

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.350 of 2022

Arising Out of PS. Case No.-323 Year-2019 Thana- GHORASAHAN District- East
Champaran

Manish Kumar Son Of Virendra Prasad Resident Of Village - Bagha, P.S.-
Ghorasahan, Distt.- East Champaran, Motihari. Appellant
Versus

1. The State of Bihar
2. xxxx C/o Ajay Prasad Kushwaha R/O Bagha P.S.- Ghorasahan, East
Champaran.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Madhurendra Kumar, Advocate Mr. Sanjiv Kumar, Advocate
For the State	:	Mr. Bipin Kumar, Addl.P.P.
For the Informant	:	Mr. Binay Kumar, Advocate Mr. Vivek Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 17-04-2025

We have heard learned counsel for the appellant, learned
counsel for the informant and learned Additional Public Prosecutor
for the State as also perused the trial Court records.

2. The present appeal has been preferred for setting
aside the judgment of conviction dated 17.02.2022 (hereinafter
referred to as the ‘impugned judgment’) and the order of sentence
dated 28.02.2022 (hereinafter called the ‘impugned order’) passed
by the learned 6th Additional District and Sessions Judge cum Spl.



Judge, POCSO Act, East Champaran, Motihari (hereinafter called 'the learned trial court') in P. Tr. No. 72 of 2019 arising out of Ghorasahan P.S Case No. 323 of 2019.

3. By the impugned judgment the appellant has been convicted for the offences punishable under Sections 376(3), 341, 342, 323 of the Indian Penal Code (in short 'I.P.C.') and Section 4 and 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, the appellant has been ordered to undergo rigorous imprisonment for 20 years and fine of Rs. 50,000/- under Section 376(3) IPC and in default of payment of fine, he has to further undergo simple imprisonment for further period of six months. Further, he has been ordered to undergo rigorous imprisonment for 10 years with fine of Rs. 50,000/- under Section 4 of the POCSO Act and in default of payment of fine, he has to undergo further imprisonment for six months. He has also been ordered to undergo rigorous imprisonment for 20 years with a fine of Rs. 1,00,000/- under Section 6 of the POCSO Act and in default of payment of fine, he has to undergo simple imprisonment for six months. He has been ordered to undergo one year imprisonment with a fine of Rs.1,000/- under Section 323 IPC and in default of payment of fine, he shall further undergo simple imprisonment for one month,



further under Section 341 IPC, he has to undergo one month imprisonment with a fine of Rs.500/- and in default of payment of fine, he shall further undergo simple imprisonment for one year. For the Offence under Section 342 IPC, he has been ordered to undergo imprisonment for one year with a fine of Rs.1000/- 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 mother of the victim (informant). In the written application, the mother of the victim (PW-5) has alleged that her daughter, aged about 13 years, was called upon by the accused-appellant on 18.08.2019 at about 7:30 P.M., to help him in arranging the books in his house. She further alleged that after taking away the minor victim inside his house, the accused locked his house and tried to commit rape upon the victim whereupon the started crying loudly which was heard by a neighbouring woman who informed the informant that a girl was crying inside the house of accused. Thereafter, the informant searched for her daughter but when she did not find her daughter, she started crying and went near the house of accused, namely, Manish Kumar where she



found that the door was locked from outside and the neighbouring women told her that the girl was crying from inside the same house. Thereafter, she called local chowkidar and with his help the lock was broken and nearby people, including the informant, entered into the house and started searching for her daughter. During the search inside the house of accused, she heard groaning sound coming from a large trunk and when the trunk was opened, she found her daughter inside the said trunk. Mouth of her daughter was tied and a noose (*'fanda'*) was tied around her neck. The local chowkidar sprinkled water over the victim, then after about 30 minutes, she regained her consciousness and at that time, froth came out of her mouth. After regaining consciousness, the victim informed that the accused after taking her in his house tried to establish physical relationship with her and when she resisted and started crying, the accused gagged her mouth with cloth and put the noose (*'fanda'*) around her neck and tried to strangle her, thereafter, she lost her consciousness.

