

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.255 of 2023

Arising Out of PS. Case No.-110 Year-2020 Thana- BUNIYAD GANJ District- Gaya

Dinesh Malakar @ Gomasta, S/O Mahesh Bhagat Mali @ Mahesh Malakar,
Resident of Mohalla- Gopal Panday Lane, Manpur, P.S.- Buniyadganj,
District- Gaya.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Sanjeev Kumar, Advocate Mr. Priya Ranjan, Advocate Ms. Chandni Kumari, Advocate Mr. Anunay Shahi, Advocate Mr. Mukesh Kumar, Advocate Mr. Sudeep Kumar, Advocate Mr. Nitish Kumar, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl.PP.
For the Informant	:	Mr. Sharda Nand Mishra, Advocate Mr. Deepak Kumar, Advocate Mr. Sumit Gupta, Advocate Mr. Isha Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-09-2025

Heard learned counsel for the appellant, learned
Additional Public Prosecutor for the State and learned counsel for
the informant.

2. This appeal has been preferred for setting aside the
judgment of conviction dated 08.09.2022 (hereinafter referred to
as the ‘impugned judgment’) and the order of sentence dated
21.09.2022 (hereinafter referred to as the ‘impugned order’)



passed by learned Special Judge, POCSO-cum-Additional District and Sessions-6, Gaya (hereinafter referred to as the 'learned trial court') in POCSO Case No. 79 of 2020 arising out of Buniyadganj P.S. Case No. 110 of 2020. By the impugned judgment, the appellant has been convicted for the offences punishable under Sections 363 and 506 of the Indian Penal Code (in short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, he has been ordered to undergo rigorous imprisonment for life with a fine of Rs.50,000/- under Section 4(2) of the POCSO Act. He has also been ordered to undergo rigorous imprisonment for seven years with a fine of Rs.1000/- under Section 363 IPC and further ordered to undergo two years' rigorous imprisonment under Section 506 IPC. All the sentences are to run concurrently.

Prosecution Case

3. The prosecution case is based on the written application of the father of the victim/ informant (PW-2). In his written application (Exhibit '2'), he has stated that on 13.07.2020 at 08:00 PM, his daughter/ Victim (PW-3) was cleaning utensils. In the meantime, Dinesh Malakar @ Gomasta (the appellant) came and kidnapped his daughter thereafter took her at the house of one Suresh Sao where he kept her for the whole night and committed



rape upon her. His daughter's condition was serious. On the next day i.e. 14.07.2020 in the morning, when his daughter started crying to let her go home, Dinesh Malakar threatened to take her to Kolkata. Thereafter, the appellant took the victim at the house of her *mausi* who lives in Belaganj. Then, the informant brought her daughter to the house. The informant went to enquire the matter at the house of the appellant where his mother abused the informant's side. A *panchyati* was held on the behest of local people, therefore, the delay was caused in lodging of the FIR. The accused threatened to kill them.

4. On the basis of this written application, Buniyadganj P.S. Case No. 110 of 2020 dated 17.07.2020 was registered under Sections 442, 376, 506 IPC and Section 4/8 of the POCSO Act against this appellant. After investigation, police submitted chargesheet bearing Chargesheet No. 267 of 2020 dated 27.09.2020 under Sections 364, 376, 376(AB) and 506 IPC and Section 4/6 of the POCSO Act. Thereafter, vide order dated 07.10.2020, learned trial court took cognizance of the offences under above-mentioned Sections.

5. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried, accordingly, vide order dated 04.12.2020, charges were framed



under Sections 376(AB), 363, 366A and 506 IPC and Section 6 of the POCSO Act.

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

List of Prosecution Witnesses

PW-1	Dr. Sushma Verma
PW-2	Father of the Victim
PW-3	Victim
PW-4	Mother of the Victim
PW-5	<i>Mausa</i> of the Victim
PW-6	<i>Mausi</i> of the Victim
PW-7	Suresh Kumar Gupta
PW-8	Raja Ram Gupta

List of Exhibits on behalf of the Prosecution

Exhibit ‘1’	Medical report
Exhibit ‘2’	Written application
Exhibit ‘3’	Signature of the victim on her statement u/s 164 CrPC
Exhibit ‘3/1’	Signature of the Victim on her statement u/s 161 CrPC
Exhibit ‘4’	Signature of Suresh Kumar Gupta on Seizure List
Exhibit ‘5’	Statement of the Victim u/s 164 CrPC
Exhibit ‘6’	Seizure List
Exhibit ‘7’	FIR

7. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. He took a plea that he is



innocent and because of *Gotiya* dispute, he has been falsely implicated. The defence examined one witness, namely, Anil Singh (DW-1).

