

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.12 of 2023

Arising Out of PS. Case No.-292 Year-2019 Thana- BETTIAH CITY District- West
Champaran

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Sartaj Alam @ Md. Sartaj Alam, s/o Manjoor Alam @ Manjur Mian, R/v-
Gulab Chowk, Pat Khauli, P.S.- Bairiya, District- West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Hazrat Ali S/o- Late Madim Mian, R/v- Gulab Chowk, Pat Khauli, P.S.-
Bairiya, District- West Champaran

... .. Respondents

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with

CRIMINAL APPEAL (DB) No. 937 of 2022

Arising Out of PS. Case No.-292 Year-2019 Thana- BETTIAH CITY District- West
Champaran

=====

Abdul Rahim Ansari, Son of Late. Aslam Mian @ Aslam Ansari, R/V- Ram
Nagar, P.S.- Ram Nagar, Dist- West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

(In CRIMINAL APPEAL (DB) No. 12 of 2023)

For the Appellant : Mr. Rajendra Narain, Sr. Advocate
Mr. Akhileshwar Kumar Shrivastva, Advocate
Ms. Akanksha Malviya, Amicus Curiae

For the State : Mr. Abhimanyu Sharma, Addl.PP
For the Resp No. 2 : Mr. Krishna Kant Pandey, Advocate

(In CRIMINAL APPEAL (DB) No. 937 of 2022)

For the Appellant : Mr. Rajendra Narain, Sr. Advocate
Mr. Akhileshwar Kumar Shrivastva, Advocate
Mr. Sriram Krishna, Amicus Curiae
For the State : Mr. Abhimanyu Sharma, Addl.PP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 07-08-2025

Heard Mr. Rajendra Narain, learned Senior Counsel
assisted by Mr. Akhileshwar Kumar, learned counsel for the
appellants, Ms. Akanksha Malviya, learned Amicus Curiae (in Cr.



Appeal (DB) No. 12 of 2023) and Mr. Sriram Krishna, learned Amicus Curiae (in Cr. Appeal (DB) No. 937 of 2022) and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State as also Mr. Krishna Kant Pandey, learned counsel for the respondent no. 2 in Cr. Appeal (DB) No. 12 of 2023.

2. These two appeals are arising out of judgment of conviction dated 21.10.2022 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 01.11.2022 (hereinafter referred to as the 'impugned order') passed by learned A.D.J. VI-cum-Special Judge, POCSO, Bettiah, West Champaran (hereinafter referred to as the 'learned trial court') in S.G.R. No. 55 of 2019 (C.I.S. POCSO – 57 of 2019) arising out of Bettiah Town P.S. Case No. 292 of 2019.

3. By the impugned judgment, the learned trial court has been pleased to convict the appellant, namely, Sartaj Alam for the offences punishable under Sections 342, 366, 366A, 363, 376(3) of the Indian Penal Code (in short 'IPC') and under Section 6/5(1) of the Protection of Children from Sexual Offences Act (In short 'POCSO Act') whereas the appellant, namely Abdul Rahim Ansari has been convicted for the offences punishable under Sections 366A, 366 and 363/34 IPC.

4. By the impugned order, the appellants, namely, Sartaj Alam has been directed to undergo rigorous imprisonment for



twenty (20) years with a fine of Rs.2,00,000/- u/s 376(3) IPC and imprisonment for life u/s 6 of the POCSO Act with a fine of Rs.1,00,000/-. He would have to serve either of the punishments awarded u/s 376(3) IPC and Section 6 of the POCSO Act in compliance of Section 42 of the POCSO Act. In default of payment of fine, he has to further undergo rigorous imprisonment for six months. He has also been ordered to undergo rigorous imprisonment for ten (10) years with a fine of Rs.25,000/- under Sections 366 and 366A IPC and in default of payment of fine, he has to further undergo rigorous imprisonment for three months. He has further been sentenced rigorous imprisonment for seven years with a fine of Rs.20,000/- under Section 363 IPC and in default of payment of fine, he shall further undergo rigorous imprisonment for two months. He has further been sentenced rigorous imprisonment for one year under Section 342 IPC.

