

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.452 of 2024

Arising Out of PS. Case No.-161 Year-2018 Thana- DHANAHA District- West Champaran

Arjun Sahani Son of Khedan Chaudhary Resident of Village - Devipur Bazar,
P.S. - Dhanha, District - West Champaran

... .. Appellant

Versus

1. The State of Bihar
2. Maya Kumari Daughter of Virendra Gupta Resident of Village - Devipur Bazar, P.S. - Dhanha, District - West Champaran

... .. Respondents

with

CRIMINAL APPEAL (DB) No. 952 of 2023

Arising Out of PS. Case No.-161 Year-2018 Thana- DHANAHA District- West Champaran

Maya Kumari @ Maya Gupta D/o- Virendra Gupta R/o Village- Devipur Bazar P.S.- Dhanaha Dist- W.Champaran

... .. Appellant

Versus

1. The State of Bihar
2. Arjun Sahani Son of Khedan Sahani R/o Village- Devipur Bazar P.S.- Dhanaha Dist- West Champaran

... .. Respondents

Appearance :

(In CRIMINAL APPEAL (DB) No. 452 of 2024)

For the Appellant : Mr. Sarvadeo Singh, Advocate
Mr. Sanjay Kumar, Advocate
Mr. Devanshu Kumar, Advocate
Mr. Anjum Akhtar, Advocate

For the Informant : Mr. Sanjeev Kumar, Advocate

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 952 of 2023)

For the Appellant : Mr. Sanjeev Kumar, Advocate

For the Informant : Mr. Anjum Akhtar, Advocate

For the State : Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 09-07-2025

We have heard Mr. Sarvadeo Singh, learned counsel for
the appellant; Mr. Sanjeev Kumar, learned counsel for the



Informant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State in Cr.App.(DB) No.452 of 2024 and Mr. Sanjeev Kumar, learned counsel for the appellant; Mr. Anjum Akhtar, learned counsel for the Informant and Mr. Satya Narayan Prasad, learned Additional Public Prosecutor for the State in Cr.App.(DB) No.952 of 2023 as also perused the trial court records.

2. These two appeals are taken together vide order dated 27.01.2025. Cr.App.(DB) No.952 of 2023 has been filed by the victim seeking the indulgence of this Court to the extent of non-awarding of any compensation amount to the appellant. A prayer has been made to award an appropriate amount of compensation to the victim in the facts and circumstances of the present case.

3. Cr.App.(DB) No.452 of 2024 is arising out of the judgment of conviction dated 10.09.2021 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 16.09.2021 (hereinafter referred to as the 'impugned order') passed by learned VIIth Additional District & Sessions Judge-cum-Special Judge (POCSO), Bettiah, West Champaran (hereinafter referred to as the 'learned trial Court') in CIS No. 65 of 2018 in connection with Dhanaha P.S. Case No. 161 of 2018 by which the learned trial Court has been pleased to convict and sentence the appellant Arjun Sahani for one month for the offences punishable under Section 341



of the Indian Penal Code (in short 'IPC'), for seven years under Section 376 IPC, for two years rigorous imprisonment under Section 506 IPC and rigorous imprisonment for 20 years under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act and to pay a fine of Rs.20,000/-. In default of payment of fine, the appellant Arjun Sahani shall undergo additional imprisonment for one month. All the sentences shall run concurrently.

Prosecution Case

4. The case of the prosecution is that the informant/victim (PW-1) filed a written application before Dhanaha Police Station to the effect that three and half months ago, her co-villager Arjun Sahani told her that monkeys have entered in her fields. On this, she went to her fields, Arjun Sahani followed her. When the informant did not find any monkey in her field, she started returning. It is further alleged that Arjun Sahani who was having a *fasuli*, caught hold of her hand and took her to banana fields, threatened her by putting the *fasuli* on her neck and committed rape with her. He also threatened her of dire consequences if she will disclose it to anyone. He also told that she will have to come whenever she will be called by him. It is further alleged that after this, she used to go on the call of Arjun Sahani due to fear and she was being raped continuously. It is alleged that



on threatening she was being raped for many times. Finally she disclosed this occurrence to her mother and they have filed this case.

5. On the basis of above written application, Dhanaha P.S. Case No. 161 of 2018 under Sections 341, 342, 376 and 506 of the Indian Penal Code (in short ‘IPC’) and under Section 4 of the Protection of Children from Sexual Offences (POCSO) Act was registered. After investigation police filed charge-sheet and learned Special POCSO court took cognizance of the offence.

