

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.374 of 2023**

Arising Out of PS. Case No.-23 Year-2019 Thana- MAHILA PS District- Darbhanga

Lal Babu Paramhans Son of Sitaram Mahto Resident of Village - Sisho West,  
P.S.- Sadar (Mabbi O.P.), District - Darbhanga.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

**Appearance :**

|                   |   |                                                                                                                             |
|-------------------|---|-----------------------------------------------------------------------------------------------------------------------------|
| For the Appellant | : | Mrs. Shama Sinha, Advocate<br>Mr. Surya Prakash, Advocate<br>Mr. Vijayansh Pratap Singh, Advocate<br>Ms. Aprajita, Advocate |
| For the State     | : | Mr. Parmeshwar Mehta, APP                                                                                                   |
| For the Informant | : | Mrs. Smiti Bharti, Advocate                                                                                                 |

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

**Date : 08-10-2025**

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

2. The present appeal has been preferred for setting  
aside the judgment of conviction dated 07.02.2023 (hereinafter  
referred to as the ‘impugned judgment’) and the order of sentence  
dated 17.02.2023 (hereinafter referred to as the ‘impugned order’)  
passed by learned Exclusive Special Judge (POCSO Act),  
Darbhanga (hereinafter called the ‘learned trial court’) in POCSO



G.R. Case No. 16 of 2019 arising out of Darbhanga (Mahila) P.S.  
Case No. 23 of 2019.

3. By the impugned judgment, the appellant has been convicted for the offence punishable under Sections 376(3), 506 of the Indian Penal Code (in short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, he has been sentenced to undergo rigorous imprisonment for thirty years with a fine of Rs.30,000/- under Section 376(3) IPC and in default of payment of fine, he shall further undergo simple imprisonment for six months. He has also been sentenced to undergo rigorous imprisonment for thirty years with a fine of Rs.30,000/- under Section 6 of the POCSO Act and in default of payment of fine, he shall further undergo simple imprisonment for six months. He has further been sentenced to undergo one year rigorous imprisonment with a fine of Rs.5,000/- under Section 506 IPC and in default of payment of fine, he shall further undergo simple imprisonment for one month. All the sentences are to run concurrently.

**Prosecution Case**

4. The prosecution case is based on the written application of the informant who is the mother of the victim (PW-1) submitted to the S.H.O., Mahila Police Station, Laheriasarai,



Darbhanga. In her written application, she has stated that in the evening at about 7:00 pm on 24.03.2019, Lal Babu Parmahans who is residing in front of her house has committed rape upon her daughter (PW-2) in mango orchard and on hearing her cry, some villagers went there then found her anxious and the villagers saw Lal Babu Paramhans running from there. The informant asked her daughter then she disclosed weeping that earlier also the appellant had committed rape with her and threatened to kill her parents by showing pistol on disclosure of this matter to them. The informant alleged that they are musclemen and after the occurrence, the entire family of the appellant threatened the informant on visiting her house and offered money to settle the dispute.

5. On the basis of this written application, Mahila P.S. Case No. 23 of 2019 dated 26.03.2019 was registered under Sections 376, 506 IPC and Section 4, 6 of the POCSO Act against the appellant. After investigation, Police submitted chargesheet bearing No. 95 of 2019 dated 25.09.2019 against this appellant under Sections 376, 506 IPC and Section 4, 6 of the POCSO Act. On the basis of the chargesheet, learned trial court *vide* order dated 17.02.2020 took cognizance of the offences punishable under above-mentioned sections. 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 09.01.2021, charges were framed under Sections 376(3), 506 IPC and Section 6 of the POCSO Act.

6. In course of trial, the prosecution examined as many as nine witnesses and exhibited several documents to prove it's case. The list of the prosecution witnesses and the list of exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

| PW No. | Name of Witnesses | Detail of witnesses                                                                                         |
|--------|-------------------|-------------------------------------------------------------------------------------------------------------|
| PW-1   | Ms. Z             | The mother of the victim/informant in this case                                                             |
| PW-2   | Ms. X             | The victim/injured in this case                                                                             |
| PW-3   | Mr. Y             | The father of the victim                                                                                    |
| PW4    | Ram Pukar Sahni   | Other witnesses                                                                                             |
| PW5    | Nurul Nadaaf      | Other witness                                                                                               |
| PW6    | Ram Jatan Mahto   | Other witness                                                                                               |
| PW7    | Munni Kumari      | Investigating Officer (IO) of this case.<br>(Police Witness)                                                |
| PW8    | Dr. Alka Mishra   | The Medical Officer (MO) of this case who has conducted the medical examination of victim.(Medical Witness) |
| PW9    | Vikash Kumar Jha  | I/C Principal of Rajkiya Madhaya Vidalya Sisodih, Darbhanga.                                                |

