

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.846 of 2022

Arising Out of PS. Case No.-100 Year-2020 Thana- MAHILA P.S. District- Bhojpur

Ajay Prasad, Son of Shiv Shankar Yadav, Resident of Village- Saharsa, P.S.-
Shor Bazar, District- Saharsa

... .. Appellant

Versus

1. The State of Bihar
2. D - Devi (Imaginary name of the informant), Wife of Manish Kumar,
Resident of Muffasil P.S., Q. No.1, P.S. - Arah, Nawada, District - Bhojpur.
Permanent Resident of Village - Tulli Bigaha, Post - Kobil, P.S. - Hulasganj,
District - Jehanabad

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Bimlesh Kumar Pandey, Advocate Mr. Mithilesh Kumar, Advocate Mr. Krishna Kant Pandey, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, A.P.P.

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

Date : 23-04-2025

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

2. This Court had issued notice to the informant-
respondent no. 2. Notice has been validly served.
Respondent no. 2 has entered appearance through her
Advocate but no one has appeared on her behalf to oppose
the appeal.

3. The present appeal has been preferred for setting



aside the judgment of conviction dated 05.09.2022 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 07.09.2022 (hereinafter referred to as the 'impugned order') respectively, passed by learned Additional Sessions Judge-VI cum Special Judge, POCSO, Bhojpur, Ara (hereinafter referred to as the 'learned trial Court') in POCSO Case No. 112 of 2020 arising out of Ara Mahila P.S. Case No. 100/2020.

4. By the impugned judgment and order, the learned trial court has been pleased to hold the appellant guilty for the offences punishable under Sections 354B, 376A, 376B of the Indian Penal Code (in short 'IPC') and under Section '6' of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). He has been ordered to undergo rigorous imprisonment for three years with a fine of Rs. 5000/- under Section 354B of IPC and in default of payment of fine, the appellant will be liable for rigorous imprisonment for three months. He has been sentenced to undergo rigorous imprisonment for 20 years and to pay fine of Rs. 10,000/- under Section 376A and 376B of IPC and in default of payment of fine, he shall be liable to undergo



rigorous imprisonment for six months. He has also been sentenced to undergo rigorous imprisonment for 20 years and to pay fine of Rs.10,000/- under Section six of the POCSO Act and in default of payment of fine, he shall be liable for rigorous imprisonment for six months. All the sentences have been ordered to run concurrently and the period undergone has been directed to be set off from the sentence awarded.

Prosecution Case

5. The prosecution story is based on a written report submitted by the mother of the victim girl. In her written application, she had alleged as under :-

“Her husband is posted as Bodyguard of Vice Chancellor in the district of Bhojpur. On 21.12.2020 at about 9:00 P.M., her daughter came very scared and told that Ajay uncle, who lives in the same building took her on the roof by alluring her and opened the zip of her pant. She further stated that, Ajay uncle started licking her private part and when she started crying, he slapped her twice but she managed to escape anyhow. Informant having heard the same got scared and went to the house of Ajay Prasad with



other neighbours and when they reached there, Ajay panicked and fled away after pushing the informant. The informant informed the Station House Officer of Mahila Police Station.

6. On the basis of the aforesaid written application, Ara (Mahila) P.S. Case No. 100 of 2020 was registered under Section 354B IPC and Section 6 of the POCSO Act on 22.12.2020. It is worth mentioning that one Kanchan Kumari (P.W.-4), who was posted as Officer In-charge of the Ara Mahila Police Station at the relevant time, registered the First Information Report (FIR). on 22.12.2020 at 00:30 hours and kept the investigation of the case with herself.

7. After investigation, the Investigation Officer (P.W.-4) submitted a chargesheet bearing no. 1 of 2021 dated 30.01.2021. The learned Special Judge, POCSO Act took cognizance of the offences on 08.02.2021 under Sections 354B, 376(AB) of the IPC and Section 6 of the POCSO Act. On 22.02.2021, the charges were framed against the appellant after he was explained the charges but denied the same and claimed to be tried.



