

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.102 of 2023

Arising Out of PS. Case No.-5 Year-2019 Thana- BAIKUNTHPUR District- Gopalganj

Sadik Mian, Son of Mokhtar Mian, R/o Village - Khaira Malikana, P.S. -
Baikunthpur, District - Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar.
2. [REDACTED] R/o Village - Khaira Malikana, P.O. - Rewtith,
P.S. - Baikunthpur, District - Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajeev Ranjan, Advocate
Mr. Sumit Kumar Srivastava, Advocate
Mr. Gyan Prakash, Advocate
For the State : Mr. Dilip Kumar Sinha, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 19-11-2025

Heard Mr. Rajeev Ranjan, learned counsel for the
appellant and Mr. Dilip Kumar Sinha, learned Additional Public
Prosecutor for the State.

2. Despite valid service of notice upon respondent
No. 2, there is none to represent him.



3. This appeal has been preferred for setting aside the judgment of conviction dated 30.11.2022 (hereinafter referred to as the '*impugned judgment*') and the order of sentence dated 13.12.2022 (hereinafter referred to as the '*impugned order*') passed by the learned Additional Sessions Judge-VI-Cum-Special Judge (POCSO), Gopalganj (hereinafter referred to as the '*learned trial court*') in connection with POCSO Case No. 04 of 2019 (*CIS No. 04 of 2019*), arising out of Baikunthpur P.S. Case No. 05 of 2019.

4. By the impugned judgment, the appellant, namely, Sadik Mian, has been convicted for the offences under Section 376(3) of the Indian Penal Code (in short, the '*IPC*') and Sections 5(m)/6 and 9(m)/10 of the Protection of Children from Sexual Offences Act, 2012 (in short, the '*POCSO Act*'). By the impugned order, he has been sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs. 50,000/- and in default of payment of fine, to further undergo simple imprisonment for 3 months for the offence under Section 5(m)/6 of the POCSO Act and to undergo rigorous imprisonment for 5 years with a fine of Rs. 20,000/- and in default of payment of fine, to further undergo simple imprisonment for 3 months for the offence under Section 9(m)/10 of the POCSO Act. Both the



sentences have been directed to run concurrently.

Prosecution Case

5. The prosecution case is based on the written application dated 04.01.2019 given by the informant/father of the victim (P.W. 2). In his written application, he has stated that on 03.01.2019, he went to work for livelihood and his children were present in the house. It is alleged that when he (informant) returned back to his house at about 09:30 P.M., he saw that clothes of her elder daughter (victim/P.W. 1) were torn and she was crying. On being asked, she told him that our neighbour Sadik Miya, aged about 20 years & son of Mokhtar Mian, came at around 08:30 P.M. to his door and asked his daughter, where is Ramji Chacha. The daughter of the informant told him that he had not returned from his work. It is further alleged that thereafter the accused, finding her alone, pressed her mouth at the door itself, pushed her inside the house and opened her pant forcibly and denuded her and commit wrong with her. The accused also threatened the daughter of the informant/victim that if she disclosed about it to anyone, he would kill her and her father too and thereafter fled from the house.

6. On the basis of the aforesaid written application, Baikunthpur P.S. Case No. 05 of 2019, dated 04.01.2019, was



registered under Section 376(2) of the IPC and Sections 4/6/8 of the POCSO Act.

7. After completion of investigation, the Investigating Officer (I.O.) submitted *charge-sheet* being Charge-Sheet No. 23 of 2019, dated 25.03.2019, under Section 376(A)(B) of the IPC and Sections 4/8 of the POCSO Act.

8. On the basis of the police report, cognizance was taken *vide* order dated 06.05.2019 under Section 376(A)(B) of the IPC and Sections 4/8 of the POCSO Act against the accused/appellant, namely, Sadik Mian.

9. Charges were read over and explained to the appellant, namely, Sadik Mian in *Hindi* to which he pleaded not guilty and claimed to be tried.