6. Charges were under Section 341, 342, 376, 506 of the IPC and under Section 4 of the POCSO Act were read over and explained in Hindi to the accused-appellant, he pleaded not guilty and claimed to be tried. Thereafter charges were framed under the aforementioned sections.

7. The prosecution has examined altogether 6 witnesses and has also adduced certain documentary evidences which are reproduced hereunder for ready reference :

List of Prosecution Witnesses

P.W.-1	Informant (Victim)
P.W.-2	Virendra Gupta (Father of the victim)
P.W.-3	Jantri Devi (Mother of the victim)
P.W.-4	Raj Kumar (I.O.)
P.W.-5	Dr. Rubi Kumari
P.W.-6	Ramashish Ram



List of Prosecution Exhibits

Ext.-P1	Questionnaire of the victim
Ext.-P1/a	Signature of victim on the questionnaire
Ext.-P2	Written application
Ext.-P2/a	Signature of victim on written application
Ext.-P3	Signature of Virendra Gupta on written application
Ext.-P4	Signature of SHO on endorsement
Ext. P5	Signature of SHO on the FIR
Ext.P6	Medical report
Ext. P6/a	Signature of Doctor of on medical report
Ext.-P7	Birth certificate
Ext.P8	Signature of victim on Serial No.5 of the birth certificate register

8. As against this, defence has also adduced only one witness, namely, Mohan Chaudhary (D.W.-1).

9. After the evidence of prosecution, the examination of accused was conducted u/s 313 of Cr.P.C. where the appellant denied the evidence of the prosecution and claimed to be innocent.

Findings of the learned Trial court

10. The learned trial court has held that the informant is the victim of this case. She has supported the case of the prosecution in her evidence. She has also stated that the accused/appellant has also taken her photographs. Her statement has been supported by PW-2 and PW-3. It has also been held that



the Doctor has found that hymen was ruptured old tag present. PW-6 has proved birth register certificate and according to which the date of birth of the victim is 06.10.2003, it means she was minor on the date of the occurrence. On the basis of above observations, learned trial court has opined that the prosecution has been able to prove that the appellant has committed rape with a minor under threat.

Submissions on behalf of the appellant

11. The learned counsel for the appellant submits that in this case PW-2 and PW-3 are interested and hearsay witnesses. PW-4 is the I.O., PW-5 is the Doctor and PW-6 is also interested witness. The deposition of PW-1, PW-2 and PW-3 are not corroborated with each other and with the FIR as well as contradictions to the statement of the victim under Section 161 of the Cr.P.C.

12. Learned counsel for the appellant has submitted that in this case the Doctor has opined that the victim was aged about 17-19 years. Learned counsel for the appellant has also submitted that in this case the age determination of the victim was not properly done by the trial court and medical report which has been marked as Ext.-P/6 goes to show that the age of the victim is between 17-19 years. It has further been submitted that the Doctor



has opined that he had not found any external injury on the body of the victim and there is no recent sign of sexual assault.

13. It has also been submitted by the learned counsel that the victim has made vacillating statements and the evidence of victim is not reliable. It has not been corroborated by the medical evidence. The I.O. has stated in his cross-examination that he has not collected the proof of age of the victim except proof of the Doctor.

Submissions on behalf of Respondent-State

14. As against this, the learned Additional Public Prosecutor for the State has submitted that in this case the prosecution has been able to prove it's case beyond all reasonable doubts. The evidence of prosecutrix is trustworthy and on the basis of her evidence alone, conviction can be upheld. It has also been submitted by the learned Additional Public Prosecutor that the victim was minor at the time of the occurrence and that the learned trial court has rightly held the appellant guilty.

15. In this case PW-1 is the victim. She has stated in her examination-in-chief that the written application was written by a co-villager on her dictation. The same was read over to her and she had put her signature after finding it correct. The victim has identified her signature on the written report which has been



marked as Ext.-P/2a whereas the written application is marked as Ext.-P2. This witness has stated that in Paragraph '3' of her deposition that the house of the appellant is 3-4 houses away from her house. The occurrence is of 10 to 15 days ago from the date of written application. On the date of the occurrence the victim was alone at her house. The appellant came at 2 PM. He was alone. He said that her fields were being attacked by the monkeys. The victim went to her fields, the appellant followed her there. This witness has stated that before going to the fields, she did not disclose it to her uncle as his house is one kilometer away and she does not know to operate phone. The field (place of occurrence) is two kilometer away from her house. When she inspected her fields and found that there were no monkeys and started returning, she saw Arjun Sahani (the appellant). At that time, it was 2 PM. There was no one near the fields. The appellant showed her a *dabiya* and threatened her to follow her to banana fields on which the victim got scared. The appellant again threatened her of dire consequences if she will raise *halla*. This witness has further stated that after that appellant took her to banana field and committed rape with her. The defence has specifically asked as to what is rape whether she understands or not. The victim has answered in yes.