The appellant, namely, Abdul Rahim Ansari has been ordered to undergo rigorous imprisonment for ten (10) years with a fine of Rs. 1,00,000/- under Sections 366 and 366A IPC and in default of payment of fine, he has to further undergo rigorous imprisonment for six months. He has also been ordered to undergo rigorous imprisonment for seven (7) years with a fine of Rs.20,000/- under Section 363 IPC and in default of payment of fine, he has to further



undergo rigorous imprisonment for two months. All the sentences, except in default of payment of fine, are to run concurrently.

Prosecution Case

5. The prosecution case is based on the written application (Exhibit '4') of the informant (PW-7). In his written application, PW-7 has stated that his daughter was at his *Nana's* place for last 20 days. On 30.03.2019 at 06:30 in the morning, he got telephonic information from his *Sasural* people that his daughter is missing. The informant reached there and when everybody started searching for her, they got information that Sartaj Alam had kidnapped her daughter with wrong intention. The informant alleged that (1) Sartaj Alam, (2) Manjur Mian, (3) Jafar Alam and (4) Arman Mian all collectively under conspiracy kidnapped his daughter with an intention to got her married.

6. On the basis of this written application, Bettiah Town P.S. Case No. 292 of 2019 dated 13.04.2019 was registered, under Sections 366(A)/120(B) IPC and later on, Section 8 of the POCSO Act was also added, against four accused, namely, (1) Sartaj Alam, (2) Manjur Mian, (3) Jafar Alam and (4) Arman Mian.

7. After investigation, Police submitted chargesheet being Chargesheet No. 915 of 2019 dated 20.09.2019 under Sections 363, 366(A)/34 IPC and Section 8 of the POCSO Act against (1) Sartaj Alam, (2) Manjur Mian and (3) Abdul Rahim Ansari (not named in



the FIR) whereas Jafar Alam and Arman Mian were not sent up for trial and name and address of accused Govind was shown not certified. Learned trial court vide order dated 29.11.2019 took cognizance of the offences under above-mentioned Sections.

8. Charges were read over and explained to the appellants in Hindi to which they pleaded not guilty and claimed to be tried, accordingly, vide order dated 20.01.2021, charges were framed under Sections 366(A), 366, 363, 342, 376(DA) IPC and Section 6, 19 read with 21, 17 read with 6 of the POCSO Act.

9. In course of trial, the prosecution has examined altogether eleven witnesses and exhibited several documentary evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Lalan Ram
PW-2	Maternal Grandfather of the victim
PW-3	Ranjan Singh
PW-4	Veena Devi
PW-5	Mother of the Victim
PW-6	Victim
PW-7	Father of the Victim (Informant)
PW-8	Bihari Singh
PW-9	Dr. Manju Jaiswal
PW-10	Amit Kumar Singh
PW-11	Naveen Kumar Shukla



List of Exhibits on behalf of the Prosecution

Exhibit ‘1’	Signature of the Victim over her statement u/s 161 CrPC
Exhibit ‘2’	Transfer Certificate of the Victim
Exhibit ‘3’	Statement of the Victim u/s 164 CrPC
Exhibit ‘3/a’	Signature of the Victim over her statement u/s 164 CrPC
Exhibit ‘4’	Written application
Exhibit ‘4/a’	Endorsement of Sriram Singh, SHO of Bettiah Town on the written application
Exhibit ‘5’	Medical Report of the Victim
Exhibit ‘6’	Signature of Sriram Singh, SHO over the written application
Exhibit ‘7’	Admission Register

10. Thereafter, the statement of the appellants were recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’). The appellants took plea that they are innocent.

11. The defence has examined two witnesses to prove their innocence. An agreement paper dated 08.01.2003 has been marked as Exhibit ‘D-1’. The description of defence witnesses are given hereinbelow in tabular form:-

List of Defence Witnesses

DW-1	Samshul Mian
DW-2	Neyaz Ahmad

Findings of the Learned Trial Court

12. The learned trial court has, upon consideration of the evidences available on the record, found at the first instance that the prosecutrix in this case is not a wholly reliable witness. There



is nothing on the record to corroborate the testimony of the prosecutrix with respect to involvement of other accused persons except accused Sartaj and Rahim. The learned trial court has held that the prosecutrix's statement during trial and during the first statement under Section 161 CrPC and 164 CrPC are not identical but having said so, the learned trial court has recorded its opinion that the statement of the prosecutrix is not fully unreliable and the Court has to find out the grains from the chaffs.