8. In course of trial, the prosecution examined as many as four witnesses and exhibited five documents to prove the prosecution case. The list of the prosecution witnesses, defence witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Mother of the victim (Informant) Hearsay witness
PW-2	Victim
PW-3	Father of the victim (Hearsay witness)
PW-4	Kanchan Kumari (Investigating Officer)

List of Defence Witnesses

DW-1	Brahmdeo Prasad Yadav
DW-2	Diwakar Kumar

List of Exhibits

Exhibit ‘1’	Written report dated 21.12.2020 having signature of PW-1 (Informant)
Exhibit ‘2’	Signature of the informant on the statement U/S 161 of Cr.P.C.
Exhibit ‘3’	Signature of the victim on the statement U/S 161 of Cr.P.C.
Exhibit ‘4’	Statement U/S 164 of Cr.P.C.
Exhibit ‘5’	Charge Sheet

9. The statement of the appellant was recorded under



Section 313 of the Cr.P.C. in which the appellant has stated that he is innocent and has been falsely implicated in this case by the husband of the informant because her husband had a doubt that his wife is having an affair with him. The appellant also made a statement that the husband had assaulted him after consuming liquor.

10. On behalf of the defence, two defence witnesses, namely, Brahmadeo Prasad Yadav, (D.W.-1) and Diwakar Kumar (D.W.-2) have been examined. D.W.-1 is the Sub-Inspector of police posted in the S.P. Office, Rohtas whereas D.W.2 is the brother-in-law of the appellant, who has claimed to be present on the date and time of the occurrence in the quarter of his sister.

Finding of the Learned Trial Court

11. The learned trial court having analyzed the evidences on the record reached to a conclusion that the prosecution has been able to prove the guilt of the accused-appellant beyond all reasonable doubt, hence, he is liable to be convicted for the offences, as stated hereinabove.

12. The learned trial court has refused to discard the evidence of the mother (P.W.1) and the father (P.W.3) of the



victim. The contention of the defence that their statements are full of contradictions and do not inspire confidence has been rejected. The learned trial court has taken a view that for minor discrepancies in the evidence of the prosecution witnesses, their evidences cannot be discarded only because they happened to be a related and interested witnesses.

Submission on behalf of the Appellant

13. Learned counsel for the appellant submits that the allegation against the appellant of licking the private part of the victim, could have been proved by Medical/Scientific Test, but admittedly, the victim of the case has not been medically examined, nor any scientific test has been carried out to prove that the appellant's saliva or spittle was there on the person of the victim. Even the pant of the victim was not handed over to the Police, what is revealed from the Paragraph '36' of the evidence of informant/mother of the victim.

14. Learned counsel submits that the testimony of the victim, who was just a six years old child has not been corroborated by any medical/scientific test. It is well settled that the evidence of the child witness must be evaluated



carefully as the child may be swayed by what other tell him/her and he/she is an easy prey to tutor. Therefore, the evidence of a child witness must find adequate corroboration before it can be relied upon. It is more a rule of practical wisdom than the law. Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Digamber Vaishnav and Another vs State of Chhatisgarh** reported in (2019) 4 SCC 522.

15. Learned counsel submits that the FIR was not lodged on the basis of the fardbeyan of the victim, nor it was registered with the Muffasil P.S, which is admittedly situated in the same premises where the place of occurrence is situated, rather the FIR was registered after calling telephonically a Police officer/P.W.-4 from Mahila Police Station, who even after an interaction with the victim, asked the informant's father to give a written report and thereafter, only the informant gave the written report which was written by her husband, this goes to show that the initial statement of the victim was not allowed to see the light of the day. Learned counsel submits that in such circumstance, there is a reasonable probability and possibility that the



victim (P.W.-2) might have been tutored and thus, the testimony of PW-2 cannot be safely relied upon without corroboration with any medical or scientific test report.

16. Learned counsel further submits that the prosecution has not proved any electronic evidence or any audio or video footage with regard to the recording of statement of the victim in view of Section 26(4) of the POCSO Act, which would prove fatal to the prosecution's case.