5. On the basis of the written application, Ghorasahan P.S. Case No. 323 of 2019 dated 19.08.2019 was registered under Sections 323, 341, 342, 376, 511 and 307 IPC and Section 8 and 10 of the POCSO Act. After investigation, police submitted chargesheet bearing no. 192 of 2019 dated 25.10.2019. On the



basis of this chargesheet, learned Magistrate took cognizance of the offences vide order dated 20.11.2019 and committed the records to the court of sessions. After receiving the records, P. Tr. No. 72 of 2019 was registered.

6. The statement of the accused person was recorded under Section 313 Cr.PC. Accordingly, he pleaded not guilty and claimed to be tried. Accordingly, on 01.12.2020 charges were framed for the offence punishable under Sections 323, 341, 342, 307, 376(3) IPC and Section 4 and 6 of the POCSO Act.

7. The prosecution examined as many as eleven witnesses and marked some document exhibits. The description of the witnesses and the documents brought in evidence by the prosecution are given hereunder in tabular form for a ready reference:-

List of Prosecution Witnesses

P.W.-1	Kapil Dev Prasad
P.W.-2	Babita Kumari
P.W.-3	Ramavati Devi
P.W.-4	Urmila Devi
P.W.-5	Mother of the Victim (Informant)
P.W.-6	X (victim)
P.W.-7	Randhir Kumar Singh (I.O.)
P.W.-8	Dr. Anupam Kumari
P.W.-9	Dr. Manoj Kumar Singh
P.W.-10	Bunilal Paswan (Chowkidar)



P.W.-11	Lalbabu Baitha
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List of Exhibits on behalf of Prosecution

Ext.-1	Written Application
Ext.-1/A	Signature of Kapil Dev Prasad on written application
Ext.-1/B	Signature of Babita Kumari on written application
Ext.-1/C	Signature of informant on written application
Ext.-2	Statement of victim under Section 164 Cr.P.C.
Ext.-2/1	Signature of the victim on her 164 CrPC statement
Ext.-3	Medical Examination Report of the Victim
Ext.3/1	Signature of the victim on medical Examination Report
Ext.-3/2	Signature of the Doctor on medical examination Report
Ext.-4	Age determination test
Ext.4/1	Signature of victim on age determination test
Ext. 4/2	Signature of medical officer on age determination test
Ext. 5	Attested copy of school register
Ext. 6	Transfer certificate of the victim

Findings of the Learned Trial Court

8. Learned trial court after considering the overall aspects found that the prosecution has successfully proved its case, while the defence has miserably failed to propose any reliable



defence and has failed to raise any doubt over prosecution case. Learned trial court observed that in the charges under POCSO Act the creation of reverse burden although shortened the aspect on this consistent suggestion, nevertheless, it is still material so far as reading into the entire prosecution story is concerned.

9. Learned trial court found that the minor victim of this case not just deposed on the line of her earlier statement rather the same has been corroborated by the evidences of the other witnesses and medical evidence. Learned trial court observed that PW-10 qualifies to be one of the independent witness in this case and his testimony is also supporting the allegations against the accused herein. The medical evidence is also corroborating the allegations against the accused. Regarding contradiction in the evidences of the witnesses, learned trial court observed that mere change of words by different witnesses to explain their contentions are required to be appreciated and this aspect cannot rebut the allegations together and this contradiction cannot be extended to give benefit to the accused.

10. Learned trial court after analysing the evidences on the record found that the accusation of accused is well-founded. Learned trial court observed that so far as taking of victim by the accused to his house is concerned, this fact has been proved by



PW-2, PW-3, PW-4 and PW-6 (victim). Learned trial court observed that the witnesses have not been confronted upon this aspect. Learned trial court found that the victim has specifically stated about her wrongful confinement. PW-10 has deposed that the victim was locked inside the house of accused and further that the accused was confined inside one trunk inside the house of the accused. Other witnesses have also deposed accordingly. Learned trial court found that the accused has not controverted the witnesses on this count nor he has put any suggestions to the witnesses. Accordingly, the charge under Section 341 and 342 IPC stands proved. Learned trial court further found that the victim was aged about 14 years 1 month.