13. The learned trial court has held that the Prosecutrix is a minor aged below 18 years. The basis for such an opinion of the trial court is the school leaving certificate (Exhibit '2') produced by the prosecution in course of trial. The date of birth mentioned in the school leaving certificate being 02.04.2006, the learned trial court has held that the prosecutrix was aged about 12 years, 11 months and 28 days on the date of occurrence i.e. 30.03.2019. The submission of the defence that the school leaving certificate is a fabricated one and is not a proof of age and further submission that in the ossification test held by the Doctor (PW-9), the age of the victim has been assessed between 17-19 years so she should be held major, has been rejected by the learned trial court.

14. After holding that the prosecutrix was aged below 18 years, the learned trial court held that from the testimony of the



prosecution witnesses, the guilt of the appellants stands proved beyond all reasonable doubts. Out of five accused, who faced trial in this case, three were acquitted holding that the prosecution had miserably failed to bring home the charge against them.

Submissions on behalf of the Appellants

15. While assailing the impugned judgment and order, Mr. Rajendra Narain, learned Senior Counsel has submitted *inter alia* that in this case, the learned trial court has determined the age of the victim/prosecutrix by taking into account a school leaving certificate (Exhibit '2') issued on 27.04.2019 under seal and signature of one Naveen Kumar Shukla (PW-11) who deposed as Headmaster of the Government School. Relying upon the judgment of the Hon'ble Supreme Court in the case of **P. Yuvaprakash versus State Represented by Inspector of Police** reported in **2023 SCC OnLine 846** (paragraph '14') and a learned Co-ordinate Bench judgment of this Court in the case of **Mannu @ Saddam @ Md. Mannu Sadam versus The State of Bihar** reported in **2024 (4) PLJR 843**, learned Senior Counsel has submitted that a school leaving certificate cannot be put in the category of any of the documents as envisaged under Section 94(2) (i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the 'J.J. Act').



16. Learned Senior Counsel further submits that the prosecutrix was medically examined and her medical examination report has been proved by Dr. Manju Jaiswal (PW-9) who has stated about her age between 17 and 19 years. It is submitted that in absence of any of the documents mentioned under Section 94(2) (i) of the J.J. Act, the age determination report of the victim is required to be relied upon as it is one of the documents which is provided under clause (iii) of sub-Section (2) of Section 94 of the J.J. Act. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **Rajak Mohammad v. State of H.P.** reported in **(2018) 9 SCC 248** and in the case of **Court on its own Motion vs. State of NCT of Delhi vs. State of NCT of Delhi (Crl. Ref. 2/2024 judgment dated 02.04.2024)** reported in **2024 SC OnLine Delhi 4484** to submit that in the cases under the POCSO Act, where sexual assault has been alleged, whenever the Court is called upon to determine the age of the victim based on bone ossification test report, upper age given in reference range be considered as the age of the victim. The submission is that, in this case, the reference range in the medical report (Exhibit '5') is between 17 and 19 years. Thus, the upper extremity of the age being 19 years, the prosecutrix has to be taken as major on the date of occurrence.



17. Learned Senior Counsel has further submitted that in this case, the informant (PW-7) is the father of the prosecutrix. A close reading of his deposition would show that he claims to have informed the police by submitting a written information on the date of occurrence itself. In paragraph '2' of his deposition, he has stated that with him his father-in-law had also gone to the police station but the name of the person who had written the said application is not known. In paragraph '3' of his deposition, he has stated that the written information which he had submitted to the police station on 30.03.2019 was not before him. In view of this statements of the informant (PW-7), it is submitted that the prosecution has suppressed the first version. It is submitted that the second written information on the basis of which the present case has been lodged came to be submitted in the police station on 13.04.2019 i.e. after about 15 days of the date of occurrence but the said FIR reached the Court of Jurisdictional Magistrate/POCSO Court after three days i.e. on 16.04.2019. It is submitted that in this case, there is not only an extraordinary delay in lodging of the FIR, there is also a delay of three days in receipt of the FIR in the Jurisdictional Court which would draw huge doubt on the prosecution story. The veracity of the prosecution case is likely to be doubtful on account of the delay as well as the



findings of the learned trial court that the prosecutrix in this case is not a wholly reliable witness.