17. Learned counsel submits that the informant has stated in the FIR that after coming to know about the incident from the victim, she went to the appellant's home along with the people of the vicinity. In Paragraph '7' of her evidence, she has stated that when she had gone to the room of appellant for enquiry then he denied of committing any offence and when some people started gathering, he ran away through the stairs, but no neighbour or independent witness has been examined on behalf of the prosecution. In Paragraph '38' of her evidence, the informant has admitted that, no one from the "*Building*" has been made witness in the case whereas PW-3 in paragraph '27' of his evidence



has stated that, out of 12 flats, in 5 flats the family of Constables had been residing. PW-3 had also taken the name of a Sepoy, namely, Banti Kumar and his wife, namely, Reshmi Kumari, who used to stay in Flat No. 10. Thus, non- examination of any independent witness from the building casts serious aspersion over the prosecution case and it appears that the prosecution has deliberately chosen not to examine the independent witnesses to hide the real state of thing.

18. Learned counsel submits that the informant in paragraph '5' of her evidence has stated that when her daughter was playing on the stairs, she was taken by the appellant at the terrace but the victim (PW-2) in reply to question No. 3 in her evidence as well as husband of the informant (PW-3), in paragraph '6' of his evidence have stated that the victim had gone to appellant's quarter for taking mobile charger. Though, both the stories appear to be contradictory, but in both the eventualities, there was no occasion for the appellant to take the victim to the terrace, especially when his quarter was at the top floor and there was none as per the prosecution story.



19. Learned counsel submits that the informant in paragraph '8' of her evidence has stated that the father of victim had made call to the Mahila Police Station, accordingly, the police came and took the statement of the victim, thereafter, on being asked by Kanchan Madam (I.O./PW4), the written report was given to the Mahila Police Station which was written by the informant's husband but signed by the informant, whereas PW 3 (Husband of the informant) has stated in his evidence (Paragraph '14') that Muffasil Police Station is in the same premise where his quarter is situated and he had informed at the Muffasil Police Station about the incident. In Paragraph 19 of his evidence, he has stated that he did not desire any case to be lodged at the Muffasil Police Station. In Paragraphs '9' and '20' of his evidence, he has stated to have informed to the Mahila Police Station telephonically about the incident. Mahila Police took the statement of the victim and thereafter, asked him to give a written report. Accordingly, PW-3 gave a written report having signed over the same as the writer of the written report but neither such written report signed by the PW-3 nor any such telephonic



information given by PW-3 to the Police Station has been shown to have been reduced into writing and thus, the written report appears to be a post investigation document which was prepared with due deliberation, discussion and afterthought and hit by Section 162 of Cr.P.C. Learned counsel has relied upon the judgment of Hon'ble Supreme Court in the case of **Allarakha Habib Memon and Others versus State of Gujarat** reported in (2024) 9 SCC 546.

20. Learned counsel submits that the informant has stated in the FIR as well as in her evidence that her daughter has narrated the incident to her and thereafter, the informant went to the room of Ajay Kumar, but the victim in reply of question No. 4, has stated about narrating the incident to her father and thereafter of taking the appellant by her father to Police Station.

21. In Paragraph 21 of her evidence, the victim has stated that appellant had given the charger in her hand. She has also stated in Paragraph 20 of her evidence that when she was being taken to the terrace, she was weeping, she has also stated in Paragraph 24 of her evidence that when her father caught the appellant to take to the Police Station,



the appellant was sitting in his room whereas in Paragraph '35' of her evidence, she has admitted to have stated to the Police that when her parents along with other persons of the building went to the residence of the appellant, the appellant fled away having dashed her father, which all appear to be contradictory, developed, after thought and as such, the PW 2 (victim) doesn't appear to be 'sterling witness'. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Rai Sandeep vs State (NCT of Delhi)** reported in **(2012) 8 SCC 21**.

22. Learned counsel submits that PW-3 in Paragraph '54' of his evidence has stated that the swelling on the face of the appellant occurred on account of his fall on the stairs, which has not been stated at any early occasion by any of the witnesses which goes to show, they all tried to conceal the fact of sustaining injury by the appellant on his person, though, the injuries over the person of the appellant supports the defence version that, the appellant had been assaulted by PW 3 and thereafter, the appellant has been implicated in the present false case. Even the I.O in Paragraph '24' of her evidence has admitted that the



appellant was in injured condition at the time of his arrest and in Paragraph '34' of her evidence, the I.O. (PW-4) has stated that the husband of the informant had done "*Marpit*" with the appellant which made him injured.