11. Therefore, learned trial court after close scrutiny of the evidences available on the record came to a conclusion that the prosecution has been able to prove its case against the appellant beyond all reasonable doubts and held the appellant guilty for the offences punishable under Sections 376(3), 341, 342, 323 IPC and Section 4 & 6 of the POCSO Act.

Submissions on behalf of the Appellant

12. Learned counsel for the appellant submits that the written application was recorded on 18.08.2019 in which the date of occurrence has not been mentioned. From the endorsement



made on the margin portion of the written application, it would appear that the case was registered on 19.08.2019.

13. Learned counsel further submits that it is apparent from the deposition of the I.O. that there is an inordinate delay of more than three days from the date and time of lodging of the FIR in sending the same to the court of learned Jurisdictional Magistrate. On this point, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Meharaj Singh (L/Nk.) versus State of U.P.** reported in **(1994) 5 SCC 188** (paragraph '12').

14. Learned counsel submits that the 164 CrPC statement of the victim was recorded on 22.08.2019 in which the victim has stated that the appellant had made her naked but when she did not allow him to commit wrong with her then he had beaten her and when she tried to get up then the appellant put his hand on her neck and slammed her down on the cot. He assaulted her on her eyes as a result whereof her eyes became red. He had administered her some medicine and thereafter after putting cloth in her mouth when she became unconscious then he put her in a trunk and put clothes upon her. On her shouting, the chowkidar (PW-10) took her out from the trunk. She has alleged that the



appellant was drunk, he happens to be his brother in distant relationship, he is married and has four children.

15. Learned counsel submits that the victim (x) in course of trial has made a material deviation from her statements and her inconsistency in course of trial has created huge doubt in the prosecution story. In her examination-in-chief, the victim (PW-6) has stated in paragraph '2' that she had gone to the house of the appellant on his request to arrange the books in his house and when she had already arranged the books in his house at his instance, she also arranged the bedsheets but thereafter, the appellant closed the door and windows, put his hand on her neck and slammed her down on the bed whereafter he committed wrong act with her. He had taken out all her clothes at the time of committing wrong act and tied her hands. He had also assaulted her and then administered medicine. She was made unconscious and then she was put in a trunk. She claimed that her entire clothes were soaked with blood. In paragraph '14', PW-6 has stated that she did not remember the colour of the bedsheet and the wrong act was committed with her at the floor (*"mera sath galat kam neeche hua tha"*). Thus, it is evident that while in paragraph '2', she has stated that the wrong act was committed with her on the bed, in



paragraph '14', she said that the wrong act was committed at the floor.

16. Learned counsel further drawn the attention of this this Court towards the claim of PW-6 regarding her admission in hospital and her treatment for three days which has not been substantiated by producing any cogent evidence. The I.O. (PW-7) has stated that when the victim was taken out of the house of the appellant, police was not present there. According to him, Chowkidar was present and he was told to be present there by the SHO. The I.O. has stated that he had gone for recording the statement of the victim on the very next day of the occurrence but she was not in a position to give her statement. He has stated that on 21.08.2019, he had recorded the statement of the victim in a private hospital but he did not remember the name of the hospital. He had not recorded the statement of the doctor in the private hospital. From the evidence of the I.O. (PW-7), it is crystal clear that regarding the admission of the victim in a private hospital, there is no evidence at all. The victim has not stated about her treatment in any private hospital.

17. Learned counsel further submits that the victim says that her entire cloth was soaked with blood and blood had also fallen in the trunk but there is neither any seizure list of the clothes



of the victim nor a seizure list of the trunk from which she is said to have been recovered.

