

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.597 of 2023

Arising Out of PS. Case No.-45 Year-2021 Thana- MAHILA P.S. District- Muzaffarpur

Jyoti Kumar Son of Sri Anil Kumar Mishra Resident of Ghiran Chhapra, R.K.
Ashram, P.S.- Bela, District - Muzaffarpur - 843116

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Gopesh Raj, Advocate Ms. Kanchan Kumari, Advocate Mr. Manoj Kumar No. 1, Amicus Curiae
For the State	:	Mr. Dilip Kumar Sinha, Addl. PP
For the Informant	:	Ms. Bela Singh, Advocate Mr. Rajeev Ranjan, Advocate

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

Date : 26-09-2025

We have heard Mr. Manoj Kumar No. 1, learned Amicus Curiae and Mr. Gopesh Raj, learned counsel for the appellant and Mrs. Bela Singh, learned counsel for the informant. The State is represented by Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor.

2. The present appeal arises out of the judgment of conviction dated 25.03.2023 (hereinafter referred to as the '*impugned judgment*') and the order of sentence dated 27.03.2023 (in short referred to as the '*impugned order*') passed by the learned 7th Additional Sessions Judge-cum-Spl. Judge,



POCSO(W), Muzaffarpur in connection with Mahila P.S. Case No. 45 of 2021/G.R. No. 10054 of 2021.

3. By the impugned judgment the appellant namely Jyoti Kumar has been convicted for the offences under Sections 341, 342, 323, 506/34 and 376(D) of the Indian Penal Code (in short referred to as the 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short referred to as the 'POCSO Act') and have been sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs. 50,000/- and in default of payment of fine to further undergo imprisonment of two years for the offences under Sections 376(D) IPC as well as under Section 6 of the POCSO Act; to undergo imprisonment for a term of one month and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo imprisonment of one week for the offence under Section 341 of the IPC; to undergo rigorous imprisonment of one year and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo imprisonment for one month for the offence under Section 342 of the IPC; to undergo rigorous imprisonment of one year and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo imprisonment of one month for the offence under Section 323 of the IPC and to undergo



rigorous imprisonment for a term of two years and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo imprisonment of three months for the offence under Section 506 of the IPC. All the sentences have been directed to run concurrently.

Prosecution Case:

4. The prosecution case is based on the written application dated 23.04.2021 given by the informant/victim (P.W. 1). In her written report she has stated that on 07.04.2021 at about 11:30 P.M. in the night while she went out of her house to attend the natural call, appellant Jyoti Kumar and accused Suraj Kumar forcibly made her to sit on the motorcycle and shutting her mouth took her towards Taraura Dam where both accused raped her one by one. Appellant Jyoti Kumar has also made video of the incident for which victim forbade him on which both of them slapped her. Victim also tried to raise alarm but due to lonely place it was heard by none. Both the accused persons also threatened her to kill her father in case of disclosure of the incident to anyone. It is also alleged that the recorded video of the incident was made viral by the accused Jyoti Kumar.

5. On the basis of the aforesaid written application,



Mahila P.S. Case No. 45 of 2021 dated 23.04.2021 was registered for the offences punishable under Sections 341, 342, 376(D), 509, 506, 323/34 of the IPC and Sections 4/6 of the POCSO Act and Sections 3(2)(va) of the SC/ST Act and Section 67(A) of the I.T. Act.

6. After completion of investigation of the case, the Investigating Officer (the I.O.) submitted Chargesheet being Charge Sheet No. 90 of 2021 dated 19.11.2021 under Sections 341, 342, 376(D), 509, 506 and 323/34 of the IPC and Sections 4/6 of the POCSO Act and Sections 3(2)(va) of the SC/ST Act.

7. The cognizance of the offences under Sections 341, 342, 376(D), 509, 506, 323/34 of the IPC and Section 4/6 of the POCSO Act and Section 67(A) of the IT Act was taken on 29.11.2021 against the appellant Jyoti Kumar.

8. Charges were read over and explained to the appellants Suraj Kumar and Jyoti Kumar in Hindi to which they pleaded not guilty and claimed to be tried.