List of Exhibits produced on behalf of Prosecution

|             |                                                                                          |
|-------------|------------------------------------------------------------------------------------------|
| Ext-P-1/PW1 | Signature of mother of victim/informant PW1 (Ms. Z) in this case on written application. |
| Ext-P-2/PW2 | Signature of victim PW2 (Ms. X) on her statement recorded                                |



|             |                                                                                                                                                          |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
|             | u/s 164 of Cr. P.C.                                                                                                                                      |
| Ext-P-3/PW3 | Signature of father of victim (PW3) (Mr. Y) on written report.                                                                                           |
| Ext-P-4/PW7 | Endorsement in writing and signature of SHO on the written application of informant.                                                                     |
| Ext-P-5/PW7 | Whole Formal FIR.                                                                                                                                        |
| Ext-P-6/PW8 | Entire medical Report in writing and signature of medical officer (PW8)                                                                                  |
| Ext-P-7     | Entire statement of victim recorded u/s 164 Cr.P.C.                                                                                                      |
| Ext-P-8/PW9 | The entry and date of birth mentioned in admission register regarding admission of victim in primary school where the victim had enrolled for schooling. |

7. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. He took a plea that he is innocent. The defence examined one witness, namely, Yogendra Mahto (DW-1) and produced several documentary evidences. List of Exhibits brought on behalf of the Defence is mentioned in tabular form hereunder:-

#### List of Exhibits on behalf of Defence

|              |                                                                                                                                                   |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| Ext-D-1/DW1  | Copy of application dated 14-03-2019 of accused Lal Babu Paramhans filed before Circle officer, Sadar of Darbhanga regarding dispute of drainage. |
| Ext-D-2/DW1  | Identity Card issued to Lal Babu Paramhans regarding election of member of Panchyat Samiti, Sishodih Paschimi.                                    |
| Ext-D-3/DW1  | Entry card of Lal Babu Paramhans issued by election officer.                                                                                      |
| Ext-D-4/DW1  | Original Scrutiny certificate issued by election officer.                                                                                         |
| Ext- D-X/DW1 | The photocopy of statement of election result of member of Panchayat Samity Shisho Paschimi.                                                      |



**Findings of the Learned Trial Court**

8. Learned trial court after appreciating the evidences available on the record found that the victim in her testimony before the court has substantially supported the allegation and charges against the accused. The victim has also corroborated her previous statement made under Section 164 Cr.P.C. Learned trial court found that the parents of the victim has also supported the case of the prosecution and the statement of the victim who came to know about the occurrence from the victim just after the occurrence.

9. Learned trial court found that the FIR was promptly lodged and minor discrepancies and exaggeration can not done away the statement of victim and statement of her parents.

10. Learned trial court found the statement of the victim and her parents quite trustworthy and true disclosure of the facts, hence the occurrence and the allegation against accused that the accused has committed rape with the victim who was below the age of 16 years at the time of occurrence and the accused has also committed aggravated penetrative sexual assault with the victim more than once which has been duly proved by the prosecution. Accordingly, learned trial court convicted the appellant and sentenced him as stated above.



**Submissions on behalf of the appellant**

**11.** Mrs. Shama Sinha, learned counsel for the appellant, has assailed the impugned judgment and order on various grounds. It is submitted that in this case, the learned trial court has not assessed/determined the age of the victim girl in accordance with law. For purpose of determination of age, a photocopy of School Transfer Certificate was produced, which was marked 'X' at the instance of the I.O. (PW-7). I.O. has stated that this photocopy was made available to him by the parents of the victim. Referring to the evidence of the In-charge Principal of Rajkiye Madhya Shishodih, Darbhanga (PW-9), learned counsel submits that PW-9 produced admission register of the school pertaining to the year 2012-2017 and submitted that the victim was admitted in the said school in Class-VI on 10.04.2015. In the said admission register, the date of birth of the victim was mentioned as 16.10.2004, however, PW-9 has admitted in paragraph '5' of his deposition that no basis of entering the date of birth in the register is mentioned. He has further stated that normally the guardians get admitted their wards in the school by reducing the age to 2-3 years.

**12.** Learned counsel submits that in view of the judicial pronouncements on the subject, the age determination has to take place in terms of the Scheme of Section 94 of the Juvenile Justice



(Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'J.J. Act'). In this case, the first school admission register was not produced and the School Transfer Certificate cannot fit in the scheme of Section 94 of the J.J. Act. In this regard, reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **P. Yuvaprakash vs. State Represented by Inspector of Police** reported in **2023 SCC OnLine SC 846**.

**13.** Learned counsel further submits that a bare reading of the evidence of the informant (PW-1) it would appear that she has lodged the case on the basis of the information furnished to her by the victim girl. The initial case of PW-1 was that the appellant had taken the victim girl to the orchard on 24.03.2019 at 7:00 PM and had committed rape on her. At that time, some villagers heard the shouts of the victim girl and went there where the victim was found ill-tempered. She asked her daughter as to what happened then she told that earlier also the appellant had committed wrong with her and had said that if she would disclose it to her parents, then he would shoot her parents and her. He had also shown the pistol and he is said to be an influential person. She also alleged that after the occurrence, all the family members of the appellant came to her house and threatened her to hush up the matter for some consideration. In course of trial, however, she has stated that



she heard *hulla* and rumour about the occurrence whereupon she asked her daughter as to what had happened and then she told the entire story. She has stated that the written information was written by one Munni Madam on which she had put her signature. She has admitted that her daughter had not told her earlier about the occurrence which had earlier taken place.