18. Learned counsel submits that the evidence of the informant, the victim, the I.O. and the chowkidar as also simultaneously taking into consideration the delay of more than three days in reaching of the FIR to the Court of Jurisdictional Magistrate, create doubt over the entire prosecution story and these facts clearly establish that the learned trial court having wrongly appreciated the evidences of the prosecution has erred in reaching finding that the prosecution has been able to prove its case beyond all reasonable doubts. Hence, the impugned judgment and impugned order is fit to be set-aside.

Submission on behalf of the State as well as the Informant

19. Learned Additional P.P. for the State and learned counsel for the informant have opposed the appeal. It is submitted that the learned trial court has rightly appreciated the evidence of the prosecution witnesses and held that the prosecution has been able to prove the charges levelled against the appellant beyond all reasonable doubts. Learned counsel has submitted that learned trial court has rightly observed that the witnesses have consistently deposed on the condition of the victim at the time of recovery and it cannot be ruled out that the victim may not have exact



knowledge to describe the offence for her tender age. Learned counsel submits that considering the overall evidence available on the record, it appears that the prosecution has successfully proved its case while the defence has miserably failed to bring any reliable defence and has failed to raise any doubt over prosecution case. Learned counsel further submits that testimony of victim is most important and she has specifically stated for her wrongful confinement which has gone unrebutted.

Consideration

20. The prosecution case is based on the written application dated 18.08.2019, (Ext. 1) under the signature of the mother of the victim girl. In the written application, the date of occurrence has not been disclosed. From the endorsement made on the margin portion of the written application (Ext.- 1/A), it would appear that the case was registered on 19.08.2019 under Sections 323, 341, 342, 376/511 and 307 IPC read with Section 8/10 of the POCSO Act. The formal FIR was registered on 19.08.2019 at 00.30 hours.

21. The 164 Cr.P.C. statement of the victim (x) has been recorded on 22.08.2019 in which the victim has stated that the appellant had made her naked but when she did not allow him to commit wrong with her then he had beaten her and when she tried



to stand up then the appellant put his hand on her neck and slammed her down on the cot/bed. He assaulted her on her eyes as a result whereof her eyes became red. He had administered her some medicine and thereafter after putting cloth in her mouth when she became unconscious then he put her in a trunk and put clothes upon her. On her shouting, the chowkidar (PW-10) took her out from the trunk. She has alleged that the appellant was drunk, he happens to be his brother in distant relationship, he is married and has four children.

22. We find from the deposition of the victim (x) in course of trial that she has made a material deviation from her statements and her inconsistency in course of trial would create huge doubt over the prosecution story. In her examination-in-chief, the victim (PW-6) has stated in paragraph '2' that she had gone to the house of the appellant on his request to arrange the books in his house and when she had already arranged the books in his house, at his instance, she also arranged the bedsheet but thereafter, the appellant closed the door and windows, put his hand on her neck and slammed her down on the bed whereafter he committed wrong act with her. He had taken out all her clothes at the time of committing wrong act and tied her hands. She had also assaulted her and then administered medicine. She was made



unconscious and then she was put in a trunk. She claimed that her entire clothes were soaked with blood.

23. This Court finds that in her own deposition, in paragraph '14', PW-6 has stated that she did not remember the colour of the bedsheet and the wrong act was committed with her at the floor ("*mera sath galat kam neeche hua tha*"). Thus, it is evident that while in paragraph '2', she has stated that the wrong act was committed with her on the bed, in paragraph '14', she said that the wrong act was committed at the floor.

24. This Court further finds that according to the victim, the appellant had put clothes in her mouth whereafter she had become unconscious and when she became unconscious after administering medicine, she was put in the trunk. In her statement under Section 164 of the Cr.P.C., she has stated that when she was shouting and weeping, the chowkidar took her out of the trunk but in her examination-in-chief, she does not talk of her weeping and shouting. Her mother has stated in the written application (Ext-1) that the appellant had tried to forcibly commit rape upon her daughter on which her daughter started shouting and weeping loudly and on hearing the same, the women of the neighborhood came to her house and told her that from the house of the appellant, some sound of weeping and shouting of the girl child



was coming whereafter she went there and raised *hulla*. The local chowkidar was called thereafter and then with the help of the people, the lock was broken. According to her, after entering into the house, they searched the victim and heard sound of screaming from the trunk. She found that the mouth of the victim was tied and a rope was fastened in the neck. Contrary to the case of the informant (PW-5) in her written application, the victim (PW-6) has stated that she had become unconscious and was put in the box. After some time, according to PW-6, her family members and chowkidar came there and took her out of the trunk and then she was admitted to hospital where she was treated.