Findings of the Learned Trial Court

8. Learned trial court after analysing the evidences available on the record found that the prosecution through its cogent and reliable evidences has been able to prove its case beyond all reasonable doubts that the accused Dinesh Malakar had taken the victim from her home to his rented home where he kept her for the whole night and committed rape upon her.

9. Learned trial court found that the victim has given the complete description of the entire occurrence from the beginning of her being taken away by the accused on 13.07.2020 at 09:00 PM which was corroborated by the other witnesses, her *mausa* and *mausi* who are residents of Belaganj where the appellant had left her after committing rape and the testimony of her father and mother to whom she narrated the story when she returned home.

10. Learned trial court further found that the rape is corroborated and substantiated by the Doctor who positively supported the prosecution. Learned trial court found that the age of the victim has been proved as 12-13 years.



11. Learned trial court after considering all the facts and circumstances of the case held the appellant guilty of the offences punishable under Sections 363, 506 IPC and Section 4 of the POCSO Act.

Submissions on behalf of the Appellant

12. Learned counsel for the appellant submits that there is a delay in the lodgment of the FIR which has not been properly explained reasonably. Though the informant has attempted to attribute the delay to *panchayati*, but no independent witness has been examined or produced to substantiate the claim of such *panchayati*.

13. It is further submitted that the version of the informant, as narrated in the First Information Report, in the statement recorded under Section 161 CrPC, and the deposition before the learned trial court, are inconsistent and suffer from material improvements at every stage. Such variations demonstrate that the prosecution case is false, concocted, and engineered. The testimony does not inspire confidence, lacks credibility and the record itself reveals that the statements are nothing but improved and tutored versions.

14. It is also submitted that the manner and the time of the alleged occurrence have been constantly changing. The



conduct of the witness, from the stage of lodging the FIR up to the recording of the victim's statement under Section 164 Cr.P.C., is wholly unnatural. The informant has altered his version regarding the return of the victim and has himself admitted the existence of family relations with the accused side. In cross-examination, he has further conceded that there is a land dispute concerning a pathway.

15. It is further submitted that the statement of the victim under Section 164 Cr.P.C. was recorded after a lapse of about one and a half months from the date of the alleged occurrence, during which period new facts emerged which had neither been disclosed in the FIR nor in her statement under Section 161 Cr.P.C. Hence, the said statement cannot be treated as truthful or reliable, particularly as the victim had sufficient time to be tutored. She has admitted that the accused is her uncle. In her deposition before the learned trial court, she has resiled from her earlier versions. She stated that her statement before the police was recorded two days after the alleged occurrence, which materially contradicts the version of the informant. She further stated that she was first treated by a doctor at her maternal aunt's (mausi's) house, which is not corroborated by the statements of any other witnesses. She also claimed that she had gone to the police station on the same



day, but there is nothing on record to support this assertion. The victim further deposed that the distance between her house and that of the accused is around one kilometer, whereas the informant has stated that the house of the accused is situated just in front of his house (*aamne-samne*).

16. It is further submitted that the statement of the mother of the victim is also unreliable, inasmuch as she has deposed that she came to know about the alleged occurrence only when her daughter returned home, whereas the informant has categorically stated that he was informed over phone by his brother-in-law. She has further attempted to justify the delay in lodging the case on the pretext of *panchayati*, though no such *panchayati* ever took place.

17. Further, with respect to the evidence of the *mausa* (P W-5) of the victim, learned counsel submits that this witness has himself admitted that he was informed over phone by the informant regarding the victim having gone missing, whereas the informant has asserted that he came to know about the occurrence only when his daughter returned home. This witness has introduced a new version and a new story altogether regarding the role of the accused and the arrival of the victim. His statement concerning the time and health condition of the victim is



materially inconsistent with that of his wife. He has even denied that the victim was provided any medical treatment, whereas his wife has categorically deposed that the victim was treated by a doctor.