23. Learned counsel submits that the I.O. (PW-4) in her evidence has stated that the informant had come with the written report to her on 22.12.2020 at about 00:30 hours along with her husband. In Paragraph '14' of her evidence, she has admitted her prior acquaintance with the father of the victim (P.W.-3). In Paragraph 15 of her evidence, she has stated that she has not recorded the statement of any of the Police Staff of Muffasil police Station In Paragraph 17 of her evidence, she has stated that, she has not recorded the statement of any of the witnesses, who reside in the four sides of the place of occurrence, which clearly indicates that on account of prior acquaintance with the husband of the informant, the I.O. also didn't allow the real state of thing to come into light and probably for this reason, the informant's husband (PW-3) didn't allow the registration of the FIR at Muffasil Police Station and made wait to the PW 4 to come at Muffasil Police Station to give the written report which



as per the PW-1 (Informant) was given to the PW-4 at Muffasil Police Station whereas PW-4 claims to have received the written report at 12:30 AM, when the informant came to her with her husband.

24. Learned counsel submits that the I.O (PW 4), in Paragraph 16 of her evidence has stated to have visited the place of occurrence at 01:30 AM, (though, not mentioned in the Case Diary) and in Paragraph 18 of her evidence, she has stated to apprehend the appellant with the help of other police force while fleeing from the Sepoy Family quarter, which is contrary to the evidence of PW 2 and PW 3, who have stated that the appellant was caught, detained and produced by PW-2.

25. Learned counsel submits that the I.O. has admitted in Paragraph '21' of her evidence that the Medical Test of the appellant was not carried out and there is nothing on record to show that the Medical Examination of the appellant was done in view of Section 53A of the Cr.P.C. It is pointed out that non-examination of appellant, particularly, for the purpose of DNA Test can be considered to be fatal for the prosecution. Learned counsel has placed



reliance on the judgment of the Hon'ble Supreme Court Court in the case of **Chhotkau vs The State of Uttar Pradesh** reported in **2022 0 AIR (SC) 4688 (paragraphs 72 to 78)**.

26. Learned counsel submits that the IO in Paragraph 41, 42, 43 and 44 of her evidence has admitted overwriting at several places in the Case Diary, which clearly indicates tainted investigation. In Paragraphs 47, 48 and 49 of her evidence, the IO (PW 4) has contradicted the statement of the victim which clearly shows that PW 2, victim is not consistent. Further, she has contradicted the evidence of PW-3 also.

27. Learned counsel submits that the I.O. (PW-4) in Paragraph '50' of her evidence has clearly stated that she has not got the victim medically examined. The prosecution, especially the I.O. has not followed the instruction of the Ministry of Home Affairs with regard to mandatory action by the Police in cases in crime against the women, *inasmuch* as no effort has been taken by the I.O. to collect and preserve the Forensic evidence which was essentially required in the present case. [Reference can be



made to the Letter dated 05.10.2020 issued by the Under Secretary to the Government of India and Letter dated 09.10.2020 of Deputy Secretary to the Government of India, Ministry of Home Affairs, (Women Safety Division)]

28. Learned counsel submits that the presumption under Section 29 of POCSO Act is rebuttable in law. Presumptions are bad in law; they fly in twilight but vanish in the light of facts. The statutory presumption would stand activated only if the prosecution proves the foundational facts, and then, even if the statutory presumption is activated, the burden on the accused is not to rebut the presumption beyond reasonable doubt. Suffice it if the accused is in a position to create a serious doubt on veracity of the prosecution case. Learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Navin Dhaniram Baraiye Vs. State of Maharashtra**, reported in **2018 2 AIR (Bom) (R) (Cri) 897**.

29. Learned counsel submits that the prosecution witnesses are not trustworthy and they have given contradictory evidence having several discrepancies and their evidence have not been corroborated by reliable



evidence or material.

30. Learned counsel submits that the learned court below has wrongly convicted and sentenced the appellant merely on surmises and conjecture and without there being sufficient, cogent and reliable evidence.