9. In the separate trial of appellant Jyoti Kumar eight witnesses on behalf of the prosecution were examined and prosecution exhibited some documentary evidences in course of trial. The description of prosecution witnesses and the exhibits are being mentioned hereunder in tabular form:-



List of Prosecution Witnesses:

P.W. 1	Victim
P.W. 2	Nawal Kishore Sah @ Kishori Das
P.W. 3	Mother of victim
P.W. 4	Father of victim
P.W. 5	Ramnath Das
P.W. 6	Ramashankar
P.W. 7	S.I. Sarita Kumari
P.W. 8	Dr. Priya Priyam

List of Exhibits on behalf of the Prosecution:

Ext. P-1/A	Written application
Ext. P-2/A	Signature of Ramgarib Das on seizure-memo
Ext. P-3	Endorsement of SHO on written application
Ext. P-4	Signature of SHO on FIR
Ext. P-5	Seizure-memo of the leggings of the victim
Ext. P-6	Seizure-memo of pen-drive
Ext. P-7	Age certificate (Matric mark-sheet)
Ext. P-8	Medical report of the victim
Ext. P-9	Supplementary medical report
Ext. P-10	Statement of victim recorded u/s 164 Cr.P.C.
Ext. P-11	FSL report

10. Thereafter, the statement of the appellants were recorded under Section 313 of the Cr. P.C. The appellants denied all the allegations and took a plea that they are innocent.



Findings of the Learned Trial Court:

11. The learned trial court after examining all the evidences available on the record found that in a case of sexual assault, it is not easy for a girl to disclose immediately to anybody. Therefore not reporting the matter to the police immediately alone cannot discredit the testimony of the girl which is otherwise cogent and trustworthy. The victim has also supported the incident in her statement recorded under Section 164 Cr.P.C. Learned trial court has appreciated the fact that not finding spermatozoa on the body of the victim is just because the life of spermatozoa is generally for 72 hours which has already elapsed in this case at the time of her medical examination. According to the mark-sheet of the victim she was found minor on the date of occurrence just one month short of the age of eighteen years.

12. The learned trial court has found that the defence has not been able to shift the burden and the prosecution has successfully proved the fundamental facts of this case establishing the link between the offence committed and the accused committing the offence.

13. It observed that the defence has drawn the attention of the trial court towards the FSL report with respect of the *leggings* of the victim in which no blood or semen have been detected. The cloth of the victim was seized after gap of number of



days from the date of occurrence therefore it is quite natural that the blood or semen could not be detected on the seized cloth. Therefore, the prosecution has been able to prove the facts of this case of committing the offence of penetrative sexual assault upon the minor victim. When the victim resisted for making video of the incident she was threatened by the accused for not disclosing the incident to anybody otherwise her father will be killed and that is why she did not reveal about the incident to her family members until the video was made viral. Therefore, the prosecution has also proved the facts constituting the offences under Sections 323 and 506 of the IPC. The charge under Section 14(2) of the POCSO Act could not be proved by the prosecution for the reason of non-compliance of mandatory certificate under Sections 65(B) of the Indian Evidence Act. The presumption under Sections 29 and 30 does not come in the aid of prosecution in this regard as well.

Submission on behalf of the appellants:

14. The learned counsel for the appellant submits that the present case was lodged after 16 days of delay without any explanation as the date of occurrence was 07.04.2021, whereas the written report was filed on 23.04.2021.

15. It has been further submitted that no independent witness has been examined and all the prosecution witnesses are the family members of the victim and who are all interested



witnesses. It has next been submitted there is severe infirmity and contradiction in the evidence of the prosecution which creates serious doubt on the prosecution version and such facts have not been taken into account by the learned Trial Court.

16. The learned counsel for the appellant has pointed out that there is serious contradiction in between the statement of P.W. 1 and her mother (P.W. 3) as according to P.W. 1 she along with her mother had gone to the Mahila Police Station and submitted her written report upon which the FIR was registered but her mother (P.W. 3) has stated that she along with the victim P.W. 1 went to Mushahari Police Station but they were subsequently referred to the Mahila Police Station, however this contradiction was not taken note of by the learned Trial Court.

17. The learned counsel has pointed out another infirmity with regard to the place of occurrence as P.W. 1 in her deposition has categorically stated that she had not gone to the place of occurrence after lodging of the FIR but according to P.W. 3 the victim had accompanied the police to the place of occurrence.