10. In course of trial, the prosecution has examined altogether five witnesses and exhibited some documentary evidences. The description of the prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of the Prosecution Witnesses:

P.W. 1	Victim
P.W. 2	Ramji Rai
P.W. 3	Dr. Sarika
P.W. 4	Ramuna Devi
P.W. 5	Amitesh

List of Exhibits on behalf of the Prosecution:



Ext.-1 & 1/A	Signature of victim and signature of her father on written petition.
Ext.-2	Statement of victim u/s. 161 of Cr.P.C.
Ext.-3	Signature of victim on her statement recorded u/s. 164 of Cr.P.C.
Ext.-4	Signature of Principal on Birth Certificate.
Ext.-4/1	Medical Report.
Ext.-5	Signature of A.S.I. Ramuna Devi u/s. 161 of Cr.P.C.
Ext.-6	Endorsement of S.H.O. on written petition.
Ext.-7	Writing and signature of Amitesh Kumar (S.H.O.) on Formal F.I.R.
Ext.-8	Birth Certificate issue by Principal.
Ext.-9	Statement of victim u/s. 164 of Cr.P.C.

11. Thereafter, the statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. on 01.10.2021, wherein, he denied all the allegations and took a plea that he is innocent.

12. The defence has not adduced any oral or documentary evidence.

Findings of the Learned Trial Court:

13. The learned trial court, upon going through the evidence on record, first held that the manner of occurrence has been proved beyond doubt as P.W. 2 (victim's father/informant) had been narrated the story by the victim and the allegations made in the First Information Report and the statement of the victim under Section 164 of the Cr.P.C. corroborates the



prosecution version in totality and even from the cross-examination of either P.W. 1, P.W. 2 and P.W. 5, her credibility as to the manner of the occurrence cannot be impeached.

14. The learned trial court held that the place of occurrence as described by the victim was corroborated by the I.O. (P.W. 5), who, in paragraph 4 of his examination-in-chief, had stated about the inspection of the place of occurrence and had also recorded the statements of the witnesses and the place finds corroboration from the deposition of P.W. 1 and P.W. 2 and the FIR along with the statement of victim under Section 161 Cr.P.C. as well as the statement made under Section 164 Cr.P.C. As far as the identity of the accused was concerned, the learned trial court has relied upon the statement of P.W. 1 and P.W. 2, who claimed to have identified the accused and even the I.O. (P.W. 5) has submitted charge-sheet against the accused/appellant, namely, Sadik Mian.

15. The learned trial court with regard to the age of the victim has held that her age was not in dispute and has recorded that P.W. 5, the I.O. of the case, has stated that he obtained birth certificate of the victim girl from the Principal of Navsrajit Primary School in which the date of birth of the victim is mentioned as 22.05.2008 and from the perusal of the said



certificate, it is clear that the victim was 11 years of the age at the time of the occurrence and such fact has also been stated by the father of the victim (P.W. 2) during his deposition and even when the statement of the victim was being recorded under Section 164 Cr.P.C., it was assessed as 12 years. It has also been held that the defence did not produce any oral or documentary evidence to the contrary.

16. Relying upon a few judgments of the Hon'ble Supreme Court, in cases of *Sukhar Vs. State of U.P.*, reported in *(1999) 9 SCC 507*; *Vijay @ Chinee Vs. State of Madhya Pradesh*, reported in *(2010) 8 SCC 191* and *State of Maharashtra Vs. Chanraprakash Kewal Chand Jain*, reported in *(1990) 1 SCC 550*, the learned trial court has held that the oral statement of the victim being the sole eye-witness to the incident can be taken into consideration for conviction solely based on her testimony. Learned trial court has found the statement of the victim (P.W. 1) absolutely trustworthy, unblemished and her evidence of sterling quality and the same was held to be covered by the decision of the Hon'ble Apex Court in case of *Rai Sandeep @ Deepu Vs. State (NCT of Delhi)*, reported in *(2012) 8 SCC 21*.

17. The learned trial court finally held that the



cumulative result of the testimony of P.W. 1 to P.W. 5 along with the medical report (Ext.-4/1), the statement of the victim under Section 161 Cr.P.C. (Ext.-2) and the statement of the victim under Section 164 Cr.P.C. (Ext.-9) established the fact the accused/appellant committed the offence of rape, an aggravated penetrative sexual assault with the minor victim below the age of 18 years.

Submissions on behalf of the appellant:

18. The learned counsel appearing on behalf of the appellant has submitted that the impugned judgment of conviction and order of sentence has been passed in a mechanical manner without application of judicious mind. It has been submitted that the learned trial court failed to take into account the evidence of the Doctor (P.W. 3), who has examined the victim girl, who in her cross-examination has stated that no tear or laceration on the private parts of the victim was found and no spermatozoa was found. It has also been argued that all the witnesses happens to be interested witnesses and close relatives.

19. Learned counsel for the appellant has further submitted that from perusal of the deposition of the prosecution witnesses, who are interested witnesses, it appears that there is



contradictions in the evidence, which goes on to show that the present case was a false and concocted one.