**14.** Learned counsel further submits that the evidence of the victim (PW-2) would not inspire confidence. In her deposition, she has stated that the house of the appellant is situated in front of the house of the victim, opposite to the road. She had been occasionally visiting the house of the appellant on occasion of marriage and some feast. The appellant has two sons and two daughters. She has stated that the family of the accused is comparatively rich and reputed. She was suggested by defence that there was a dispute between the family of the accused and the victim on account of drainage of water, but she denied the suggestion. She admitted that her father had good relationship with Nurul Naddaf and her father was working in the brick kiln of Shoaib Khan. This witness has also admitted in paragraph '51' that her father had gone to Shoaib Khan on the next day of the occurrence to inform him about the occurrence which had taken



place with her and her father had also made a complaint to *Mukhiya* and *Sarpanch* regarding the occurrence.

**15.** It is submitted that neither Shoaib Khan nor the *Mukhiya* or *Sarpanch* have been examined in this case. The defence case is that the appellant was having bitter relationship with the people of the Muslim community, who were in majority in the village, and it has come in the evidence of the prosecution witnesses that the appellant had contested election of Panchayat Samiti Member against Nihal Ahmed Khan.

**16.** Learned counsel further submits that it has come in the evidence of the father of the victim, who has deposed as PW-3, that there are *sauchalaya* in the courtyard of the house but PW-3 has stated that the *sauchalaya* are of his brothers. The submission is that it cannot be believed that despite there being *sauchalaya* in the courtyard of the house of the victim, she would go to the orchard to defecate in the late evening. PW-1 has stated about good relationship with her husband's brother family but no one of them has supported the prosecution case. It is pointed out that the mother and father of the victim have said differently about how they came to know about the occurrence and when they came to know it. They are materially inconsistent and their statement would not inspire confidence.



**17.** Learned counsel further submits that in this case two prosecution witnesses, namely, Ram Pukar Sahni (PW-4) and Ram Jatan Mahato (PW-6) have not supported the prosecution case. They have also not been declared hostile. All these witnesses have stated that there were enmity between the parties. Father of the victim works in the brick kiln of Shoaib and Shoaib Khan has got the case lodged through the father of the victim by instigating him. PW-4 has stated that in the panchayat election, Lal Babu Paramhans (the appellant) and Shoaib Khan both had contested for the post of *Mukhiya* and this witness has also stated that there was a dispute on playing of loudspeakers on the occasion of marriage of the niece of Lal Babu. PW-4 has stated that there is no complaint against Lal Babu Paramhans in the village and the society. He lives peacefully with all the villagers.

**18.** It is submitted that Noorul Naddaf (PW-5) who has good relationship with the father of the victim has stated that he had come to know that there was a quarrel at the time of marriage of the niece of Lal Babu on playing of *band baja* which was passing through the Masjid. He has stated that except this case, he had not heard about any complaint against Lal Babu. He has also confirmed that Lal Babu had contested election. It is submitted that though this witness has deposed in his examination-in-chief



that he had seen Lal Babu fleeing away when he was going from the village towards the orchard where is his *gaushala* and had seen 2-4 ladies present there but on a scrutiny thereof the same would not be reliable. He has not stated any material circumstance showing involvement of the appellant in commission of any sexual assault upon the victim.

**19.** It is also submitted that Ram Jatan Mahato (PW-6) has neither deposed on the occurrence nor on the circumstances after the occurrence. This witness has been cross-examined by defence and in his cross-examination, this witness has categorically stated in paragraph '10' that Lal Babu Paramhans has been implicated by all these people in a false case.

**20.** It is further submitted that I.O. (PW-7) has categorically deposed that she had not found any abnormal mark of either movement or dragging at the place of occurrence which was shown to her. She had taken over charge of investigation on 26.03.2019 and had produced the victim girl for the first time in court on 28.03.2019. The victim had stated in her statement about giving of Rs. 200 by the appellant though it was not mentioned in the written application or in the restatement. The I.O. has stated in paragraph '24' that the independent witness Ram Jatan Mahato had said that Lal Babu Paramhans has four children, there is no



complaint against him, he is a person of good moral and character and prior to this occurrence, there were disputes between both the families on account of drainage of dirty water and for that reason a false case has been registered. I.O. has also stated in paragraph '25' that Ram Pukar Sahni (PW-4) had stated that the allegations against Lal Babu Paramhans are false and he has been falsely implicated on account of dispute over drainage of water and also due to local politics. The I.O. has recorded in paragraph '26' of her deposition that the victim had submitted an application for getting compensation. She has also contradicted the statement of the informant as according to her, the informant had not stated either in her written statement or in her restatement that two days prior to Holi when the victim had gone to ease out/defecate at 6-7:00 PM then the accused had committed rape on her and one day after Holi when she had gone to defecate then the accused pulled her and showed pistol and threatened her to kill. The informant had only stated that the accused had said that if she would tell it to her mother and father then she would be killed.