18. Learned Senior Counsel has further drawn the attention of this Court towards the deposition of the first I.O. who has been examined as PW-10. It is submitted that in his examination-in-chief, PW-10 has stated in paragraph '5' that for the recovery of the victim/prosecutrix, he had proceeded towards Gulab Chowk Pathkhauri and reached the house of Sartaj Alam. He conducted a raid but during the said raid, none of the accused was present. In course of search of the house, inside a room, the victim/prosecutrix was found in a restless and frightened condition. It is submitted that there is no independent witness to prove that search was conducted in the house of Sartaj Alam from where the victim/prosecutrix was recovered. It is, therefore, evident that the search was not conducted in accordance with law. Attention of this Court has been drawn towards paragraph '18' of the deposition of the I.O. (PW-10) wherein he has stated that he had not conducted any investigation as to who was the owner of the house from where the prosecutrix was recovered. This witness was suggested by the defence that the victim was found in some other house but he had wrongly shown that she was recovered from the house of the accused persons.



19. Learned Senior Counsel has further drawn the attention of this Court towards paragraphs '20', '21' and '22' of the deposition of the first I.O. (PW-10) to submit that the mother of the prosecutrix had made a statement before the I.O. that her daughter was in prior relationship with Sartaj and she had also said that on the asking of her father, she had reached the village. The I.O. has further stated that the victim/prosecutrix (PW-6) had stated before him that she was in relationship with Sartaj and was on visiting terms in his house. She had stayed in hotel with Sartaj in Delhi. The victim had not stated before the I.O. that when she was standing at the door of her maternal uncle then Rahim and Sartaj came and they said that her Papa was calling her. The prosecutrix had also not said to the I.O. that the accused persons threatened her to kill and at the station, Manjur, Jafar, Govind and Arman were already there who made her to sit in the train. Most importantly, the I.O. (PW-10) has stated that before him, the prosecutrix had not said that Sartaj and Rahim had committed rape on her. It is pointed out that the defence had suggested to the I.O. that the victim/prosecutrix was major and on her own will and volition, she had left her house but then the accused were falsely implicated.



20. It is submitted that from the statement of the victim under Section 161 CrPC and 164 CrPC, it would be evident that at both the stages, she had disclosed about her relationship with Sartaj. She has clearly stated that Sartaj had not made her to flee away with her rather she had gone on her will with Sartaj. She has stated that her brother-in-law and father had fraudulently called them and made them to visit.

21. Learned Senior Counsel submits that in course of trial, the prosecutrix (PW-6) had deviated from her earlier statements and for the first time, she deposed that Sartaj and Rahim had committed rape on her for eight days. It is submitted that in her cross-examination, the prosecutrix has stated that she had met Sartaj for the first time in Pihuni Bagh at the gate of her maternal uncle and on the same day, she was kidnapped. It is submitted that not only the I.O. (PW-10) has completely contradicted the prosecutrix on all counts, even her own statements recorded under Sections 161 and 164 CrPC are clearly indicating that what have been deposed by the prosecutrix in course of trial cannot be believed and it has come for the first time by way of her after-thought. Apparently, the prosecutrix cannot be put in the category of a sterling witness.



22. Learned Senior Counsel has further pointed out that learned trial court has convicted the appellants even though all the circumstances which have been used against the appellants to convict them were not brought to their notice in course of their statements under Section 313 CrPC. By placing reliance upon the judgment of the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116** (paragraphs '142' to '144'), learned Senior Counsel submits that if circumstances were not brought to the notice of the accused, the conviction based on such circumstances would not be sustainable. It is pointed out that the evidence of the victim/prosecutrix (PW-6) or the I.O. (PW-10) that the victim was confined in the house of Sartaj and that she was recovered from the said house were not brought to the notice of the accused. On all these grounds, prayer has been made to set aside the impugned judgment and order of the learned trial court with respect to the appellants.

23. Mr. Sriram Krishna and Ms. Akanksha Malviya, who have been appointed learned Amicus Curiae, on earlier occasion have assisted this Court by pointing out the discrepancies which may be found with regard to the timing of the occurrence and other circumstances in the deposition of the prosecution witnesses.



