence of the Court. But in the case on hand, the Prosecutrix does not appear to be trustworthy inspiring confidence of the Court. She appears to have concealed true state of affairs. As per the I.O., there was love affair between the Prosecutrix and the Appellant and there was settlement reached at between the Appellant and the Prosecutrix at Kapali O.P. in the presence of her father and, thereafter, she had joined her father. But this love affair and settlement between the two in the presence of father has not been disclosed either by the Prosecutrix or her father. The F.I.R. has been lodged after fifteen days of the occurrence by her father despite the fact that during the alleged captivity of the Prosecutrix under Appellant, she had telephonic contact with her father and she had informed him that she was with the Appellant and she was well. But this fact has not been disclosed by the Prosecutrix in her statement under Section 164 Cr.P.C., nor has this fact been disclosed by the informant-father in his written report. He lodged this case only after the Prosecutrix and the Appellant, appeared before the Kapali O.P. and entered into settlement. So, true version of the occurrence has not been brought forth by the prosecutrix and the informant.



43. In view of such facts and circumstances, the serious reasonable doubts are created in the Prosecution case against the Appellant and it would not be safe to uphold the conviction of the Appellant . The Appellant, therefore, deserves to be acquitted giving benefit of doubts.

44. Hence, this **Appeal is allowed** setting aside the impugned judgment and order of sentence dated 22.11.2022 and 26.11.2022, respectively passed by Ld. Additional District and Sessions Judge-VIth-cum-Special Judge, POCSO Act, Samastipur in connection with T.R. No. 118 of 2022/R.N. No. 02/2014, arising out of Samastipur (Rail) P.S. Case No. 02 of 2014, giving benefit of doubt to the Appellant. The appellant stands acquitted of the charges levelled against him.

45. Since the appellant/Rajendra Singh is in jail, he is directed to be released forthwith, if he is not required in any other case.

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

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

48. Interlocutory application/s, if any, also stand



disposed off accordingly.

(Jitendra Kumar, J)

Ramesh/
Chandan/Shoaib

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25. 07.2024
Transmission Date	25.07.2024