**21.** Learned counsel submits that it is a clear case of false implication of a reputed person in the village only because of the quarrel between the two families, taking advantage of the same Shoaib Khan and other local political opponents of the appellant,



who belong to another community, hatched a conspiracy and falsely implicated the appellant. It is pointed out that the doctor (PW-8) has clearly opined that there was no conclusive evidence to show commission of sexual intercourse with emission with her. There was no injury either external or internal on the body of the victim. It is submitted that if a forcible act of rape could have been committed on the victim in the orchard, then some mark of injury on her back or any other part of the body would have been definitely there but that has not been found.

**Submissions on behalf of the State and the Informant**

**22.** On the other hand, learned Additional Public Prosecutor for the State as well as learned counsel for the informant have opposed the appeal. It is submitted that in this case the alleged occurrence took place on 24.03.2019. Her date of birth as mentioned in the school admission register is 16.10.2004 and the doctor has assessed her age between 14-15 years. Thus, there cannot be any dispute that the victim was a minor at the time of occurrence.

**23.** Learned counsel further submits that to prove the prosecution case it is not required to prove that there must be some external or internal injury on the body of the victim. It is submitted that in this case, the sole testimony of the victim (PW-2) may be



relied upon to sustain the conviction of the appellant. Save and except some minor contradictions in the prosecution evidence, there is no major contradiction to disbelieve the prosecution case.

**Consideration**

24. We have heard learned counsel for the parties and perused the trial court's records. On perusal of the records, we find that so far as the age of the victim girl is concerned, the prosecution has brought on record a photocopy of School Transfer Certificate which was marked 'X' at the instance of the I.O. (PW-7) but it has not been proved later on in accordance with law. The In-charge Headmaster of the school (PW-9) produced a school admission register of Class-VI showing that the victim was admitted in the said school on 10.04.2015 in Class-VI. Thus, this is not the first school admission register of the victim. The date of birth of the victim recorded in the said register is 16.10.2004. In view of the judgment of the Hon'ble Supreme Court in the case of **P. Yuvaprakash** (*supra*), the School Transfer Certificate cannot be relied upon to prove the age of the victim. However, we find that in this case, the doctor (PW-1) has also opined that the medical examination of the victim revealed her age between 14-15 years. A plus/minus two years with the same would also lead to a maximum upper extremity age of only seventeen years, therefore, the victim



(PW-2) in this case would come in the category of a child as defined under Section 2(d) of the POCSO Act.

**25.** At this stage, we would therefore examine as to whether the victim (PW-2) in this case may be taken as a sterling witness so as to rely upon her testimony for purpose of conviction of the appellant and further we would also examine whether the appellant has been able to demonstrate that it is a case of false implication because of his local rivalry particularly because he was contesting elections against some persons who did not like him.

**26.** On going through the evidences on the record, we have noticed that in this case, the first occurrence of rape is said to have been committed two days prior to Holi festival. The victim (PW-2) has stated in her evidence that about two years ago, there was a shop in her house which was being run by her mother, sister, father and brother were also attending their shop. She has stated in paragraph '36' of her deposition that four days prior to Holi festival, the appellant had given her 200 rupees at her shop. He had not purchased anything but just went away after giving Rs. 200. There was no one else at that time at the shop. She has stated that she had not opposed to the giving of that money and had not asked that why the appellant had given that money to her. In paragraph '41' she has also stated that she had not disclosed this fact of



giving of Rs. 200 to her mother, father, brother, sister and uncle. The accused has said not to disclose it but except that he had not said anything else. Having said so in paragraph '42', this witness again says that she had disclosed this fact to her mother, father, brother and sister after 4-5 days. She has stated in her deposition that she had gone in the orchard to defecate two days prior to Holi festival in the orchard of one Lakshmi Ram and one day after Holi festival also she had gone in the orchard of Lakshmi Ram. She had gone alone in the orchard. She had received threat on the first day but she had not disclosed it to her mother and father. She disclosed the second occurrence to her mother and father and at that time only her mother, father and sister were there. She has stated in paragraph '57' that she had told the Magistrate and police that two days prior to Holi when she had gone to defecate then the appellant was present there from before who pulled her there and committed rape on her.