18. The learned counsel for the appellant has emphasized upon the fact that no site plan of the place of occurrence was prepared, as admitted by the I.O. (P.W. 7) and the clothes worn by the victim at the time of occurrence was stated to



have been washed except the *leggings* which was seized for further examination. It is submitted that the victim is not a sterling witness and conviction on the basis of her sole testimony would be a miscarriage of justice.

19. The learned counsel for the appellant has further submitted that even the medical examination does not support the factum of rape by two persons, as alleged by the victim/informant and the Doctor (P.W. 8) has stated that she did not find any injury on the private part of the victim and there was no mark of violence on the private part of the victim. He points out that even in the FSL report in respect to the *leggings* of the victim neither any blood nor semen was detected on the said clothes during forensic examination.

20. The learned counsel for the appellant has submitted that the father of the victim P.W. 4 in his deposition has stated that the date of birth of the victim is 24.10.2002 and taking the same into consideration the age of the victim would more than 18 years at the time of the so called occurrence. The learned counsel for the appellant, lastly, has submitted that without considering the aforesaid facts and circumstances and the evidence which has come on record the learned Trial Court merely on the basis of conjectures and hypothesis has convicted the appellant which is not tenable in law and thus fit to be set aside.



Submissions on behalf of the informant:

21. Ms. Bela Singh, learned counsel for the informant has opposed the submissions made by the learned counsel for the appellant primarily on the fact that all the witnesses examined on behalf of the prosecution have been able to prove the factum of the incident with the help of both oral and documentary evidence.

22. The learned counsel for the informant has submitted that all the prosecution witnesses including the victim have supported the case of the prosecution and there are minor contradictions which cannot be taken into account as the same is bound to occur because of the nature of offence committed against the minor victim. She has further submitted that the family members of the victim through their deposition have corroborated the prosecution story without any infirmity in the same and therefore the conviction cannot be challenged on such ground. She has next submitted that as far as the submissions made on behalf of the appellant with regard to delay in lodging of the FIR is concerned, the same is immaterial as it has been specifically stated by the prosecutrix that the two accused persons were threatening of dire consequences and also had threatened to make the video viral. It was because of such threatening that the victim could not gather strength to report the incident to her immediate family



members within time and therefore the delay in lodging of the FIR.

23. Ms. Bela Singh, learned counsel for the informant has submitted that from the evidence on record the age of the victim girl has been found to be within 18 years and therefore there is no quarrel with regard to her being a minor and therefore the conviction under the provisions of POCSO Act was justified. She has lastly submitted that the present case involves two sequence of offences committed by the appellant i.e. firstly they committed rape upon the victim and recorded the same on mobile phone and thereafter made the said video viral. She has thus submitted that in view of such incriminating circumstances the appellant does not deserve to be acquitted and there is no infirmity in the impugned judgment and order of sentence and the appeal is fit to be dismissed.

Submissions on behalf of the State:

24. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing for the State has submitted that the prosecution has been able to prove the case beyond all reasonable doubt by leading oral and documentary evidences. He has submitted that the prosecution witnesses were consistent in their examination and they have all proved the factum of the incident and also the fact that it was the appellant and one Suraj Kumar



who were involved in committing the said crime. He has pointed out that even the Doctor who was examined as P.W. 7 has found the hymen ruptured and therefore the possibility of sexual assault is being proved from the medical examination. He has further pointed towards the examination of the I.O. (P.W. 8) who has conducted the investigation and from her evidence it could be gathered that the place of occurrence as well as the factum of the occurrence has been proved and therefore the prosecution has been able to establish that the offence was committed by the appellant and one another. He has lastly submitted that in view of such consistent and impeccable evidence there is no illegality in the impugned judgment and the same may be sustained.

Findings:

25. Before we proceed, it would be apt to refer to various deposition of the prosecution witnesses in order to find out whether the prosecution through its oral as well as documentary evidence has been able to prove the case beyond all reasonable doubt.

26. In the present case, the prosecution has examined altogether eight witnesses and have also proved eleven documents as evidence in order to establish their case.