Submissions of the State

24. Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State has contested the appeals. It is submitted that the learned trial court has, no doubt taken into consideration the school leaving certificate (Exhibit '2') for determination of age of the prosecutrix, the entire case of the prosecution cannot be thrown out only on the ground that the prosecutrix was major. It is submitted that in course of trial, the prosecutrix has stated in her examination-in-chief that she was subjected to rape by these two appellants. In his opinion, even though the learned trial court has not believed the prosecutrix as a wholly reliable witness, the learned trial court has rightly believed her as regards the commission of rape upon her by these two appellants. The learned trial court has, for that reason examined the evidences to separate the grains from the chaffs.

Submission of the Respondent No. 2

25. Mr. Krishna Kant Pandey, learned counsel representing informant-Respondent No. 2 has simply endorsed the submissions of learned Additional Public Prosecutor for the State.

Consideration

26. We have heard learned Senior Counsel for the appellants, learned Amicus Curiae, learned Additional Public



Prosecutor for the State as well as learned counsel for the informant-Respondent No. 2 and have perused the records of the trial court.

27. We have noticed from the materials available on the record and the submissions noted hereinabove that the prosecutrix went missing from the morning of 30.03.2019. We are not going into the exact time as we are of the opinion that the difference of one and one and half hour in the time would not be very relevant for the purpose of the present case. According to the informant (PW-7), he had gone to the police station with his father-in-law on the same day and had reported the matter. He claims to have submitted a written information but the said written information is not available on the record. It is evident that the first version of the prosecution story has not seen the light of the day.

28. We further find that in this case, the written information (Exhibit '4') was submitted on 13.04.2019. The First Information Report was registered on the same day at 09:00 AM but from the endorsement made at the top of the Formal FIR, it appears that the same has been seen by the learned Judicial Magistrate, Bettiah only on 16.04.2019. On perusal of the formal FIR, it appears that in the column in which the date of dispatch of FIR to the court is required to be mentioned and it is a statutory



requirement, no date has been mentioned. It is, therefore, evident that there is initially a delay of fifteen days in lodging of the FIR and then three days in dispatch of the FIR to the Jurisdictional Court. The delay in lodging of the FIR and dispatch of the same to the Jurisdictional Court would create huge doubt on the prosecution story.

29. On perusal of the evidences on the record, we find that the victim/prosecutrix has stated in her 161 CrPC statement and 164 CrPC statement that she reached Bettiah on the request of her father. She reached there on 16.04.2019 but she had been recovered on 22.04.2019. This seems completely unbelievable. If she had reached there on 16.04.2019 on the request of her father, the natural conduct would be to inform her father about her reaching there. The I.O. (PW-10) has stated that he had raided the house of Sartaj from where the prosecutrix was recovered but there is no witness on this point, it is not known that in whose presence the house of Sartaj was raided. The I.O. has himself stated that he had not investigated as to who was the owner of the said house. The fact that the prosecutrix was recovered from the house of Sartaj is one of the circumstances which has been brought by the prosecution against the appellants but apparently this circumstance was not brought to the notice of the appellants in course of their



statement under Section 313 CrPC, therefore, in the opinion of this Court, this cannot be taken into consideration for purpose of proving the guilt of the appellants.

30. This Court has further noticed that the learned trial court has admitted the school leaving certificate/transfer (Exhibit '2') issued by PW-11 on 27.04.2019. The defence has questioned PW-11 and he was suggested that the certificate was not produced before the I.O. in course of investigation. It is a fact that the certificate (Exhibit '2') was not produced before the I.O. in course of investigation. It has been brought in evidence only in course of trial. The I.O. has stated in paragraph '15' of his deposition that he had not gone to the school to verify the age of the prosecutrix and the age proving certificate (Exhibit '2') is not attached with the case diary. At this stage, we find from the judgment of the Hon'ble Supreme Court in the case of **P. Yuvaprakash** (supra) that the burden of proof as to the age of the prosecutrix is always upon the prosecution. The prosecution, in this case, could not have relied upon a document which was not collected in course of investigation by the I.O., moreover, the document (Exhibit '2') does not confirm the description of any class of documents mentioned under Section 94(2)(i) of the J.J. Act. The discussions in this regard may be found in paragraph '14' of the judgment of



the Hon'ble Supreme Court in the case of **P. Yuvaprakash** (supra)

which we reproduce hereunder for a ready reference:-

“14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “*an ossification test*” or “*any other latest medical age determination test*” conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.”