25. It is further found that as per mother of the victim, if the victim had started shouting and weeping when the accused was forcibly trying to rape her and then on hearing the voice of the victim, her mother and other persons had reached at the house, how it may be possible for the accused to still commit rape and put her in a trunk. Mother claimed to have reached there then called the Chowkidar whereafter with the help of people, lock was broken. This cannot be a natural conduct of the mother that even after hearing the shouting and weeping of her daughter from inside a house, she would wait for arrival of the chowkidar to break open the lock. Mother talks of presence of the villagers also still they



did not make any attempt to break open the lock before arrival of chowkidar. Chowkidar does not say that he received any call from the mother or any villager. There is no seizure of the 'lock'.

26. This Court finds that the claim of PW-6 regarding her admission in hospital and her treatment for three days has not been substantiated by producing any cogent evidence. The I.O. (PW-7) has stated that when the victim was taken out of the house of the appellant, police was not present there. According to him, Chowkidar was present and he was told to be present there by the SHO. The I.O. has stated that he had gone for recording the statement of the victim on the very next day of the occurrence but she was not in a position to give her statement. He has stated that on 21.08.2019, he had recorded the statement of the victim in a private hospital but he did not remember the name of the hospital. He had not recorded the statement of the doctor in the private hospital. From the evidence of the I.O. (PW-7), it is crystal clear that regarding the admission of the victim in a private hospital, there is no evidence at all. The victim has not stated about her treatment in any private hospital.

27. This Court further finds from the evidence on the record that the attention of the I.O. was drawn towards the date of receipt of the FIR in the Court of learned ADJ-I and he was



confronted with the fact that endorsement of receipt of FIR in the Court is showing that the FIR was received in the court on 22.08.2019. The I.O. was called upon to explain as to why there was such a delay in sending the FIR to the Court but the I.O. took a plea that he cannot say about the reason for delay in sending the FIR to the Court. The I.O. himself claimed that the job of sending the FIR to the Court is that of the SHO. It is evident from this part of the deposition of the I.O. that there is an inordinate delay of more than three days from the date and time of lodging of the FIR in sending the same to the court of learned Jurisdictional Magistrate. This is in violation of the mandatory provision of Section 157 CrPC. The SHO of the police station has not been examined in this case, therefore, in his absence, the defence of the appellant has got seriously prejudiced.

28. On the point of delay in sending the FIR, the Hon'ble Supreme Court in the case of **Meharaj Singh (L/Nk.) versus State of U.P.** reported in **(1994) 5 SCC 188** has held in paragraph '12' as under:-

“**12.** FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in



lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW-8.”

29. Again in the case of Chotkau vs. State of U.P.

reported in (2023) 6 SCC 742, the Hon’ble Supreme Court has held as under:-

“69. On the question of compliance of Section 157(1) along with logical reasoning for doing so,



the following passage from the decision in *Jafarudheen v. State of Kerala*⁸ may be usefully quoted as under : (SCC p. 462, paras 28-29)”

“28. The jurisdictional Magistrate plays a pivotal role during the investigation process. It is meant to make the investigation just and fair. The investigating officer is to keep the Magistrate in the loop of his ongoing investigation. The object is to avoid a possible foul play. The Magistrate has a role to play under Section 159CrPC.