**27.** In paragraph '58' she has stated that after one day of Holi when she had again gone to defecate at about 6-7 PM, the appellant had committed rape on her and threatened her by showing gun that if she would tell it to anyone then her parents and she would be killed. In paragraph '60' she has stated that she had objected to the occurrence which took place with her. She was



dragged for 9-10 feet and during this she had also shouted but on her shoutings no woman came. She has stated that some boys came after she had already been raped. She has stated that when the appellant was present there then she had shouted and boys had come. She had started shouting immediately when he had caught hold of her and within 3-4 minutes thereafter the boys had come and during this period in order to save herself '*uthapatak*' with her and the appellant kept on going and there were soil on her body and her leg was also injured, her backside had bruises due to dragging and her hands were injured. On analysis of this part of the evidence of PW-2 it appears that prior to the first occurrence, she had been given Rs. 200 by the appellant but without saying anything that why the money is being given to her. She did not disclose this to her parents immediately and two days prior to Holi, she says that she had gone to the orchard where rape was committed. During the commission of rape at first instance, there is no allegation that any threat was given to the victim (PW-2) by the appellant but she chose not to disclose it to her parents.

**28.** This Court further finds that regarding the second occurrence she has stated that it took place one day after Holi festival and this time the appellant had shown her gun and threatened her to kill and committed rape on her but in the same



deposition, the victim (PW-2) says that the moment the appellant caught hold of her hand, she started shouting and within 3-4 minutes some boys came there, during this period she was trying to save herself and in the said exercise '*uthpatak*' between the accused and the victim were going on in which the victim has sustained injury also. This statement of the victim in paragraph '60' of her deposition is completely contrary to paragraph '58' of her deposition where she has stated that the appellant had committed rape with her by showing threat of gun. The victim has not disclosed the name of the boys who had arrived within 3-4 minutes in the orchard. She has stated that the whole body was having soils, she had suffered bruises on her leg and back as also injured her hand but the doctor (PW-8) has categorically stated that no injury or stains were found on external or internal part. There was no injury either external or internal on the body of the victim.

**29.** The medical examination report (Exhibit 'P-6/PW-8') clearly rules out the story made by PW-2 in paragraph '60' of her deposition. Thus, it can be safely held that the story propounded by PW-2 that there were '*uthapatak*' for 3-4 minutes and then the boys had come in the orchard are only an afterthought which have been developed in course of trial. This medical report gets further strengthened from the deposition of the I.O. (PW-7) who has



clearly stated in paragraph '19' of her deposition that at the place of occurrence, which was shown to her, she had not found any sign of movement of any person or dragging of any person. She had not found any abnormal circumstance at the place of occurrence. This Court, therefore, finds it unsafe to rely upon the testimony of PW-2 as regards the place and manner of occurrence. It cannot be believed that the appellant will give Rs. 200 to the victim without saying anything and then the victim would go to the orchard two days prior to Holi where the appellant would be present from before and would commit rape on her which she would not disclose to her parents.

**30.** This Court further finds that in paragraph '64' of her deposition, the victim (PW-2) has stated that she had given information about the occurrence after 4-5 days of Holi at 8:00 PM in her house where her parents and sister were present. Her parents were very angry. They disclosed this occurrence to *Mukhiya* and *Sarpanch* and *bade papa*. She has stated that Nihal Ahmad @ Chhote Khan is a Member of the Panchayat Samiti. She has stated that *Mukhiya* and *Sarpanch* advised to lodge a complaint in Mabby Police Station. She was suggested by the defence that *Mukhiya* and *Sarpanch* had called the media people but the witness denied her awareness regarding this. It is evident from her deposition that the



present case was lodged on the advice of *Mukhiya* and *Sarpanch*. In this background, the defence has suggested that because of the local politics, the particular community to which *Mukhiya* and *Sarpanch* belong to and at the instance of Shoaib Khan, under whom her father was working, the present case was lodged. The victim denied this suggestion, however, we find from the evidence of the father of the victim that he has stated in paragraph '6' that he came to know about the occurrence when there was a rumour in the whole village in the same night when the second occurrence had taken place. According to him, the villagers were talking to each other regarding the occurrence on which he had asked his wife and then he came to know about the occurrence. Thus, PW-3 claims that he had come to know about the occurrence on the very next day of the occurrence. At the same time, the mother of the victim (PW-1) has also stated in paragraph '35' that her daughter had given the information regarding the occurrence one day after the occurrence in the morning at 6-7:00 AM whereafter on the next day she had gone to the police station. It is, thus, evident that two days after the alleged second occurrence, the informant had gone to the police station to lodge the present case after the *Mukhiya* and *Sarpanch* told her to lodge the case in Mabby Police Station. Thus, PW-1, PW-2 and PW-3 are materially inconsistent on the



point of information with regard to the occurrence available to them. PW-1 has stated that her husband had not submitted any written complaint to Sarpanch or in Mabby O.P.