31. There is no legal, cogent, reliable and sufficient evidence to prove the charges levelled against the appellant and to justify the appellant's conviction and sentence and the prosecution has failed to prove its case beyond shadow of all the reasonable doubts.

Submissions on behalf of the State

32. Mr. Bipin Kumar, learned Additional Public Prosecutor for the State has opposed the appeal. It is submitted that the victim girl (P.W.-2) is a child witness but she has been found to be a competent witness in this case in the preliminary examination conducted by the learned trial Court. Her testimony stands corroborated by the evidence of her mother (P.W.-1) and father (P.W.-3) who are, though, not the eye witnesses to the occurrence but have deposed as to immediate circumstances which were present just after the occurrence.



33. Learned Additional Public Prosecutor further submits that there may be some minor discrepancy in the evidence of the prosecution witnesses with regard to the time of recording of the statement of the victim and non-recording of certain dates and times in the case diary by the Investigating Officer (P.W.4) but the totality of the prosecution case has to be judged on the basis of the entire evidences and the case has to be decided on the basis of broad probability of the case.

Consideration

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

35. This Court finds that the whole prosecution case with regard to the alleged occurrence depends upon the evidence of the victim, who has been examined as (P.W.2). She was just six years old child, therefore, this Court is required to keep in its mind that while appreciating the evidences of the child witness, the court must look into the same with all circumspection and care. The court is required to examine as to whether there is any tutoring of the child



witness. Although, it is not a rule of law that a conviction cannot take place on the basis of the evidence of a child witness but at the same time, it is well settled that the evidence of a child witness must get corroboration from independent material particulars unless the evidence is of such a quality that the child witness may be placed in the category of a 'sterling witness'.

36. We find from the records that the written application giving rise to the present case has not been marked exhibit. The prosecution has only proved the signature of P.W.1 on the written application which has been marked as Ext-1. Despite this, the learned trial court has treated the written application itself in evidence. If we go through the written application, it is found that the husband of the informant was posted as a 'Body Guard' with the Vice Chancellor being a member of the Bhojpur District Police Force. According to the informant, on 21.12.2020 at about 9:00 P.M., her daughter (P.W.2) came in a frightened condition and told her that the appellant, who is living in the same building, had allured her and had taken her at the room of the house where he opened her pant and then



started licking her private part on which she shouted then he gave her two slaps. She somehow came running to her house. The informant alleged that after hearing it, she got disturbed and then along with the neighbors, she went to the house of the appellant but the appellant pushed them and fled towards the ground. She claimed to have informed Officer-In-charge of Mahila Police Station. In course of trial, no independent witness/neighbour of the informant has come forward to support the prosecution case. In fact, the Investigation Officer (P.W.4) has clearly stated in her deposition that she had not recorded the statement of the neighbours. In paragraph-17 of her deposition she has stated that she had not recorded statement of any of the persons whose house is near the place of occurrence. Thus, the fact that after the occurrence, the informant had gone with the neighbours to the house of the appellant and then appellant had pushed them and fled towards the ground has not been proved in course of trial.

Change in the statement in course of trial

37. The informant has claimed in her deposition that she had informed the officer in-charge of the Mahila Police



Station but in course of trial, she has stated in paragraph-‘8’ of her deposition that father of the victim girl had made a telephone call to Mahila Police Station whereafter police came and recorded the statement of the victim girl. This Court not only finds that the informant has deviated from her statement made in the written application with regard to the information given to Mahila Police Station, she has also stated that police had recorded the statement of the victim but this statement of the victim has been suppressed by the prosecution.

38. This Court finds that according to the informant (P.W.1), she had submitted an application through the Investigating Officer (P.W.4) which was written by her husband, on which she had put her signature. The Investigating Officer (P.W.4) has stated in her deposition that the father of the victim (P.W.3) was known to her from before. She has also stated that the informant had come with her husband and she had recorded the re-statement of the informant at the police station itself but she had not recorded the statement of her husband at that time. The fact that the Investigating Officer had not recorded the statement



of the husband of the informant even though she claims that he was present with the informant in the police station is to be considered in the light of the suggestion of the defence that when the Investigating Officer went to the place of occurrence, the husband of the informant was not with her because he was in a heavily drunken condition and for this reason, the Investigating Officer could not record his statement at that time.