20. It has also been pointed out by the learned counsel for the appellant that the age of the victim has not been proved and the learned trial court has proceeded with the assumption that the child was under 12 years of age. However, no evidence with regard to her date of birth was brought forward and proved as per the requirement of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. It has been submitted that there is no medical report with respect to the age of the victim girl and, in fact, during the cross-examination, the Doctor (P.W. 3) has admitted that the finding of the age can be done perfectly by a radiologist. However, the age of the victim was not determined by the Doctor (P.W. 3).

21. A very important question of law has been raised by the learned counsel for the appellant, wherein, the victim, if proceeded ahead assuming her to be below 12 years of age, then she falls in the category of a “child witness”; however from her deposition, it would be evident that while she was being examined as P.W. 1, her competence was not tested by the learned trial court. It has been pointed out that the victim, during her cross-examination, has stated that she does not



remember the date of the incident; day of the incident and neither the date when her father had given application to the police station. She has not been able to answer as to who had drafted the application and as to what was written in it and does not remember as to who had read over the contents of the application to her, upon which she had made her signature and, ultimately, she has also deposed that she was told by her father what to say in the evidence before the court.

22. The learned counsel for the appellant, thus, submits that the prosecution has not been able to lay down the foundational facts of the case and therefore the presumption under Section 29 of the POCSO Act shall not be attracted in the present facts and circumstances of the case.

Submissions on behalf of the State:

23. On the other hand, Mr. Dilip Kumar Sinha, the learned Addl. Public Prosecutor for the State submits that the findings arrived at by the learned trial court is based on judicious consideration of the evidence which had been brought on record by the prosecution and after careful reading of the evidences of the prosecution witnesses and the materials available on record, the learned trial court came to the conclusion that the statement of the victim is trustworthy and



unblemished and her evidence is of sterling quality and therefore, even on her sole testimony, the conviction can be based. It has further been submitted that from the statements of the victim (P.W. 1) made under Section 161 Cr.P.C., Section 164 Cr.P.C. and as P.W. 1 (victim), she has been consistent with the prosecution case and therefore, there is no reason not to believe her testimony.

24. The learned Addl. Public Prosecutor though has admitted that the age of the victim girl has not been formally proved, however, the evidence of the father of the victim (P.W. 2), victim herself and the reference in the statement made under Section 164 Cr.P.C., it would be found that her age was stated to be 11 – 12 years and therefore, the conviction under the POCSO Act was justified. It has also been submitted on behalf of the State that the Doctor (P.W. 3) had opined that the victim had sexual intercourse and her hymen was not found intact, which corroborates the prosecution evidence and the statement of the victim and therefore no injury being found on the body of the victim, cannot in itself rule out the possibility of sexual assault.

25. The learned Addl. Public Prosecutor for the State, therefore, submits that there is no lacuna in the evidence of the victim and no adverse inference could be drawn from the



readings of the evidence of the prosecution and therefore, the conviction and sentence, referred to above, are proper and needs no interference.

Consideration & analysis:

26. We have heard both sides and perused the evidences available on the record of the learned trial court, gone through the statements of the appellant and have also given out thoughtful consideration to the submissions advanced on behalf of the parties.

27. We have seen that the learned trial court has relied upon the statements of the victim girl (P.W. 1) made under Section 161 Cr.P.C., 164 Cr.P.C. and her deposition during the trial and have found it to be of sterling quality and therefore opined that in the present case, conviction in the case of sexual offence can be based solely on the testimony of the victim. In order to appreciate such finding, we would like to reappraise the evidence of the victim (P.W. 1) during the trial.

28. The victim, who was examined as P.W. 1, in her cross-examination has said that she was alone in the home and her other siblings were in the other home and rest of the neighbourers were sleeping while her father had gone out for work at 08:30 P.M. In paragraph 13, she changes her stand and



has stated that she does not have another home and her siblings were at the house of one Ashok Rai, whose house is adjacent to her house (the said Ashok Rai has not been examined). We have also observed that the victim (P.W. 1) in paragraphs 19 and 20 has deposed that she does not remember the date and the day of the incident. She does not remember the date on which her father had given an application before the police and in paragraph 21 of her deposition, she has stated that she even does not remember who had drafted the application and as to who had read over the same to her. Ultimately, in paragraph 25 of her deposition, she has stated that her father had told her what to say in the evidence before the court.