**31.** As regards the enmity between the prosecution side and the appellant, there are sufficient materials on the record. In this regard, we refer the evidence of PW-1. She denied her awareness that the appellant had contested Panchayat Election. In paragraph '22' of the deposition, she denied the suggestion that the appellant had given an application to the Circle Officer against drainage water but we find that through defence witness no. 1, the appellant has brought on record the acknowledgment receipt of the application dated 14.03.2019 of the clerk in the Circle Office as Exhibit D-1/DW-1 and the identity card of the candidate issued by the Panchayat Election Officer showing that the appellant was a candidate for member of Panchayat Samiti, he has also proved the candidate entry pass in the name of the appellant of 2016 Panchayat Election. These documents are Exhibits 'D-2/DW-1' and 'D-3/DW-1' respectively. From Exhibit 'D-4/DW-1' and Exhibit 'D-X/DW-1', it is further proved that the appellant had contested the Election. DW-1 has stated that the appellant had lost the Election to his opponent Mohd. Nehal Ahmad. Despite all this, PW-1 denied her knowledge that the appellant had contested



Panchayat Election. This conduct of PW-1 shows that she was trying to suppress the fact that there were enmity between the appellant and her family on account of drainage of water and that there was local political rivalry between the appellant and some persons of a particular community.

**32.** This Court further finds that when the victim came to depose as PW-2, she was also suggested by the defence that there was dispute over drainage of dirty water of the sewerage and in this connection, a quarrel had taken place between the appellant and her mother but PW-2 denied the suggestion. Thus, she also tried to suppress this quarrel on account of drainage of sewerage water. In her deposition, PW-2 has admitted in paragraph '27' that her father has good relationship with Nurul Naddaf. It is evident that the father of the victim was having good relationship with the opponents of the appellant. She has also stated in paragraph '51' of her deposition that her father had gone to the brick kiln owner Shoaib Khan to tell him about the occurrence. It is evident from the deposition of PW-2 that her father was in the company of the local political opponents of the appellant, therefore, the case of the defence that the appellant has been framed in a false case cannot be thrown away. There are ample materials on the record to prove the bad relationship between the parties.



**33.** On behalf of the prosecution, Ram Pukar Sahni (PW-4) has been examined as an independent witness. He is a neighbour of the informant and knows the appellant also. In his examination-in-chief, he has stated that the appellant and the informant had regular quarrel over drainage of the sewerage water. He has also stated that on the occasion of marriage (*matkor*) of the niece of the appellant, Shoaib Khan and his 2-4 persons had come near Masjid and beaten the *band baja* people on playing the bands, due to this, both the parties had enmity. PW-4 has further stated that the father of the victim works in the brick kiln of Shoaib and it is Shoaib Khan who has got a case lodged falsely implicating the appellant by instigating the father of the victim. In his cross-examination, PW-4 has stated that there is no complaint in the village and the society against the appellant. The Muslim community is in majority in the panchayat and they do not behave well with the Hindu community. In paragraph '9' of his deposition, this witness has stated that the appellant lives peacefully in the village.

**34.** This witness has though deposed against the prosecution's case, he has not been declared hostile by the prosecution. Similarly, another independent witness, Ram Jatan Mahato (PW-6) has not deposed in favour of the prosecution. He



has deposed on the line of PW-4 only. In paragraph '7' of his deposition, this witness has stated that on the occasion of the marriage (matkor) of the niece of the appellant, there were quarrel between the two groups and the people of a particular community had threatened the appellant that he would bear the consequences. This witness has stated in paragraph '10' that those people had falsely implicated the appellant. This witness is also a neighbour of the informant. He has stated that the two brothers and other members of the family of the father of the victim had not supported this case and therefore they have not deposed in favour of the prosecution. This witness has also not been declared hostile.

**35.** What will be the effect of not declaring PW-4 and PW-6 hostile may be found in the judgment of the Hon'ble Supreme Court in case of **Mukhtiar Ahmed Ansari vs. State (NCT of Delhi)** reported in **(2005) 5 SCC 258**. Paragraph '30' and '31' of the said judgment are being extracted hereunder for a ready reference:-

**"30.** A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan*, (2005) 5 SCC 272. In that case, the evidence of the Doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The Doctor was not declared "hostile". The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the Doctor and it was binding on the prosecution.



31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to police in which police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, accused can rely on that evidence.”

36. In the case of **Raja Ram vs. State of Rajasthan** reported in **(2005) 5 SCC 272**, the Hon’ble Supreme Court has held that the testimony of PW-8 Dr. Sukhdev Singh would be binding on the prosecution because he was not declared hostile by the Public Prosecutor in the trial court. On the strength of these judgments of the Hon’ble Supreme Court, this Court would conclude that the evidence of PW-4 and PW-6 would be binding upon the prosecution as they have not been declared hostile.

37. So far as the evidence of Nurul Naddaf (PW-5) is concerned, in his examination-in-chief, he has stated that at about 6:00 PM, he was going from his village towards the orchard where his *gaushala* is situated, he saw the appellant fleeing away, after some time, he saw that in the orchard 2-4 women and men were standing. This evidence of PW-5 in his examination-in-chief would not inspire confidence for the reason that the victim (PW-2) has stated in her evidence that when the appellant caught hold of her hand, she started shouting but on shouting no women had come in the orchard, after 3-4 minutes some boys had come. According to PW-2, at that time, the darkness had already



prevailed and she has categorically stated in her deposition that she had identified the appellant by his voice. In paragraph '59', she has stated that at the time when occurrence had taken place, the night was dark and there were darkness at the place of occurrence. PW-5 has admitted in paragraph '3' of his deposition that he had not received any notice from court to depose. He had come to depose on the asking of the father of the victim with whom he had good relationship. This witness has also admitted in his cross-examination that he had heard about the quarrel which had taken place at the time of marriage of the niece of the appellant on playing of the *band baja* near the Masjid. In his deposition, he has stated that he had seen the appellant going towards the village, at that time it was 6:00 PM and there were light (*ujala*), he had seen 4-5 ladies and gents but he cannot say their names and he had not seen them by face. It is evident that the statement of PW-5 is in complete contradiction with the evidence of the victim (PW-2) with regard to the conditions prevailing at the place of occurrence at the relevant time and the presence of any women.