18. With regard to the evidence of the Investigating Officer (PW-8), it is submitted that in his examination-in-chief, he has clearly admitted that the articles allegedly seized during investigation were never produced before the court. He has further conceded that the clothes of the victim were not sent for forensic examination. According to his own statement, even the manner of occurrence appears to be doubtful, which strikes at the very root of the prosecution case.

19. Learned counsel for the appellant further submits that in course of trial Anil Singh (D.W.-1) has deposed that he happened to be the neighbour of Kapil Mali and Dinesh Malakar. He had heard hulla that the victim girl had fled away and returned after 6-7 days. He has stated that there was a hulla that Dinesh Malakar had taken her away but at that time Dinesh was in his house. This victim girl had fled away earlier also on two occasions. This witness has further stated that when the victim returned home, her father never told that where she had gone. Mohalla people decided that they cannot do any Panchayati. Kapil



was pressurizing for marriage of Dinesh with the victim girl. This witness has stated that only to falsely implicate Dinesh, the present case has been lodged.

Submissions on behalf of the Informant and State

20. On the contrary, learned counsel for the informant submits that the victim has fully supported the prosecution case through her evidence. It is submitted that her testimony is corroborated by material particulars by the prosecution. Thus, her testimony deserves due reliance by this Hon'ble Court. Learned counsel further submits that any apparent contradictions or inconsistencies in the victim's evidence are minor, trivial in nature, and do not affect the overall credibility of her testimony. Learned counsel submits that such discrepancies should be disregarded in the interest of justice.

21. Learned Additional Public Prosecutor for the State has endorsed the submissions of learned counsel for the informant.

Consideration

22. Having heard learned counsel for the appellant, the informant and learned Addl.P.P. for the State as also on perusal of the records, we find that in this case the date and time of occurrence is 13.07.2020 at 8.00 PM. According to the prosecution case in the written information submitted by father of



the victim (PW-2) on 17.07.2020 at 3.15 PM, the victim was cleaning the utensils in her house at 8.00 PM when all of a sudden the appellant who is a resident of the Mohalla came, gagged the mouth of the victim and took her to the house of Suresh Sao where she was kept for the whole night and he committed rape on her. PW-2 has further stated in the written information (Exhibit-2) that when the condition of the victim worsened and she started bleeding on 14.07.2020 in the morning and insisted to take her to her house then the appellant threatened her that he would take her to Kolkata, thereafter he took the victim girl to the house of sister-in-law of PW-2 who is residing in Mohalla Belaganj. She was dropped there whereafter the informant (PW-2) brought her to his house.

23. In course of trial, PW-2 has stated that the victim was cleaning the utensils at the hand-pump. At that time, he and his wife had gone to market and the victim was alone in the house. We have noticed from the evidence of the mother of the victim (PW-4) that PW- 2 and PW-4 had two sons aged about 16 years and 14 years but about them, it is stated that they had gone to attend the coaching classes in the night. On being asked about the name of coaching she showed her unawareness about the name of the coaching. The defence suggested her that her both sons were



in the house that day and they had not gone to attend any coaching classes. This shows that in his deposition, PW-2 has suppressed the fact that his two sons were also residing in the same house. In his deposition, he has not stated that his two sons were not present in the house at that time. Both the sons have not been produced for their examination.

24. This Court has further found that in course of trial, PW-2 has stated that the delay occurred in search of the victim and due to the Panchayati but this Court has noticed from paragraph '13' of the deposition of PW-2 that he had been in search of the victim in the night till 12.00-1.00 O' Clock but he had not gone to the police station. In the morning, he had not gone to the police station and remained in his house. He has stated that in the morning at 11.00 O'Clock he came to know that the victim was in the house of Sarju Sao and this information was given by the victim after she went to the house of her Mausi (PW-6). From this part of the deposition of PW-2, it appears that the victim had reached the house of her Mausi (PW-6) and from there she had given information to PW-2. The informant (PW-2) has stated in his written information that he had brought the victim to his house but in course of trial, PW-2 has stated that the Mausa (PW-5) of the victim had brought her to the house of the informant. In



paragraph '16' of his deposition, PW-2 has clearly stated that he has not gone to the house of PW-5. The mother of the victim who has been examined as PW-4 has not stated in her examination-in-chief that PW-5 had brought the victim back to her house. She has stated in paragraph '2' that her daughter came back and told her that Dinesh Malakar had taken her by gagging her mouth in the house of Sarju Sao where she was kept for the whole night and was subjected to rape.