39. To this Court, it appears questionable as to why the Investigating Officer (P.W.4) did not record the statement of the husband of the informant, if he was present in the Police Station, the fact that husband of the informant though wrote a long drawn application but did not put his signature on the application either as informant or a witness. Only strengthen the belief of this Court that the husband of the informant was using his acquaintance with the I.O. (P.W.4) from behind the curtain.

40. This Court further finds that the Investigating Officer (P.W.4) has stated in paragraph '34' of her deposition that husband of the informant had assaulted the accused as a result whereof the accused was found injured.



If it was so a case of causing assault should have been registered by the I.O. and it was required to be investigated. The prosecution has not explained the injuries found on the body of the accused-appellant. The conduct of the Investigating Officer (P.W.4) is required to be noted for the reason that she neither sent the victim girl (P.W.2) for medical examination nor she produced the accused-appellant for his medical examination, even though, she had found the accused-appellant in injured condition.

41. The Investigating Officer (P.W.4) has repeatedly stated that she had caught the accused but admits not in the case diary, she had not mentioned about preparation of arrest memo. She had also not mentioned that information with respect to arrest of the accused was given to her family members and she had not written in the case diary that at which place the accused was arrested.

42. The evidence of the Investigating Officer (P.W.4) with regard to the arrest of the accused is also required to be closely examined with reference to the evidence of the father of the victim who has been examined as P.W.3. He has stated in his deposition that when the accused was



trying to flee away from his quarter after pushing them, he chased him and apprehended him whereafter he gave information to Mahila Police Station. He has further stated that he had kept the accused in Muffasil Police Station till the time '*mahila*' police did not arrive. It is evident from the deposition of P.W.3 and P.W.4 that they are making completely contradictory statements with regard to the manner in which the accused-appellant was arrested. It has come in evidence that after the arrival of the police within 20 minutes from Mahila Police Station, the statement of the victim girl was recorded and thereafter, Investigating Officer told P.W.3 to submit a written application, later on he wrote the application which P.W.3 claims to have written as stated by his daughter.

43. The submission of the defence that P.W.3 & 4 were well known to each other, therefore, they were acting hands in glove and P.W. 4 was helping P.W.3 in falsely implicating the appellant cannot be thrown out. The conduct of the Investigating Officer (P.W.4) and the vacillating statement of the P.W.3 & 4 as also the suppression of the first statement of the victim are some of the circumstances



creating a huge doubt over the prosecution case.

44. This Court further finds that P.W.1, who is the mother of the victim, has stated in her deposition that the victim was playing at the stairs when the appellant had taken her to the roof of the house and committed the wrong act with her. Contrary to this, the definite stand of P.W.2, who is the victim girl is that her father told her to bring charger from the house of the appellant and for that she had gone there and when she was coming down from stairs, the appellant took her to roof of the house where he committed the wrong act.

45. P.W. 3 has also tried to support P.W.2 on this point saying that the appellant had borrowed the charger and he had sent his daughter to bring back that but it has come in evidence of the Investigating Officer (P.W.4) that P.W.3 had not stated before her (P.W.4) in course of investigation that in the morning, the appellant had borrowed his charger and when he searched the charger, his wife told that the appellant had not returned the same and then P.W.3 told the victim to bring back the charger from the house of the appellant. It is, thus, evident that the story



that the victim was sent to bring back the charger from the house of the appellant has been contradicted by the Investigating Officer (P.W.4) and the story developed at a belated stage by the prosecution has lost its credibility. Initially it was stated that the victim was playing from where the appellant allured her and took her to the roof of the house. What kind of allurement was given has not surfaced in the evidence. A complete changed version of the victim going to bring back the charger has been introduced which would not inspire confidence of this Court. There is no investigation on the point that the accused and P.W.3 were using similar kind of mobile and charger. The so-called charger was not seized by I.O. (P.W.-4).