**38.** Munni Kumari (PW-7) in this case is the Sub-Inspector of Police who has given a completely different place of occurrence and according to her, the place of occurrence in this case is situated one kilometre south to the house of the informant



and up to 500 metres, there are houses whereafter there are mango and bamboo orchards. She has stated that the place of occurrence is said to be the orchard of Lakshmi Ram. In the north, there is orchard of Mirjapur people which is looked after by the appellant, in south there is a wheat field of Panchkari Yadav, in east there is orchard of Kalar Yadav and in west, there is mango orchard of Vishnu Yadav. The victim has, however, stated that there are 40-50 houses in between her house and the orchard and after 40 houses from her house, the orchard starts but according to the I.O. the place of occurrence is 500 metres inside the orchard. She says “घटनास्थल वादिनी के घर से लगभग 1 किमी दक्षिण है। जिसमें 500 मीटर तक घर है। उसके बाद आम एवं बांस का बगीचा शुरू होने से 500 मीटर बाद इस कांड का घटनास्थल लक्ष्मी राम का आम का बगीचा है।”

**39.** It is evident from the deposition of the I.O. that at least half kilometre inside the orchard of mango and bamboos, the occurrence is said to have taken place. It is highly unbelievable that the victim would go to defecate in the dark evening/night 500 metres inside the orchard. This is another circumstance which seems highly improbable and falsifies the prosecution story. The I.O. (PW-7) has clearly stated in paragraph ‘19’ of her deposition that at the place of occurrence, she had not found any sign of movement of persons or dragging or any other abnormal



circumstance. To this Court, therefore, there is no iota of doubt that the prosecution has miserably failed to prove the place of occurrence and the whole story of the victim that the occurrence had taken place when she had gone to defecate in the orchard of Lakshmi Ram is not duly proved.

**40.** We have already taken note of the evidence of doctor (PW-8) who has stated that there was no injury either external or internal on the body of the victim. If the victim would have indulged in ‘*uthapatak*’ for 3-4 minutes at the place of occurrence in the orchard and she claimed that she had suffered injury on her back, leg and hands, the medical examination of the victim (PW-2) would have definitely revealed at least some scratches on her back but nothing of that sort has been found.

**41.** In the present case, this Court is also required to take note of Section 29 of the POCSO Act which reads as under:-

**“29. Presumption as to certain offences.-** Where a person is prosecuted for committing or abetting 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.”

**42.** In the case of **Veerpal @ Titu versus State (CRL.A.223/2023 dated 15th April, 2024)**, the Hon’ble Delhi High Court has dealt with the presumptions provided under Section 29 of the POCSO Act. This Court has discussed the case



laws in the case of **Subrata Biswas and Another versus State** reported in **2019 SCC Online Cal 1815**, **State of Kerala reported in (2019) 1 KLT 935** and in the case of **Heera Das Vs. State of Bihar & Anr.** reported in **2025 (2) BLJ 517**. Paragraph ‘33’, ‘34’ and ‘35’ of the judgment in the case of **Heera Das (supra)** are quoted hereunder for a ready reference:-

“**33.** In the case of **Veerpal @ Titu (supra)**, the Hon’ble Delhi High Court has discussed the kind of presumption provided under Section 29 of the POCSO Act. Paragraph ‘20’ of the judgment in the case of **Veerpal @ Titu (supra)** is quoted hereunder for a ready reference:-

“**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.

For the foregoing reasons, appeal is allowed and the judgment and order on sentence passed by the learned Trial Court is set aside. Appellant is acquitted and be released forthwith, if not required in any other case.

Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the Jail Superintendent and the learned Trial Court for information and compliance. A copy be also provided to the appellant, free of cost.”