29. In view of the aforesaid evidence of the victim (P.W. 1), we are compelled to observe that the victim girl had admitted that she had deposed what her father told her to say. Her ignorance of the date of occurrence, time of occurrence and other details, which are germane to the incident, also makes her evidence unreliable.

30. We have observed that during investigation no effort was made to get the clothes of the victim girl examined and admittedly, the appellant too was not examined.

31. At this juncture, we would like to refer to the



judgment of the Hon'ble Supreme Court in the case of ***Pradeep Vs. State of Haryana*** reported in ***AIR 2023 SC 2345*** and ***P. Ramesh Vs. State represented by Inspector of Police*** reported in ***(2019) 20 SCC 593***, wherein, it has been held that it would not be safe to base the conviction only on the testimony of the child witness, which does not inspire confidence.

32. The I.O. (P.W. 5), during his cross-examination, has admitted that during investigation he had not found any material at the place of occurrence which would go on to show that any incident had occurred with the victim by the appellant. P.W. 5 has admitted that the age of the victim was not assessed in the medical report.

33. In such circumstances, we find that the age of the child was not assessed in a proper manner in a case where the victim is said to be a child and the case has been registered under the POCSO Act. We have gone through Ext.-8, brought on record by the prosecution, which is a handwritten certificate granted by the Principal of Navsrajit Primary School, certifying the date of birth of the victim to be 22.05.2008. We do not find the relevance of such document as the proof of date of birth as elaborated under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 does not contemplate any



such document to be admissible in law for the assessment of the age of the victim or an accused and moreover the scribe of such certificate was not examined.

34. For the ready reference, the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is being reproduced as under:

“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.”

35. One aspect which needs to be answered in the present case is the fact that the learned trial court without proper assessment of the age of the victim has proceeded ahead and has even examined the victim as P.W. 1. However, in doing so, the learned trial court failed to test the witness (victim) prior to her examination as she fell in the category of a “child witness”. We are aware of the provisions of the Section 29 of the POCSO Act, however, it is only when the prosecution would have proved the age of the victim, then only the presumption would have come into play. However, the materials, which have been brought forward, have not been sufficient to establish foundational facts regarding the commission of the alleged offence by the appellant and therefore, the prosecution was not entitled to get a



benefit of the presumption under Section 29 of the POCSO Act. Therefore, the accused/appellant can rebut the presumption by questioning the prosecution's evidences, *i.e.*, the credibility of the witnesses, the inconsistencies in their evidence and creating a reasonable doubt.

36. While dealing with the presumption under Section 29 of the POCSO Act, Hon'ble Delhi High Court in the case of *Veerpal Vs. State* reported in **2024 SCC OnLine Del 2686** in paragraph 20 observed as under:-

“20. Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.

Keeping the same in perspective, the prosecution in the first instance is required to establish the foundational fact that the incident, as



alleged, was conveyed by the victim to her dadi (grandmother) on 16.09.2016 (i.e. the day of lodging of FIR). However, the evidence and statements during investigation, as discussed above, reflect different dates of alleged communication of the incident, which throws a doubt on the prosecution version. In view of above, in absence of foundational fact not being proved beyond reasonable doubt, the reliance placed upon presumption under Section 29 & 30 of POCSO Act by learned Trial Court to base conviction, appears to be misplaced. Taking in the alternative, even if the foundational facts are considered to be proved, to make the presumption under Section 29 of POCSO Act, the same stands discredited by way of discrepancies brought in cross-examination of the victim, PW3 and witnesses examined in defence.

The presumption of guilt under Section 29 & 30 of POCSO Act taken by the learned Trial Court could not be an edifice to convict the appellant since testimony of victim is unreliable and there are serious flaws and gaps in the prosecution case. As a wrongful acquittal shakes the confidence of people, a wrongful conviction is far worse. A child abuser in the eventuality of false implication even continues to suffer a blot of social stigma which is much more painful than the rigours of a trial and imprisonment. Prosecution case is marred by inadequacies and contradictions which strike to the root of prosecution case and, as such, prosecution has failed to bring home the



charge against the accused beyond reasonable doubt.”

37. Similarly, in the case of *Joy vs. State of Kerala* reported in **2019 SCC OnLine Ker 783**, the Hon’ble Kerala High Court in paragraphs Nos. 10 and 11 observed as under:-

“10. This court is not oblivious to Section 29 of the Act which contains a legislative mandate that the court shall presume commission of the offences by the accused unless the contrary is proved. Section 29 of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the 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. The court shall take into consideration the presumption under Section 29 of the Act while dealing with an application for bail filed by a person who is accused of the aforesaid offences under the Act (See *State of Bihar v. Rajballav Prasad*, (2017) 2 SCC 178 : AIR 2017 SC 630).