16. She has further stated that first of all the accused threatened her with *hasua*, after that caught her hand, knocked her down and committed rape. She tried to protest but was scared due to the threatening of the appellant. This witness has further stated that the appellant has disrobed her. She was in the fields for half an hour and the appellant went away from there after commission of rape. She did not disclose this occurrence to anyone. This witness has further stated that after 2-3 days of the occurrence when she again went towards fields, the appellant attempted to do the same and at this time the victim disclosed the occurrence to her parents. The second occurrence took place between 11-12 AM. The appellant was in another field and the victim had gone to see her fields. She has further stated that there had been no talk between the victim and the appellant on mobile. This witness has stated that Arjun Sahani has collected her photographs after threatening her. There was no *panchayati* regarding the occurrence. As the occurrence was known to all, the appellant fled away.

17. This witness has further stated that she called the appellant at Khirkiya Mandir on the pretext of solemnizing marriage where the appellant arrived; no marriage was solemnized and he was arrested by the police. This witness has further stated that at the temple, the parents of the victim and parents of the



appellant were present. It is not correct to say that the parents of the victim had offered some clothes whereas the parents of the appellant have not offered any cloth. This victim had not seen the appellant at the temple. She saw him only after his arrest. This witness has also stated that she did not identify the person who had written the written application. He is her co-villager and lives 10-15 houses away. This witness has been suggested by the defence that the victim was having an affair for last 2 years and she was to marry the appellant but she did not solemnize the marriage due to pressure of her parents and has filed this false case.

18. PW-2 is the father of the victim. This witness has also reiterated the statements of the victim in his examination-in-chief. This witness has further stated that he had also read the written application and signed over it. He has identified his signature on the written application which has been marked as Exhibit-P/3. In cross-examination, this witness has stated that he is a farmer. He was informed regarding the occurrence by his wife two months ago and when he arrived at his house he had the occasion to talk with the victim. He was being informed that the victim was subjected to forceful act 3 to 4 times.

19. This witness has further stated that he has complained the father of the appellant regarding his occurrence.



This witness has further stated that his daughter has taken education till class 6th. This witness has stated that he was away from the house for one month and was on talking terms with his wife. She disclosed him regarding the occurrence one month ago. This witness has also stated that he had called the parents on pretext of marriage and the appellant was arrested at the same time by the police. This witness has been suggested that the victim was having physical relationship with the appellant with her own will and was willing to marry the appellant but the marriage could not be solemnized due to objection of this witness.

20. PW-3 is the mother of the victim. This witness has also reiterated the statements of the victim in her examination-in-chief. She has further stated that 10 to 15 days after the occurrence she was informed by the victim. In cross-examination this witness has stated that she knows the accused-appellant from his childhood. This witness has also stated that the appellant was arrested from the temple. This witness has also been suggested by the defence that the victim was having relationship with the appellant and that due to objection of the parents her marriage could not be solemnized with the appellant and this false case was filed.



21. PW-4 is the I.O. of this case. This witness has stated that he received charge of the investigation on 30.08.2008, after that he recorded the statement of the victim, her father and her mother. He has recorded the statement of Lalji Gupta, Asharfi Sah and Madan Sah. On secret information, the accused/appellant was arrested on 30.08.2018. He has confessed his guilt. The statement of the victim was recorded under Section 164 Cr.P.C. and her personal examination was also conducted. In cross-examination this witness has stated that he had not collected any document regarding age of the victim except the medical evidence.

22. PW-5 is the Doctor Rubi Kumari. This witness has conducted the medical examination of the victim. We reproduce the evidence of PW-5 as under :

“1. दिनांक 31/08/2018 को लेडी मेडिकल ऑफीसर एम०जे०के० अस्पताल बेतिया, पश्चिमी चंपारण में कार्यरत् थी।

And on the same date I examined Victim D/O- Virendra Gupta, Village- Devipur Bazar, P.S.- Dhanaha, Dist- West Champaran at 5:45 P.M. on 31 August 2018 brought by A.S.I. Rajkumar and lady Constable Puja Raut(No-631) and found following.