27. P.W. 1 is the victim/prosecutrix of the present case who has stated in her deposition that her year of birth is



2003 and she does not recall the date and month of her date of birth. She has further stated that she has her Aadhar Card and the certificate from the School as proof of her date of birth which she could submit later. P.W. 1 has reiterated her statement made in the written report and has stated that she was raped by both the accused persons who took turns and Jyoti had recorded the video and when she objected he had threatened to kill her as also her brother and father. P.W. 1 in her examination-in-chief has stated that they had gone to the Mushahari Police Station on 23.04.2021 for giving the report and thereafter they went to Mahila Police Station where her statement was recorded. P.W. 1 during her cross-examination has stated that while she was returning after attending the call of nature both the accused persons made her sit on a motorcycle and had tied her hands. She has stated that the place they had made her sit on a motorcycle, no house was present in the vicinity. She has further stated that she had received injuries on her shoulder, Jyoti Kumar had slapped her however her clothes were not torn. She has stated that she had told about the incident to her mother and father when the video had gone viral. She has further stated that her medical examination was done however no examination with regard to her age was conducted. She has also stated that



she had written the application herself and while the FIR was being written there were two police personnel along with my father and uncle.

28. P.W. 2 Naval Kishore Sah @ Kishori Das is the grand-father of the victim and he has stated that he came to know about the incident when the video went viral. He has stated that two accused persons namely Suraj Kumar and Jyoti Kumar had committed rape upon his grand-daughter. During his cross-examination P.W. 2 has stated that he had seen his grand-daughter crying at the doors around one hour after the incident. He has stated that he had deposed what his grand-daughter had told him. His grand-father has further stated that he had met his grand-daughter after the incident after one hour once she has met her mother and father. He has next submitted that his grand-daughter had told him about the incident. This P.W. 2 has described the place of occurrence as north of the canal near the acacia bushes. He has further stated that his grand-daughter was medically examined. He has not been able to tell as to when and in whose mobile phone he had seen the video which had gone viral. He has also stated that he had heard the sound of his grand-daughter in the video in which she was shouting and crying. He has lastly stated that he could not recall who was



there in the incident apart from the victim.

29. P.W. 3 is the mother of the victim and she has stated that her daughter had gone to ease herself at 10:30 P.M. in the night and there two accused persons forcefully took her daughter to an isolated place where they took turn in committing rape. She has also stated that Jyoti Kumar (appellant) had recorded the video and when her daughter asked him not to do the same, she was threatened of dire consequences. She has stated that when the video had gone viral then her brother-in-law Ramnath Das (Devar) came to her house and when she inquired from the victim she started crying and disclosed that she had faced the trauma of rape. P.W. 3 has also stated that they had initially gone to Mushahari Police Station and thereafter they were sent to Mahila Police Station where the case was registered on 23.04.2021. She further deposed that Mahila Police Station had come to her house and they have also visited the place of occurrence. During her cross-examination P.W. 3 has stated that she got to know about the incident when the video had gone viral on 23.04.2021. She has categorically stated that she had not seen the victim on the date of the incident as she was sleeping in another room. She has deposed that she came to know about the incident from her brother-in-law



(Devar). She has stated that Suraj Kumar was also visible in the said video. P.W. 3 has stated that Mahila Police Station had got the medical examination of her daughter done. P.W. 3 has denied the suggestion that there was any dispute with family of Jyoti Kumar. She has next stated that the name of Jyoti Kumar was disclosed by the accused Suraj Kumar, when he was apprehended by the police. She thereafter stated that her daughter had disclosed the name of Suraj Kumar and Jyoti Kumar. P.W. 3 has stated that in the video her daughter had been crying and shouting. She had stated that she cannot say about the clothes being torn. She had stated that Mahila Police Station had taken the clothes.

30. P.W. 4, Ramgarib Das who happens to be the father of the victim has reiterated the facts which has been stated in the written report and has further stated that her daughter had gone to attend the call of nature at 11:00 P.M. and there both the accused Suraj and Jyoti together took her on a red motorcycle near the canal which is an isolated place and there they took turns for committing rape upon his daughter. He has also stated that Jyoti Kumar was recording the video and when his daughter protested they had assaulted her and also threatened her of dire consequences. He has stated that he got to



know about the viral video from his cousin Ramashankar and then he inquired from his daughter who gave the details of the incident. He has stated that he had gone to Mushahari Police Station and from there they were sent to Mahila Police Station where the FIR was lodged. During his cross-examination P.W. 4 has stated that generally his daughter goes daily to attend the call of nature at around 6 – 7 P.M. but on that day she had her stomach upset. He has further stated in his cross-examination that the clothes of the victim was normal and there was no injury. He has further stated that she was not taking food but she did not ask anything. He has reiterated that he came to know about the incident from his cousin. He has stated that no villager has given evidence. He has categorically stated in paragraph-15 of his cross-examination that they narrated the FIR which was drafted by the Sub-Inspector.