11. However, the statutory presumption under Section 29 of the act does not mean that the prosecution version has to be accepted as gospel truth in every case. The presumption does not mean that the court cannot take into consideration the special features of a particular case. Patent absurdities or inherent infirmities or improbabilities in the prosecution version may



lead to an irresistible inference of falsehood in the prosecution case. The presumption would come into play only when the prosecution is able to bring on record facts that would form the foundation for the presumption. Otherwise, all that the prosecution would be required to do is to raise some allegations against the accused and to claim that the case projected by it is true. The courts must be on guard to see that the application of the presumption, without adverting to essential facts, shall not lead to any injustice. The presumption under Section 29 of the Act is not absolute. The statutory presumption would get activated or triggered only if the prosecution proves the essential basic facts. If the accused is able to create serious doubt on the veracity of the prosecution case or the accused brings on record materials which would render the prosecution version highly improbable, the presumption would get weakened....”

38. In the present case, the victim was examined as P.W. 1 and her age was assessed to be 11 years at that time by the learned trial court. We have already seen that the Doctor (P.W. 3) had not opined anything about the age of the victim.

39. From perusal of the deposition of P.W. 1, it would be evident that no questions were put to the victim, testing her competency as a witness by asking sufficient questions. In view of the above, the evidence of the victim



(P.W. 1) needs to be taken into consideration with circumspection and in co-relation with the other prosecution witnesses. The only other witness from the family was P.W. 2, the father of the victim and he has deposed that he came to know about the incident from her daughter. However, in paragraph 4 of his deposition, he has stated that when he came back, he found her daughter to be lying naked and crying and his two children were sleeping there. This statement of the father is in complete contradiction to the statement of the victim, who had stated that her siblings were not there in the house at the time of the incident. Taking such evidence of P.W. 2 into consideration, we see a major contradiction in the statement made by the victim and her father with regard to the presence of the two children at the place of occurrence as also the state in which victim was in, raising serious doubt over the prosecution case where such an incident had occurred and nobody inside the house or adjacent to the house could come to know about it.

40. We have observed that in the present case the medical evidence does not make out a case of any rape, however mere opinion was given that “it seems she had sexual intercourse”. In such view of the matter, it would not be safe to



convict the appellant on the basis of sole testimony of the child witness, P.W. 1. We have already seen that there are no independent witnesses despite the fact that the I.O. (P.W. 5) during his deposition has stated that he had recorded the statements of two neighbours, namely, Jai Rai and Ashok Rai.

41. We have observed that the defence suggested that no such incident had occurred and the present case is a false one, which P.W. 2 (father of the victim girl) denied. It has been argued that no plausible reason for false implication has been suggested by the prosecution, however, it is settled law that a lacuna in the defence during the cross-examination will not entitle the prosecution to take advantage of the same. The prosecution has to prove the case beyond all reasonable doubt against the appellant.

42. The point raised by the learned counsel for the appellant with regard to the tutoring of the victim can be tested from the portions of both, *i.e.*, her testimony as well as the previous statement. The possibility of the witness being tutored is being established by the statement of the victim in paragraph 25, wherein, she has stated “मेरे पिताजी मुझे बताये थे कि न्यायालय में ये-ये गवाही देना है।” The witness being a child witness and coming out with such a statement during her cross-examination,



does not leave any scope of imagination to think otherwise than the fact that she was tutored to depose such fact as stated during her evidence as P.W. 1. The absence of the competency test by the learned trial court has added to such finding of her being tutored.

43. In view of the discussions made hereinabove, we are constrained to observe that this Court cannot rely upon the inconsistent evidence brought forward by the prosecution and the evidence of P.W. 1, the victim, does not inspire confidence to hold the appellant's guilty of such offence.

44. For the reasons aforesaid, we are of the considered view that the learned trial court has committed grave error in convicting the appellant and therefore, we set aside the judgment of conviction and order of sentence referred to above and acquit the appellant/Sadik Mian of the charges giving him benefit of doubt.

45. The appeal stands allowed.

46. The appellant is in custody; therefore, he is directed to be released forthwith, if his custody is not required in any other matter.

47. Let the trial court records and a copy of this judgment be sent immediately to the trial court and the



concerned Jail authority for information and needful compliance.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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