Height- 5 feet 1 inch

Weight- 45 K.g.

1.Secondary Sexual Character

Axillary hair present breast develop

2. P/V examination- Hymen rupurted old tag present. There was no any injury on other body parts.

M.I. - A mole on left cheek.

LMP-14 August 2018.

No of Teeth- Upper jaw/- 12

Lower jaw/- 13



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According to pathologist- M.J.K. Hospital Bettiah.

Spermatozoa not seen in Vaginal Swab.

According to Radiologist- M.J.K. Hospital Bettiah.

1- X-Ray Clavicle AP View- Epiphysis of sternal end of clavicle not fused.

2- X-Ray of elbow with wrist- Epiphysis of lower end of Radius and ulna fused.

3- X-Ray of Pelvis AP view Epiphysis of creast of ileum almost fused.

Opinion- According to Pathologist, Radiologist, Dentist & Physical Examination- There is no any recent sign of Sexual Assault & age of Victim is between that is above 17 & below 19.

Court:-

1. Had you received any court order for determination of age of the victim

Ans- No.

2. Have you counted the variation factor at the time of observing regarding age ?

Ans- Yes.

This Injury report is in My pen & Signature. It is Marked as Medical report to Ext- P-6 & Signature is marked as Ext- P-6/a.

Cross examation By Ld. Cousel for Shri. Pawan Kumar Tiwari, Ld. Counsel for accused is present in person.

3. I have not found any internal injury on the body of the victim.

4. My opinion regarding is age based on the corospondance reports given by different experts.

5. The age of the victim may fall some where between 17 to 19.

Cross examination closed.

Witness is discharged”

23. PW-6 is Ramashish Ram who has brought birth register from *panchayat* which is of the year 2013-2015. In this register, date of birth of victim is recorded as 06.10.2003 and birth certificate is also issued on 20.12.2013. The above birth certificate



has been marked as Ext.-P/7 and the date of birth at serial no.5 in the register has been marked as Ext.-P8. In cross-examination, this witness has stated that the register is certified by the previous Secretary of the Panchayat and that on 20.12.2013, four certificates were issued. This witness has also stated that it is possible that the certificate would have been set aside.

24. As against this, the defence has adduced one witness, namely, Mohan Chaudhary (DW-1). This witness has stated that he had heard that the appellant and the victim were on visiting terms of each houses. The accused was arrested from temple. Both parties were there in temple for purpose of marriage. Marriage could not be solemnized and the accused was arrested from the temple. In cross-examination this witness has stated that Arjun Sahani is his nephew and that he works in paint and polish.

Consideration

25. We are conscious of the position of the law that even the sole testimony of prosecutrix is sufficient for holding the accused guilty if the evidence of the prosecutrix is trustworthy and creates confidence in the mind of the Court. For solely basing the judgment on the evidence of the prosecutrix, the nature of the evidence of the prosecutrix must be of a sterling nature. The Hon'ble Supreme Court has explained the term "sterling witness"



in the case of **Rai Sandeep v. State (NCT of Delhi)** reported in **(2012) 8 SCC 21 (para-22)** which is being reproduced below for ready reference :-

“22. In our considered opinion, The "sterling witness" should be of a very high quality and caliber 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."

26. Similarly in the case of **Kuriya v. State of Rajasthan** reported in **(2012) 10 SCC 433** it has been observed by the Hon'ble Apex Court which is being reproduced hereunder for ready reference :-

Generally Witnesses of "sterling worth" Meaning, explained Linguistically, "sterling worth" means "thoroughly excellent" or "of great value" -This term, in context of criminal jurisprudence, held, cannot be of any rigid



meaning and would mean a witness worthy of credence, one who is reliable and truthful - This has to be gathered from entire statement of witnesses and demeanour of witnesses, if any, noticed by court - Herein, statements of witnesses are reliable, trustworthy and deserve credence by court - They do not seem to be based on any falsehood - Conviction confirmed - Words and Phrases "Sterling worth" and "witness of sterling worth" - Criminal Law - Penal Code, 1860 - Sections 299-304 -- Culpable Homicide and Murder - Trial, Sentencing and Other Issues - Generally - Ss. 302/34 and 364/34 - Criminal Law - Trial Witnesses - Generally Criminal Law - Criminal Trial- *Proof* - Generally - Evidence Act, 1872 - S. 155 (Paras 23 to 31)

27. The age of victim has to be ascertained keeping in view the scheme of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. We reproduce Section 94 of the J.J. Act hereunder :

“94.Presumption and determination of age.