31. P.W. 5 Ramnath Das, who is the uncle of the victim and he has stated that he came to know about the incident after the video went viral. He has further stated that he inquired from the victim after seeing the video then she disclosed that at around 11:30 P.M. in the night two accused persons were there from before took her by tying her mouth on a motorcycle near Taraura Dam and they committed rape upon her. During his



cross-examination, he has stated that he had seen the face of Suraj Kumar in the viral video and had not seen the face of Jyoti Kumar in the said video. He has further stated that he came to know about the name of Jyoti Kumar through the victim.

32. P.W. 6 Ramashankar, who has stated that the victim is his niece and he had received the video on his mobile which he told to the guardians of the victim and thereafter the victim was inquired who disclosed that she had been raped by Jyoti Kumar and Suraj Kumar and video was recorded by Jyoti Kumar and who had made the video viral. He has stated that he does not recognize Jyoti Kumar. In his cross-examination, he has stated that he received the video from one Bittu and had told the guardians about the same. He has further stated that he had disclosed about the video to the mother of the victim and though he has not seen Jyoti Kumar in the video however he had heard the voice and had also seen the vehicle. He has further stated that people had told him about the voice which was of Jyoti Kumar. He has further stated that the victim had never told him about the incident personally. He has admitted that he has come to depose upon hearing it from the people and the viral video.

33. P.W. 7, Sarita Kumari is the I.O. of the case and she has stated that she had recorded the re-statement of the



victim and had also got the victim medically examined at Sadar Hospital. She has stated that she had collected the *leggings* of the victim and had prepared the seizure list and had prepared another seizure with respect to pen-drive which she had received. She identified the mark-sheet of the victim issued by the Bihar School Examination Board which was marked as Ext. 7. She has also stated that Jyoti Kumar has criminal antecedent. She in her cross-examination in paragraph-5 has stated that she has not taken the statement of the persons who are there on the east and west side of the place of occurrence. She has stated that she cannot recall as to who had written the report. She has stated that she did not find any objectionable material or mark or sign of any struggle at the place of occurrence. She has stated that she has recorded the statements of the family members of the victim as also of the neighbours. However, many people did not turn up for giving evidence despite her efforts.

34. P.W. 8 is Dr. Priya Priyam. She has identified the report of the medical examination of the victim while she was posted as General Medical Officer at Sadar Hospital, Muzaffarpur. She in her examination has stated that no external or internal injury was found on the valva and vagina and there was no pain reported. She has further stated that the vaginal



swab was taken and the same was sent for pathological examination and a supplementary report was also prepared taking the pathological report into account wherein no spermatozoa was found. During her cross-examination P.W. 7 has categorically accepted that no injury was found on the private part of the victim and there was no mark of violence was found over the body of the victim.

35. We have considered the deposition of the prosecution witnesses from which it could be gathered that with regard to the place of occurrence there is fundamental contradiction between the statement of the prosecution witnesses which leads to adverse inference as it would be clear that no person, who all are family members of the victim, has come out with a clear picture of the actual place of occurrence. We have observed that P.W. 1 has stated the Dam to be the place of occurrence and an isolated place, as supported by P.Ws. 2, 3 & 4 in comparison to what has been stated by the I.O. (P.W. 7) who has stated that she had not recorded the statement of those who have been stated to be on East and West side of the place of occurrence.

36. In view of the aforesaid evidence and from perusal of the various statements of the prosecution witnesses, it would be clear that all the private witnesses are related witnesses of the victim and they have come out with various description of



the incident, the manner of disclosure of the incident and the explanation of the delay in lodging the FIR.

37. As discussed earlier, in the written report P.W. 1 has stated that on 07.04.2021, while she had gone to nearby field to attend the call of nature at the field, the two accused persons namely Suraj Kumar and Jyoti Kumar (appellant) made her sit on a red coloured motorcycle and upon closing her mouth they took her near Taraura Dam of her village and thereafter committed rape upon her taking turns. She has further alleged that Jyoti Kumar recorded the video of the said incident and when she forbade him to make such video they slapped her. She has stated that though she had shouted but the place being isolated one, nobody heard her voice. She has further alleged that both the accused had threatened her and warned her from disclosing the incident to anyone else they would kill her father.