25. This Court has further noticed that the victim girl (PW-3) has stated that she was in her house when one boy, namely, Gumasta came, he had hidden himself in the orchard and when she went to the orchard then he gagged her mouth and took her away. Thus, the victim has initially said that she was in her house when the boy came, then she has stated that she had gone in the orchard where she was threatened and was asked to come to the Dera otherwise her parents would be killed and then he took her to his Dera. PW-3 has not stated in her examination-in-chief that she was alone in her house, she has not stated the time when the boy came, she has also not stated that whether it was day time or evening time when she had gone to the orchard. She has not stated that she was forcibly taken away from the hand-pump. She has stated in her cross-examination that two days after the



occurrence her statement was recorded by the police and in her statement she had stated that on that day she was in the orchard and Dinesh had concealed herself in the orchard from where he had taken her away by pressing her mouth.

26. It is evident from the deposition of the victim (PW-3) that the case of the prosecution that she was taken away from the hand-pump where she was cleaning the utensils materially differs with that of the evidence of the victim with regard to the place from where she was taken away. Even with regard to the presence of the parents and the two brothers the victim has maintained a complete silence. Contradictions may also be found in the evidence of PW-2 and PW-4 who are husband and wife with regard to their going to the market at the time of occurrence. While PW-2 has stated that he had gone to the market with his wife and his daughter was alone in the house, PW-4 has stated that she had gone to the market. She has not stated that she had gone to the market with PW-2. PW-4 has also not stated that when she went to the market then the victim (PW-3) remained alone in the house.

27. As regards the story as to how the victim returned home, we have already recorded hereinabove the statement of the witnesses particularly PW-1 and PW-2. The informant (PW-2)



initially stated in his written information that he had brought the victim back home but thereafter in his examination-in-chief he did not say that he had gone to bring back the victim. He has only stated that when the victim came back then she told the entire story. Contrary to this, he has stated in the written information that when the victim was dropped at the house of his sister-in-law Rubi Devi, from there she had informed him about the occurrence.

28. PW-2 has stated that he had no enmity in the mohalla, the police station is situated at a distance of half kilometer from his house and he had told about the occurrence to Hareram Baba who is a respectable person of the society in the mohalla but he neither told him to go to the police station nor he himself went to the police station. This conduct of PW-2 seems to be unnatural. If his minor daughter had gone missing in the night and the police station is hardly at a distance of half kilometer, it is difficult to understand as to why neither he will go to the police station nor Hareram Baba would go there. This Hareram Baba has not been examined in course of trial. PW-2 had not gone to the police station even in the morning and though he has stated that he came to know about the fact that his daughter was in the house of Sarju Sao and this was informed to him by his daughter after reaching the house of her Mausi (PW-6) why he would furnish



this information to the police station at 15.15 hours on 17.07.2020. If the prosecution is believed that then the victim had returned home on 14.07.2020 itself. In order to explain the delay in lodging of the FIR, the informant has stated about a Panchayati had taken place in the matter on the next day of the arrival of the victim. In the said Panchayati, the accused had not come and no written Panchayati was there. The four persons, namely, Binod Malakar, Bhushan Baba, Ajay Malakar and Hareram Baba who have been named as members of the Panchayati were neither examined by the I.O. nor they have been brought in course of trial. If the Panchayati as stated by the informant (PW-2) had taken place next day of the arrival of the victim then in that case it would be 15.07.2020 but still the FIR has been lodged on 17.07.2020 in the afternoon. The delay in lodging of the FIR has not only remained unexplained by providing any plausible reason with evidence, it appears from the deposition of PW-2 that he is not corroborated with regard to the place of occurrence and the manner of occurrence by the victim (PW-3) and by his wife (PW-2) on material aspects of the matter.

29. This Court has further noticed that the victim had given the statement that she was in the orchard from where she was taken away. This appellant is her uncle in relationship. It has



come in evidence of PW-2 that on some occasions there were some heated exchange of words between PW-2 and the family of the appellant on the issue of keeping the animals on the road/street in between the house of PW-2 and the appellant. The victim (PW-3) has stated that the appellant is her uncle and on that day her parents had gone to the market at 7.00 PM and they returned at 9.00 PM. The statement of the victim is unbelievable, if she had already been kidnapped and taken away as stated by the prosecution witnesses at about 8.00 PM, how can she say the time when her parents returned home. This would create huge doubt over the statement of PW-3 and would discredit her to a large extent.