46. This Court further finds that the Investigating Officer (P.W.4) was suggested by the defence that P.W. 3, who is the husband of the informant had committed assault on the accused in a drunken condition and had injured him and thereafter, in order to save himself, he in collusion with the Investigating Officer (P.W.4), registered a false case through his wife (P.W.1). The Investigating Officer (P.W.4) has, though, denied the suggestion but the fact remains that



she has admitted in paragraph '34' of her deposition that the appellant was assaulted by the husband of the informant, as a result whereof, he had suffered injuries. To that extent the denial of the suggestion of the defence by the Investigating Officer (P.W.4) would not carry much confidence of this Court. Despite this information neither any F.I.R. was registered nor any effort was taken to arrest P.W.3 who had assaulted the accused-appellant.

47. The conduct of the Investigating Officer (P.W. 4) may also be found from the fact that the Investigating Officer had not recorded the statement of any police officer or Sepoy of Muffasil Police Station even though P.W. 3 has categorically stated in his deposition that he had apprehended the appellant and had kept him in Mahila Police Station till the time police arrived from Mahila Police Station . It is evident that the prosecution in this case is not coming clean and the evidences of P.Ws. 1, 2, 3 & 4 are not inspiring.

48. Apart from the aforementioned materials which this Court has noticed, it is also found that because the Investigating Officer (P.W. 4) did not send the victim girl



for medical examination, no scientific test could be conducted to find out as to whether the victim was subjected to any alleged act.

49. Learned counsel for the appellant has placed before us a circular letter issued by the Government of India, Ministry of Home Affairs (Womens Safety Division), New Delhi dated 9th of October, 2020 addressed to all the Chief Secretaries/Advisors to Administrators (All States and UTs) which contains guidelines as to the mandatory action by police in cases of crime against women. Paragraph '2' of the said letter is being reproduced hereunder for a ready reference:-

“ 2. It is again brought to your attention that criminal laws relating to sexual offences against women provide, interalia, for the following actions to be taken by the Police in such cases:

(i) Compulsory registration of FIR in case of cognizable offence under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (Cr.PC). The law also enables the police to register FIR or a "Zero FIR" (in case the crime is committed outside the jurisdiction of police station) in the event of receipt of information on commission of a cognizable offence, which includes cases of sexual assault on women.

(ii) Section 166 A(c) of the Indian Penal Code



1860 (IPC) provides for punishment to a public servant for failure to record FIR in relation to cognizable offences punishable under section 326A, Section 326B, Section 354, Section 354(B), Section 370, Section 370A, Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB, Section 376E or Section 509 in IPC.

(iii) Section 173 of Cr.PC provides for completion of police investigation in relation to rape in two months. In order to facilitate the State police to monitor compliance, in this regard MHA has provided an online portal called Investigation Tracking System for Sexual Offences (ITSSO) for monitoring the same. This is available exclusively to law enforcement officers.

(iv) Section 164-A of CrPC provides that in rape/sexual assault investigation the victim shall be got examined by a registered medical practitioner under consent within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(v) Section 32 (1) of the Indian Evidence Act, 1872, provides that the statement, written or verbal, by a person who is dead shall be treated as relevant fact in the investigation when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death. Hon'ble Supreme Court in its order dated 7th January 2020, in the matter of Criminal Appeal Nos. 194-



195 of 2012 in the case of **Purshottam Chopra & Anr. v. State (Govt. of NCT Delhi)**, directed that a particular statement, when being offered as dying declaration and satisfies all the requirements of judicial scrutiny, cannot be discarded merely because it has not been recorded by a Magistrate or that the police officer did not obtain attestation by any person present at the time of making of the statement.

(vi). The Directorate of Forensic Science Services (DFSS) under the MHA has issued Guidelines for collection, preservation & transportation of forensic evidence in sexual assault cases for Investigation Officers and Medical Officers. In order to facilitate the State Police, Bureau of Police Research and Development (BPR&D) has issued Sexual Assault Evidence Collection (SAEC) Kits to every State/UT. It is necessary to use these SAEC kits in every case of sexual assault reported. MHA advisory dated 5th October 2020 in this matter may be referred. BPR&D and LNIN National Institute of Criminology and Forensic Sciences (NICFS) have been regularly conducting Training and Training of Trainers (TOT) programmes on procedure for collection, preservation and handling of forensic evidence for Police/Prosecutors and Medical Officers respectively”.