29. The first information report in a criminal case starts the process of investigation by letting the criminal law into motion. It is certainly a vital and valuable aspect of evidence to corroborate the oral evidence. Therefore, it is imperative that such an information is expected to reach the jurisdictional Magistrate at the earliest point of time to avoid any possible ante-dating or ante-timing leading to the insertion of materials meant to convict the accused contrary to the truth and on account of such a delay may also not only get bereft of the advantage of spontaneity, there is also a danger creeping in by the introduction of a coloured version, exaggerated account or concocted story as a result of deliberation and consultation. However, a mere delay by itself cannot be a sole factor in rejecting the prosecution's case arrived at after due investigation. Ultimately, it is for the court concerned to take a call. Such a view is expected to be taken after considering the relevant materials.”

8. [*Jafarudheen v. State of Kerala*, (2022) 8 SCC 440 : (2022) 3 SCC (Cri) 436]



30. A case under the POCSO Act is a serious matter, therefore, what has been opined by Hon'ble Supreme Court in **Meharaj Singh** (supra) would equally apply in this case.

31. This Court finds that the victim says that her entire clothes were soaked with blood and blood had also fallen in the trunk but there is neither any seizure list of the clothes of the victim nor a seizure list of the trunk from which she is said to have been recovered. At one stage, she has stated under Section 164 Cr.P.C. that the accused had made her naked but she did not allow him to commit wrong act. If it was so, the only conclusion will be that the accused could not overpower her and he was not able to commit rape on her. If she was made naked and how she claims to have been found in a trunk in clothes soaked with blood is another question in the mind of this Court. The chowkidar (PW-10) has stated that he had gone to the house of the appellant where he found large number of people had assembled and the lock of the door was closed. The people present there told him that one girl was crying there and then he informed this to the officer in-charge of the police station that in the house of the appellant, a girl has been confined. According to him, the SHO ordered him to break open the lock which he did with the help of the villagers.

32. This Court finds that the claim of the victim girl that she had become unconscious is getting highly doubtful from the



evidence of her mother as well as the chowkidar (PW-10). The fact that the chowkidar had given information to the SHO and he told him to break open the lock, has not been substantiated by producing any independent witness of the village. The fact that large number of persons had assembled at the house of the appellant but they had not broken the lock seems to be an unnatural conduct. The Call Data Report of the mobile phone of the chowkidar and SHO has not been proved, the SHO has not deposed and the lock which was broken for opening the door of the house of the appellant has not been seized by police. All these discrepancies and the deficiencies on the part of the prosecution are vital and would create huge doubt over the prosecution story that the victim girl (x) was recovered from the house of the appellant lying inside a box. The evidence of the Chowkidar (PW-10) is self-contradictory as in one of the paragraphs, he says that the people told him that the victim girl was crying in the house of the appellant but in the very next paragraph, PW-10 has stated that when he entered in the house, he saw that the victim girl was in unconscious condition and she regained consciousness after water was sprinkled on her face. The Chowkidar has made another contradictory statement when he says that a vehicle from police station came on which he went with the victim, her mother and her uncle to the police station. This statement of the Chowkidar (PW-10) cannot be believed on the face of the evidence of the I.O. (PW-7)



who has clearly stated that at the time of taking out the victim girl from the house of the appellant, police was not present.

33. We find from the evidence of the I.O. (PW-7) that in paragraph '20' of his deposition, he has clearly stated that he had not taken the accused-appellant for his medical examination and he had not recorded his statement. He admits in the same paragraph that during investigation, he had not recorded the statement of the any independent witness and he had not conducted any investigation on the point of prior enmity between the victim and the accused side.

34. It is important to take note of the contradictions which may be found from the statement of the I.O. (PW-7) in paragraphs '11', '12', '13' and '14' of his cross-examination. The I.O. has stated that the occurrence in this case is of 19.08.2019 and he had recorded the statement of the victim on 22.08.2019. This is not correct statement because the FIR itself was lodged on 19.08.2019 at 00:30 hours, the date of occurrence is not stated in the written application submitted by the informant (PW-5). This witness has stated that one Babita Kumari (PW-2) who has deposed in this case had not stated before him that after regaining consciousness, the victim had taken the name of the accused in her presence and had not stated that he had committed rape on her. It is important to note that in paragraph '15' of his deposition, the I.O. has stated that father of the victim girl had made statement before police on 21.08.2019 in which he had



stated that the application given by him on the date of occurrence is not based on true and correct information with regard to the occurrence. He had also stated that the requisition for medical examination of the victim was issued by him on 21.08.2019 i.e. after two days of the occurrence.