30. This Court has further noticed that PW-3 has stated that the appellant had taken her away through the streets of the mohalla and he had taken her away by lifting her in his hands, he had taken her through the streets on foot. In the said street, there are houses of several persons but PW-3 has stated that no one was there. She has shown unawareness as to whose houses are there. She has stated that when she was being taken away through the streets then there was no person and all the doors were closed. She has stated that he had taken her to his Dera but he cannot say that where is that Dera. Now she knows that his Dera is in Jora Masjid.



She has stated that after taking her to Dera the accused had opened her mouth and he sat besides her then she had not raised any hulla because she was afraid of him.

31. This Court finds that this witness (PW-3) has not stated in her deposition that the appellant had acted forcibly with her and when she asked the appellant to leave her then he said that he would not leave her whereafter she was weeping then the appellant took her to the house of Bela Mausai. It appears that the victim has not specifically stated in her deposition that the appellant had committed sexual act with her, though she has stated that the appellant had acted forcibly with her. PW-3 has not stated about the presence of any other person in or around the Dera where she was taken to by the appellant. On this point, the house owner Suresh kumar Gupta (PW-7) has been examined by the prosecution. He has stated that he had heard about an occurrence in his house and that a rape case had been registered. He has stated in his examination-in-chief that the appellant had talked to him for a room that day but PW-7 has not stated that he had provided any room to the appellant in his house. In his cross-examination, he has stated that in his house two persons were residing as tenant for last 2-3 years. On asking of police, he had gone to his house. This witness has stated that he was not present when police had broken



the lock and opened the room. His son was present there who on returning home told that police had taken away some clothes from the room. Police had called PW-7 at the police station and recorded his statement. Here, we find that no seizure list of the lock which was broken has been prepared, the son of PW-7 who was present at the time of seizure of the clothes has not been made seizure list witness and later on the signature of PW-7 has been obtained on the seizure list showing seizure of a piece/part of a Dhoti only. It is evident that the seizure list was prepared in the police station on which the signature of PW-7 was obtained. The another seizure list witness, namely, Muskan seems to be an illiterate lady whose thumb impression has been shown on the seizure list but nobody has identified the same and she has not been examined in course of trial. The seizure list (Exhibit-4) would, therefore, not inspire confidence of this Court. It is difficult to understand that if PW-7 was not present at the time when police had broken the lock and entered in the room then how he could put his signature on the seizure list (Exhibit-6).

32. This Court has further found that Dhoti cutting was sent to the FSL for examination. The FSL report (Exhibit-08/01) would show that Exhibit marked 'A' had a blood stain of human



but the grouping could not be determined and the result for the test of blood grouping remained inconclusive.

33. The I.O. (PW-8) has stated that there are two places of occurrence in this case. Second place of occurrence is rented room of the accused. He has given the boundary of the same as follows:- east house of Bhola Sao, west house of Ramchandra Sao, north house of Suresh Sao and south PCC road. He has stated in paragraph '14' that there is a dense population around the place of occurrence but he had not examined the people residing in the boundary. PW-8 has further stated in paragraph '12' that the victim had stated during investigation in paragraph '28' that she had gone with her parents and lodged the case but in the FIR there is no signature of the victim. She was not examined at that time. In paragraph '13', the I.O has stated that in the case diary he had not recorded whether the hand-pump was inside the house or outside the house. He had not found any utensil lying here and there near the hand-pump. He has stated that there is a dense population in the west side of the house of the informant and this is not the road through which the victim girl was taken away. He has stated that the victim was taken away through the road of the orchard.