50. This Court is, therefore, left with a situation where there is a mere statement of the victim aged about 6



years in course of trial, whose first statement made before the police which could have been basis of lodging the F.I.R. has not been recorded, therefore, what was her first version has not been brought on record in this case. The chances of tutoring of the victim girl (P.W.2) aged about 6-7 years are present as the prosecution seems to be indulging in suppressing her statements. The statements of the mother and father of the victim are changing on material aspects of the matter, they are not coherent and in fact, some of their statements with regard to the arrest of the accused-appellant are highly contradictory when compared with the statement of the Investigating Officer (P.W.4).

51. This Court has already noticed that on the one hand, the husband of the informant wrote a long drawn written application at the instance of the Investigating Officer (P.W.4) but at the same time, he did not sign the same and left it for his wife to put her signature and if this circumstance is considered together with the fact that the Investigating Officer (P.W.4) has stated that P.W.3 was present in the police station but she had not recorded his statement at that time, it would lead to conclude that the



Investigating Officer (P.W.4) is making a false statement to this effect and the Court cannot believe the presence of P.W.3 in Muffasil Police Station or Mahila Police Station at the time of lodging of the FIR.

52. This Court finds much weight in the argument of learned counsel for the appellant that the Investigating Officer (P.W. 4) and the husband of the informant (P.W.3) seem to be in collusion and the case was lodged by P.W.4 but purposely no medical examination either of the victim or of the accused was conducted. P.W. 4 had not even issued any requisition for medical examination of the victim and the accused. It is not her statement that P.W.2 and her parents (P.W.1 & P.W. 3) did not give their consent for medical examination. This Court would draw an adverse **inference** on this point.

53. For the reasons stated hereinabove, we find that the judgment of the learned trial Court is not based on cogent appreciation of the materials on the record. The impugned judgment and order dated 05.09.2022 and 07.09.2022 respectively are set aside finding that the prosecution has failed to establish the charges by leading



reliable evidence.

54. The conduct of the I.O. (P.W.4) has been found blame-worthy. We are acquitting the appellant for the reasons already discussed hereinabove. The conduct of the I.O. (P.W. 4) has been noticed by this Court in various paragraphs of the judgment hereinabove. At this Stage, we are reminded of the judgment of Hon'ble Supreme Court in the case of **State of Gujarat Vs. Kishanbhai** reported in **2014 (5) SCC 108**. Paragraphs 19, 22 and 23 of the judgment are being quoted hereunder for a ready reference.

“19. Every time there is an acquittal, the consequences are just the same, as have been noticed hereinabove. The purpose of justice has not been achieved. There is also another side to be taken into consideration. We have declared the respondent-accused innocent, by upholding the order of the High Court, giving him the benefit of doubt. He may be truly innocent, or he may have succeeded because of the lapses committed by the investigating/prosecuting teams. If he has escaped, despite being guilty, the investigating and the prosecution agencies must be deemed to have seriously messed it all up. And if the accused was wrongfully prosecuted, his suffering is unfathomable. Here also, the investigating and prosecuting agencies are blameworthy. It is therefore necessary, not to overlook even the hardship suffered by the accused, first during the trial of the case, and then at the appellate stages. An innocent person does not deserve to suffer the turmoil of a long-drawn litigation, spanning over a decade or more. The expenses incurred by an accused in his defence can dry up all his financial resources — ancestral or personal. Criminal



litigation could also ordinarily involve financial borrowings. An accused can be expected to be under a financial debt, by the time his ordeal is over.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure tha2. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongful of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee, should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the



basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

23. On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

(underline is mine)

55. In our considered opinion, this is one of those



cases in which the copy of this judgment is required to be transmitted by the Registry of this Court to the Home Secretary, Government of Bihar within a period of one week from the date of receipt/communication of a copy of this judgment. The Department of Home, Government of Bihar shall identify the erring officer in the instant case and will take appropriate action in accordance with the established procedure of law.

56. In result, this appeal is allowed.

57. The appellant is said to be in custody. He shall be released forthwith, if not wanted in any other case.

58. The trial Court records with a copy of the judgment be sent down to the learned trial Court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Jagdish/lata/-

AFR/NAFR	NAFR
CAV DATE	N/A
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