38. The victim in her 164 Cr.P.C. statement has stated that she had gone to attend the call of nature near her house at 11:30 P.M., two boys namely Jyoti Kumar (appellant) and Suraj Kumar came on a red motorcycle and inquired from her as to from where she was coming and thereafter they closed her mouth and took on their motorcycle near the Dam and started forcing themselves upon her. She has stated that first Jyoti Kumar (appellant) had committed rape and thereafter Suraj Kumar



committed rape upon her while Jyoti Kumar recorded the video of the same. She has stated that she had not disclosed about the incident to anyone as the accused had threatened her.

39. However, in course of trial the prosecutrix/victim/P.W. 1 in her examination-in-chief has stated that the incident is of 11:00 P.M. when she had gone to attend the call of nature and while returning home two persons came on a bike and inquired from her as to from where she was coming and thereafter both the boys took her from there after tying her up. She has further stated that when she tried to flee both of them caught hold of her and assaulted her and thereafter committed rape upon her. She has further stated that when Jyoti Kumar was recording the video she asked him not to do the same upon which he threatened her that if she would say anything he would kill his father and brother and hence she did not disclose about it to anybody. She has stated in her cross-examination that where she was made to sit on the motorcycle there was no houses around and there was only a bridge. She has further stated that while the boys were taking her towards the Dam, no house fell in the way and she did not know in which direction she was being taken. PW-1 has stated in paragraph '16' of her cross-examination that on the date of occurrence, it was a dark night and not a moonlit night.

40. From the perusal of the aforesaid, we have noted



that the victim has improved upon her statement with regard to the place and manner of occurrence and own family members of the victim have given different versions with regard to the manner of occurrence and the mode of disclosure including the date on which they came to know about the incident. Even the cause of delay of lodging of the FIR is not being answered because the victim has stated that she did not disclose about the incident because of the threatening given by the accused persons of killing her father but at the time of lodging of the FIR and the various depositions of the prosecution witnesses it would appear that they have stated that they decided to lodge the case only when they came to know that the video has become viral, which in turn demolishes the earlier explanation given for lodging the FIR with a delay of 16 days.

41. At this juncture, we are reminded of the judgment rendered by the Hon'ble the Supreme Court in the case of *Raju and Others vs. State of Madhya Pradesh* reported in (2008) 15 SCC133, wherein the Supreme Court on the testimony of the prosecutrix and its evidentiary value had held that though the testimony of the victim is believable at par with that of an injured witness but her testimony cannot always be presumed to be gospel truth. It was observed that possibility of exaggeration or embellishment or false implication cannot be ruled out. In the said case the Hon'ble Supreme Court has observed in paragraphs – 10



and 11 as hereunder:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

42. From the discussions made hereinabove, We have found the age of the girl was 17 years 11 months and 28 days to be exact on the date of occurrence i.e. merely one month two days short from 18 years of age. We have also taken note of the fact that the incident was reported to the police after 16 days of the occurrence and the cause of delay was stated to be the threat given



by the accused persons, including the appellant. However, from the evidence of the prosecutrix as well as the other witnesses it would be evident that the occasion to lodge the FIR arose only when the video had gone viral as has been unanimously stated by all the prosecution witnesses who were members of the family of the victim. The said video has not been proved. The fact that the prosecutrix is going to a lonely place to defecate near road side at dead of night i.e. 11:30 PM, then she comes back and does not say anything to her family member and keeps quite, has made this Court to take a possible view that the prosecutrix is suppressing some material information as to her relationship with the accused and her explanation for the delay in lodging of FIR is a mere pretext not acceptable to this Court.

This Court further finds that:-

(i) the victim's description of the place of occurrence as per the three versions of her statement made in the written report, 164 Cr.P.C. statement as well as her testimony during the course of trial vis-a-vis the description of the place of occurrence by I.O. does not show it to be an isolated place;

(ii) the manner of knowledge of the incident being stated by all the prosecution witnesses which has varied from mouth to mouth further doubts the story of the prosecution as P.W.- 2, grand-father has stated that he came to know about the



incident after one hour of the incident from the victim, who was crying while rest witnesses have stated they came to know on 23.04.2021;

(iii) the non-production of the pen-drive along with the certificate by the person who had forwarded the same to the uncle of the victim raises a question mark over the prosecution story and lastly;

(iv) the non-examination of the boy namely Bittu who had forwarded the video on to the mobile phone of the uncle of the victim in order to verify the veracity of such video, which though was never proved during the course of trial.