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child



or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

28. From bare perusal of the above provisions it is clear that following are the documents of age determination :

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical



age determination test conducted on the orders of the Committee or the Board:

29. In this case, the certificate issued by Panchayat has been placed before the court and on the basis of that document (Ext.-P7), the learned trial court has held that on the basis of birth certificate issued by the panchayat, the date of birth of the victim is 06.10.2003. Learned counsel for the appellant has submitted that from perusal of the Ext.-P7 it is clear that the birth certificate was issued on 20.12.2013. Learned counsel for the appellant has submitted that this document is not believable as this document was made in the year 2013 and it is not clear from the birth certificate of panchayat as to on what basis this certificate was issued. It has also been argued by the learned counsel for the appellant that the birth certificate register which has been brought before learned trial court was of year 2013-14 and it does not disclose as to on what basis this date of birth was entered in the register. It has also been submitted that this Ext.-P8 does not bear signature of any authority of *panchayat* rather it is just certified. The argument which has been advanced by the learned counsel for the appellant regarding the age determination has force. As though the birth certificate is issued by *panchayat* but date of registering of the same is 20.12.2013. From the evidence of the prosecutrix it



is also clear that she has studied up to Class-VI. Since the document which has been brought before the learned trial court for assessment of age of the victim is dubious and it does not disclosed basis on which the same was issued, in that circumstance we are of the considered view that for the assessment of age, the admission register of the school first joined should have been brought on record. The assessment which has been made by the Doctor has to be considered as the age of the victim-prosecutrix. In this case, the Doctors have opined that the age of the victim is between 17-19 years. In the case of **Court on its own Motion vs. NCT of Delhi** reported in **2024 SCC Online Delhi 4484**. Paragraphs '23' and '24' of the said judgment are being reproduced hereunder :

“23. We cannot be oblivious of the fact that we are following adversarial system of law where the presumption of innocence is indispensable philosophy. Though in any criminal trial, the endeavour is to reach the truth, in adversarial system, the judge generally acts like an umpire who watches whether the prosecution has been able to prove the case beyond reasonable doubt or not. Since the adversarial system in India is based on the ‘innocence of the accused’, the burden of proof, generally, falls on prosecution. Our criminal system prescribes that a case against any accused has to be proved beyond doubt. Meaning thereby, if there is an element of doubt, such benefit has to go to the accused.



24. Admittedly, in context of any juvenile wrongdoer, the endeavour of the defence would always be to seek margin of error on the 'lower side' as the same would prove to be beneficial for such wrongdoer who would be in a better position for being treated as juvenile in conflict with law, thereby becoming entitled to get due protection in many ways, including sentencing aspect. Thus, though the courts are zealous to see that a juvenile gets benefit of the provisions of JJ Act but at the same time it is also imperative for the courts to ensure that such protection and privileges are not misused by unscrupulous persons to escape punishments for having committed serious offences⁵."

30. The Hon'ble Delhi High Court in the case of **Shweta Gulati vs. State of NCT of Delhi** reported in **2018 SCC OnLine Del 10448** considered the upper age of the victim in order to ensure that the accused is not get prejudiced in any manner. The Court was of the view that if there was any uncertainty, the benefit of doubt should go to accused and accused only. In another case of **Raju Yadav vs. State of NCT of Delhi** reported in **2023 SCC OnLine Del 2782**, a conflicting view was taken. At this time, the Court took note of the objective of POCSO Act and held that determining the age of a child victim under POCSO Act, the inclination of the Court should be towards considering the lower side of the margin of error as that would be in consonance with the



objective of POCSO Act. Taking note of the conflict in the two judgments of the Delhi High Court, the Hon'ble Court referred its own Division Bench judgment in the case of **State v. Basir Ahmad** reported in **2023 SCC OnLine Del 5852** in which the same issue had arisen for consideration. In the said case, the accused who was facing trial for committing sexual assault was acquitted by the learned trial court observing that the age of the prosecutrix was shown to be between 17 to 19 years and therefore, there was no conclusive evidence of her being a minor at the time of alleged offence. The benefit was extended to the accused who was acquitted. The Hon'ble Delhi High Court not only upheld the factum of consideration of the age on the upper side of the ossification report but also approved the principle of giving further margin of two years to such upper estimated age. The pertinent excerpts from the aforementioned judgment is being reproduced hereunder:-