34. This Court, therefore, finds that the I.O. has given a completely different version with regard to the place of occurrence and manner of occurrence. The I.O. has not gone to the orchard from where the victim girl claims to have been taken away. The I.O. has specifically stated that at the second place of occurrence, though the victim claims that she was raped but no one else said so. In paragraph '60' of the case diary, he had recorded that the witnesses told him that the clothes were washed off whereafter he had not seized the clothes. He had demanded the washed clothes and the bloodstain clothes but not mentioned it in the case diary. He has stated in paragraph '20' that he had not interrogated the victim regarding the occurrence, the officer in-charge of Mahila police station had interrogated her. This Court finds that in this case the officer in-charge of Mahila police station has not been examined. About Muskan who is in the vicinity of the rented room as she was also a tenant, the I.O. had though recorded her statement but she has not been examined and it would appear from the evidences available on the record that there is no witness at all either who claims to have seen the appellant taking away the victim girl in his hands from the first place of occurrence and similarly there is no witness to say that he had seen the appellant



with the victim girl in the house of Suresh Sao either entering into the house or being taken away from there in the morning.

35. The veracity of the statement of the victim girl (PW-3) further becomes doubtful after noticing that the victim girl has stated in her deposition that she was taken to the house of her Mausi (PW-6) in unconscious condition on a motorcycle. She had regained consciousness at 4.00 PM though she had reached the house of PW-6 at 10.00-11.00 AM. She has also stated that her Mausi/Mausa had got her examined by a doctor at their house but she did not know the name of the doctor. This Court finds that in unconscious condition the victim could not have ride on the motorcycle and it was not possible for the appellant to take her to her Mausi's place on a motorcycle in unconscious condition that too without being noticed by any one in the vicinity.

36. We further find that in paragraph '11' of her deposition, the victim has stated that after taking her to her house, her Mausa (PW-5) had gone to police station with her and in the police station Darogaji had not recorded her statement on any paper but her Mausa's (PW-5) statement was recorded in writing at the police station. Paragraph '11' of the deposition of PW-3 gives an impression that the earliest version of the prosecution case has been suppressed.



37. Lastly, we have also noticed the medical examination report of the victim. She was examined by Dr. Sushma Verma (PW-1) who was posted at Prabhavati Hospital as Medical Officer on 17th July, 2020. She has recorded- “no marks of violence, Axillary hair present, breast well developed, abdomen- no mark of violence, Perineum- no mark of violence, public hair-present, hymen ruptured, orificedilated and vagina admits two finger easily. Urine for HCG negative. The vagina swab showed no dead or alive spermatozoa”. The doctor has concluded that “though there is no recent sign of sexual intercourse rape cannot be denied”. In her cross-examination, the doctor has stated that she had not found any injury on the body of the victim. She had also not found any injury on genitals of the victim. She has stated that there may be injury after intercourse. It is lastly stated by PW-1 that spermatozoa were not present on the cloth and body of the victim. She was not sure whether rape was committed or not. This Court, therefore, finds that the doctor (PW-1) has not found any sign of recent sexual intercourse. In fact the victim has also not stated so specifically in her deposition as noticed by this Court hereinabove.

38. In the kind of materials present on the record, we are of the considered opinion that the victim in this case cannot be said to be a sterling witness. Who will be called sterling witness



has been discussed by the Hon'ble Supreme Court in the case of ***Rai Sandeep @ Deepu vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***. Paragraph '22' of the said judgment is being reproduced hereunder for a ready reference:-

“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.”

39. Since we have noticed that the medical examination of the victim did not suggest any recent sign of sexual intercourse, some enmity between the parties on account of keeping the animals on the road/street has been admitted by PW-2 and with regard to the place of occurrence from where the victim was taken away, the evidence of the victim and the prosecution witnesses are at much variance, we are of the considered opinion that it would not be safe to convict the appellant ignoring the principle of presumption of innocence. We are conscious of Section 29 of the POCSO Act which raises a presumption, however, this aspect of the matter has been dealt with in a number of judicial pronouncements some of which have clearly laid down the requirements to raise a presumption under Section 29 of the POCSO Act. In this case, we find that the primary facts which are required to be proved as foundational facts to attract the presumption under Section 29 of the POCSO Act are missing. We are of the view that the principle of presumption of innocence of



an accused until proves guilty beyond all reasonable doubts remains intact.

40. In result, we set aside the impugned judgment and order and acquit the appellant of the charges giving him benefit of doubt.

41. The appellant is said to be in custody, hence he is ordered to be released forthwith, if not wanted in any other case.

42. The appeal is allowed.

43. Let a copy of the judgment along with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Sushma2/Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.09.2025
Transmission Date	18.09.2025