43. From the questions framed herein above, this Court is constrained to look at the present case from an angle where a consented sexual activity between the victim of the present case could not be ruled out. We have seen that the prosecutrix was of 17 years, 11 months and 28 days old therefore, the question is whether merely because she had not touched the threshold age of 18 years and was merely 32 days away from attaining the majority as per law, whether such an act would attract the offence under the POCSO Act and would it amount to an offence of rape as contemplated under Section 375 of the IPC.

44. We are constrained to observe that the manner in which the victim has stated about the incident only after the video



going viral after 16 days of the alleged occurrence and when confronted by her parents that the matter was reported giving rise to a presumption that “had the matter not gone viral, the same would not have been reported to the police”.

45. On close scrutiny of the record, it is evident that the deposition of the prosecutrix and her relatives *i.e.* mother, father and uncle are riddled with material contradictions. The written report, the statement under Section 164 Cr.P.C. and the testimony during trial contains inconsistencies regarding the occurrence, the identity of the exact place of occurrence and even the identity that she did not know the two boys and on the other during her deposition has stated their names. We haste to add at this stage that during her cross-examination the victim/P.W. 1 at one stage even stated that she knows both the accused Jyoti Kumar and Suraj Kumar.

46. We have noted the fact that the witnesses, being closely related to the victim, are interested witnesses. The statements vary not only with regard to the manner of commission of the offence but also with regard to the place of occurrence. No independent witnesses have come forward to support the prosecution case and the testimony of the victim does not inspire complete confidence so as to qualifying as evidence of sterling quality.



47. A significant aspect of the prosecution case was the video of the victim with Suraj Kumar purportedly going viral. However, the prosecution has failed to produce any forensic report, original device or any technical expert to establish the genuineness of the content of the video. Neither the person who had seen the video first and had forwarded the same to the uncle of the victim was examined nor the said video was proved during the course of trial. In absence of such evidence, the alleged video cannot corroborate the testimony of the victim or go of to supplement the prosecution evidence.

48. It is a settled principle of law that if evidence is filled with contradictions and/or omissions and is not supported by independent or cogent corroborative material then the benefit of doubt must go to the accused.

49. The aforesaid fact reminds us of the judgment rendered by the Hon'ble Supreme Court in the case of ***Santosh Prasad @ Santosh Kumar vs. State of Bihar*** reported in (2020) 3 SCC 443, wherein the Apex Court in paragraph '5.4.1' has observed thus:-

"5.4.1. In Raju, it is observed and held by this Court in paras 11 and 12 as under: (SCC p. 141)

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to



the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability.



This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

50. In the present case, as we have already observed, material contradictions among prosecution witnesses and the non-production of the alleged viral video make it difficult to convict the appellant beyond all reasonable doubt. The evidence which has been led by the prosecution does not stand to prove as contemplated under Criminal Jurisprudence and therefore possibility of false implication cannot be ruled out. As in the present case, we have seen that evidences contain material contradictions and the place of the occurrence being not proved without an iota of doubt. The circumstances which has been alleged by the prosecution thus remains in doubt.

51. In view of the aforesaid discussions and taking into account the various judicial pronouncements, we find that the conviction of the appellant cannot be upheld with the kind of



evidence which is inconclusive and accordingly the conviction and sentence of the appellant cannot be sustained and is, therefore, set aside giving him the benefit of doubt.

52. The appellant is in incarceration in connection with this case, so he will be released forthwith if not wanted in any other case.

53. This appeal is allowed.

54. Let a copy of this judgment together with the trial court’s records be sent down to the learned trial court.

55. Before we part with the appeal, we must appreciate the assistance provided by learned Amicus Curiae Mr. Manoj Kumar No. 1 on behalf of the appellant. Secretary, Patna High Court Legal Services committee is directed to pay Rs. 15000/- to the learned Amicus Curiae towards honorarium.

(Sourendra Pandey, J)

Rajeev Ranjan Prasad, J :

(Rajeev Ranjan Prasad, J)

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