35. On analyzing the evidence of the informant, the victim, the I.O. and the chowkidar as also simultaneously taking into consideration the delay of more than three days in reaching of the FIR to the Court of Jurisdictional Magistrate, this Court would record that the very authenticity of the FIR in this case has become doubtful. It is evident that even though the occurrence is said to have taken place prior to 19.08.2019 when the FIR was lodged, for two days, the police did not think it proper to issue requisition for medical examination of the victim. Victim has developed her case of rape during trial. Prior to sending the copy of the FIR to the court, the father of the victim made a statement before police that the application with regard to occurrence given to police was not based on true and correct information with regard to the occurrence. The delay in sending the FIR coupled with the quality of the evidence of the prosecution witnesses as stated above would create a dent in the prosecution story.

36. The aforesaid findings of this Court get strengthened from the medical examination report issued by Doctor (PW-8). This



Court finds that the doctor who proved the injury report (Ext-3) had found redness present over the sclera (white portion of eye) on outside of right eye. There was redness present over the sclera (white portion of the eye) on inner side of left eye. Bruise was present on nose, mouth, cheeks, neck and front of chest. The bruises were turned brown in colour. The injury report says that there was no injury mark present over the pubic area. No injury present over the breast area. Her hymen was found ruptured. It is well known in medical jurisprudence that hymen may be ruptured for various reason. The Doctor (PW-8) has opined that when victim was brought to her, no previous medical record/slip etc. were produced and the same Doctor has stated in her cross-examination that in her report, she has stated about physical assault and not of any sexual harassment/assault. This Court has noticed that the Doctor (PW-8) has though tried to improve upon the injury report while deposing in court but in her cross-examination, she has admitted that the patient had not come to her on being referred which would show that the claim of the victim that she had been admitted in hospital and then the claim of the I.O. that he had recorded the statement of the victim in a private hospital are not true. The treatment particulars of private hospital has been suppressed. P.W.-8 admits that in her report, she has not found any injury on the pubic portion. From the evidence of the Doctor and the injury report (Ext-3), at best it seems to be a case of some quarrel in



which the victim girl may have suffered bruises on her nose and neck, no bleeding has been found from the injuries. It is evident that the case was registered under various Sections of I.P.C. including one under Section 376/511, thus, it was a case of attempt to commit rape which has been later translated into a case of rape.

37. In the totality of the materials which we have discussed hereinabove, in our opinion, the learned trial court has not appreciated the evidences available on the record meticulously and has convicted the appellant on the basis of the evidence of the prosecution witnesses who cannot be put in the category of reliable witnesses.

38. The defence has suggested to the prosecution witnesses that the wife of the appellant and the informant both were working in a self-help co-operative society. The informant has allegedly taken a sum of Rs.1 lakh/- from the said group but when the turn of the wife of the accused came, they lodged a false case against him and falsely implicated him. Although, the prosecution witnesses had denied the suggestion of the defence, the fact remains that the prosecution in this case is unable to stand on its own leg.

39. In result, we set aside the impugned judgment and the order of the trial court. The appellant is acquitted of the charges under Sections 376(3), 341, 342, 323 IPC and Section 4 & 6 of the POCSO Act giving him benefit of doubt.



40. The appellant is in jail, therefore, he will be released forthwith if not wanted in any other case.

41. This appeal is allowed.

42. Let the records of the trial court together with a copy of this judgment be sent down to the trial Court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Jagdish/-
Shubham/-

AFR/NAFR	
CAV DATE	
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