“12. The question which thus arises is whether the lower or the upper age recommended in the ossification test should be adopted to be the age of the prosecutrix. If benefit of doubt has to be given to the accused under all circumstances, then, it is the higher limit which has to be taken and benefit extended as has been held in the cases of **Triveniben Vs. State of Gujarat (1989) 1 SCC 678** and **Maru Ram Vs. Union of India (1981) 1 SCC 107**. So being the case, we may consider the range of age of the prosecutrix as given in the ossification test to be 17 to 19



years. Applying the margin of error principle of two years on either side, the age of the prosecutrix could be anything between 15 to 21 years. Even if the margin of error is not on the higher side, the upper limit of the age has been estimated by the ossification test as 19 years. Giving the benefit, the age of the prosecutrix has to be held as 19 years. Similar conclusion was taken by the Court in the case of **Shweta Gulati vs. State of NCT of Delhi 2018 SCC OnLine Del 10448**. We thus find that learned ASJ has rightly held the prosecutrix to be major at the time of incident. We find no infirmity in the findings in respect of the age of the prosecutrix.”

31. We also find that in the case of **Rajak Mohammad v. State of H.P.** reported in **(2018) 9 SCC 248**, the Hon’ble Supreme Court has observed in paragraph ‘9’ as under:-

“9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”

32. Based on the above discussion, we are of the opinion that in the present case, the prosecution has not succeeded in conclusively proving that the prosecutrix was a minor on the date of the alleged occurrence.

33. In this case, the victim has made vacillating statements and from her cross-examination it is clear that the marriage of the victim was going to be solemnized with the appellant but the same



could not be solemnized due to inter-caste marriage. As per the case of the prosecutrix in her written information the first occurrence took place about three and half months ago from the date of filing of this case. No specific date is given of the occurrence in the written application, whereas, written application has been filed on 30.08.2018 and from perusal of the evidence of the Doctor, it is clear that Doctor has found hymen ruptured old tag present. There was no injury on other body parts and has also held that there is no recent sign of sexual assault. In her statement in course of trial she has stated that the first occurrence took place about 10-15 days back and the second occurrence happened after 2-3 days of the first occurrence. Her father (PW-2) says that he was told by his wife about two months back. These are the vacillating statements of the prosecutrix.

34. As per the case of the prosecution, the appellant had committed rape after threatening the victim and she had been continuously being subjected to rape but the examination of her private part does not suggest it. Other witnesses who have been examined on fact they have stated what they were told by the victim regarding occurrence. The father of the victim has stated that he was out of State and he came 15 days after the occurrence and then filed the case. It is quite unnatural that a father will come



to know that her daughter is being subjected to rape and he will keep waiting for a date for filing a case.

35. In this case, the victim is not a sterling witness. Her evidence is not corroborated by the evidence of doctors and other witnesses. Age assessment done by the learned trial court is not in accordance with Section 94 of JJ Act and the victim is not a minor. We are of the considered opinion that prosecution has not been able to prove the primary facts to raise presumption under Section 29 & 30 of the POCSO Act. On the other hand the defence has made out a case for interference with the impugned judgment of conviction and order of sentence. The prosecution has failed to prove its case beyond all reasonable doubt and as such the appellant is liable to be acquitted giving him benefit of doubt.

36. In result, appeal against the conviction of the accused-appellant under Sections 341, 376, 506 IPC and Section 6 of the POCSO Act stands allowed. Since the appellant is already on bail, he and his bailors are discharged from the liabilities of the bail bonds.

37. So far as Cr. App.(DB) No. 952 of 2023 is concerned, it is for awarding compensation. In this case appellant has to establish that she is a victim in view of Section 2(wa) of the



Cr.P.C. We reproduce hereunder Section 2(wa) of the Cr.P.C. for ready reference:-

“(wa)[“victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;] *[Inserted by the Code of Criminal Procedure (Amendment) Act, 2008, Section 2.]”*

38. From the discussions made hereinabove, it is clear that the prosecution has failed to prove the charges levelled against the accused, hence it is not possible to hold that the prosecutrix has suffered any loss or injury caused by reasons of the act or omission of the accused. Thus, the appellant in Cr. App. (DB) No. 952 of 2023 is not a victim, as such, no compensation can be awarded.

39. The appeal [Cr.App.(DB) No. 952 of 2023] has got no merit and is hereby dismissed.

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

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Durgesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.07.2025
Transmission Date	18.07.2025