**34.** Similarly, in the case of **Subrata Biswas (supra)**, the Hon’ble Division Bench of Calcutta High Court has discussed the scope of statutory presumption under Section 29 of the POCSO Act, 2012. Paragraphs ‘22’ and ‘23’ of the judgment in the case of **Subrata Biswas (supra)** are quoted hereunder for a ready reference:-



**“22.** The statutory presumption applies when a person is prosecuted for committing offence under Sections 5 and 9 of the Act and a reverse burden is imposed on the accused to prove the contrary. The word “is prosecuted” in the aforesaid provision does not mean that the prosecution has no role to play in establishing and/or probablising primary facts constituting the offence. If that were so then the prosecution would be absolved of the responsibility of leading any evidence whatsoever and the Court would be required to call upon the accused to disprove a case without the prosecution laying the firm contours thereof by leading reliable and admissible evidence. Such an interpretation not only leads to absurdity but renders the aforesaid provision constitutionally suspect. A proper interpretation of the said provision is that in a case where the person is prosecuted under Section 5 and 9 of the Act (as in the present case) the prosecution is absolved of the responsibility of proving its case beyond reasonable doubt. On the contrary, it is only required to lead evidence to establish the ingredients of the offence on a preponderance of probability. Upon laying the foundation of its case by leading cogent and reliable evidence (which does not fall foul of patent absurdities or inherent probabilities) the onus shifts upon the accused to prove the contrary. Judging the evidence in the present case from that perspective, I am constrained to hold that the version of the victim (PW-1) and her mother (PW-2) with regard to twin incidents of 24<sup>th</sup> March, 2016 and 18<sup>th</sup> April, 2016 if taken as whole, do not inspire confidence and runs contrary to normal human conduct in the backdrop of the broad probabilities of the present case.

**23.** Hence, I am of the opinion that the evidence led by the prosecution to establish the primary facts suffer from inherent contradictions and patent improbabilities particularly the inexplicable conduct of the victim herself. One part of the prosecution case improbabilises the



other part to such an extent that no man of reasonable prudence would accept the version as coming from the witnesses. Hence, I am of the opinion that the factual matrix of the case does not call for invocation of the aforesaid statutory presumption so as to convict the appellant on the charges levelled against him.”

35. The same views have been expressed by the Hon’ble Kerala High Court in the case of **Joy versus State of Kerala** reported in **(2019) 1 KLT 935**. It has been held that the duty to rebut the presumption arises only after the prosecution has established the foundational facts of the offence alleged against the accused and the court must be on guard to see that the application of presumption, without advertent to essential facts shall not lead to injustice. In the present case, the foundational facts such as that the victim was taken away by the appellant at 11:00 am by alluring her after giving a biscuit and then the rape was committed inside the house has not been established. The prosecution story as discussed in the written report giving rise to the present FIR and then the evidence of PW-7 are materially inconsistent and this Court has discussed hereinabove why the evidence of PW-7 would not inspire confidence.”

43. In a case under POCSO Act, the presumption of innocence of an accused would not belie. In the case of **Ramanand vs. State of U.P.** reported in **AIR 2022 (SC) 5273**, the Hon’ble Supreme Court has held in paragraph ‘99’ and ‘101’ as under:-

“99. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of



probability. In American Jurisprudence, 2<sup>nd</sup> Edn., Vol. 30, the expression “preponderance of evidence” has been defined in Article 1164. In America the term means “the weight, credit and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term greater weight of the evidence”, or “greater weight of the credible evidence”. It is a phrase which, in the last analysis, means probability of the truth. To be satisfied, certain, or convinced is a much higher test than the test of “preponderance of evidence”. The phrase “preponderance of probability” appears to have been taken from Charles R. Cooper v. F.W. Slade Charles R. Cooper v. F.W. Slade, (1857-59) 6 HLC 746. The observations made therein make it clear that what “preponderance of probability” means “more probable and rational view of the case”, not necessarily as certain as the pleading should be.

**101.** The inalienable interface of presumption of innocence and the burden of proof in a criminal case on the prosecution has been succinctly expounded in the following passage from the treatise The Law of Evidence, 5<sup>th</sup> Edn. by Ian Dennis at p. 445:

“The presumption of innocence states that a person is presumed to be innocent until proven guilty. In one sense this simply restates in different language the rule that the burden of proof in a criminal case is on the prosecution to prove the defendant’s guilt. As explained above, the burden of proof rule has a number of functions, one of which is to provide a rule of decision for the fact-finder in a situation of uncertainty. Another function is to allocate the risk of mis-decision in criminal trials. Because the outcome of wrongful conviction is regarded as a significantly worse harm than wrongful acquittal the rule is constructed so as to minimise the risk of the former. The burden of overcoming a presumption that the defendant is innocent therefore requires the State to prove the defendant’s guilt.””

**44.** In our considered opinion, the appellant in this case has been able to demonstrate in his favour by way of preponderance of probability of his false implication in this case.



As we have held that the victim (PW-2) in this case cannot be said to be a sterling witness and the evidences available on the record do not corroborate her testimony by any stretch of imagination, this Court is of the considered opinion that the impugned judgment and order cannot sustain and the appellant has made out a case of acquittal giving him benefit of doubt. Accordingly, we set aside the impugned judgment and order. The appellant is acquitted of the charges giving him benefit of doubt. He shall be released forthwith if not wanted in any other case.

45. This appeal is allowed.

46. Let a copy of this judgment together with the trial courts’ record be sent down to the learned trial court.

**(Rajeev Ranjan Prasad, J)**

**(Sourendra Pandey, J)**

Rishi/-

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