31. The judgment of the Hon'ble Supreme Court in **P. Yuvaprakash** (supra) has been relied upon by a learned Co-ordinate Bench of this Court in the case of **Mannu @ Saddam @ Md. Mannu Sadam** (supra). Paragraph '39' of the judgment of this Court is being extracted hereunder:-

“**39.** As such, the age of the victim is determined on the basis of birth certificate from the school or matriculation or equivalent certificate, if available. In other words, if the victim was a student of school, the aforesaid certificates have precedence over other mode of proof regarding the age. In the absence of such certificate, birth certificate given by Municipal Authorities or Panchayat is required to be considered for determination of the age of the victim. In the absence of the aforesaid certificates, the age of the victim is required to be determined by ossification test or any other latest medical test. Any other proof like oral evidence is impliedly excluded from consideration for determination of the age of the victim.”

32. On the face of the judicial pronouncements, which we have noted hereinabove, the reliance placed by the learned trial court on Exhibit '2' is misplaced.

33. In such circumstance, the only option open to the trial court was to consider the medical report of the prosecutrix which was proved by Dr. Manju Jaiswal (PW-9). In the said report



(Exhibit '5'), the age of the prosecutrix has been assessed in between 17 and 19 years.

34. At this stage, this Court would rely upon the judgment of the Hon'ble Supreme Court in the case of **Rajak Mohammad** (supra) which has also been relied upon by the Hon'ble Division Bench of the Delhi High Court in the case of **Court on its own Motion** (supra). Paragraph '46' of the judgment of the Hon'ble Division Bench of Delhi High Court is being reproduced hereunder:-

“**46.** As an upshot of our foregoing discussion, the Reference is answered as under:-

(i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?

Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in 'reference range' be considered as age of the victim.

(ii) Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.

Ans: Yes. The margin of error of two years is further required to be applied.”

35. In fact, this Court has been persuaded on earlier occasion in Cr. Appeal (DB) No. 461 of 2022 (Sangita Devi @



Sangeeta Devi Vs. State of Harbin & Anr.) decided on 23.01.2025 to agree with the views expressed by the Hon'ble Delhi High Court. We are, therefore, of the opinion that in this case, the upper extremity of the age being 19 years, the prosecutrix cannot be put in the category of a 'child' as defined under Section 94 of the J.J. Act, the provision applies to POCSO Act.

36. The learned trial court has recorded by way of a finding that the prosecutrix is not a wholly reliable witness. In fact, the trial court has found the material deviations in her statements at different stages. This Court finds specific mention in the judgment of learned trial court. The findings of the learned trial court itself is sufficient to take a view that the prosecutrix in this case would not come in the category of a sterling witness. Who will be a sterling witness has been discussed by the Hon'ble Supreme Court in the case of **Rai Sandeep @ Deepu v. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**. Paragraph '22' of the said judgment is being extracted hereunder for a 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.”

37. We have once again gone through the testimony of the prosecutrix (PW-6). For the first time, in course of trial, she has deposed that she was subjected to rape by Sartaj and Rahim. The learned Senior Counsel has rightly pointed out from paragraph ‘22’ of the deposition of the first I.O. (PW-10) that in course of her statement before the I.O., she had not stated that she was subjected to rape by the appellants. In fact, the I.O. has contradicted her deposition on the strength of what were recorded by him in course of investigation. We find substance in the submissions of learned Senior Counsel for the appellants. Neither in course of her statement under Section 161 CrPC nor while making her statement under Section 164 CrPC, the prosecutrix supported the prosecution case. No doubt, the statements under Section 164 CrPC are not in the nature of substantive piece of evidence but it can be used for purpose of corroboration or contradiction. In this regard, this Court would rely upon the judgment of the Hon’ble Supreme Court in the case of **State of Rajasthan versus Kartar Singh** reported in **(1970) 2 SCC 61**.



38. There are more than sufficient materials on the record to take a view that the prosecutrix has come out with a completely contradictory version of her own case at the stage of trial. She is not a sterling witness and there being material improvement upon her own case which are in fact in the nature of contradictions, it would not be safe to sustain the conviction of the appellants.

39. In the light of the discussions made hereinabove, we are of the considered opinion that the learned trial court has erred in appreciation of the evidences available on the record. The learned trial court has also erred in the matter of appreciation of laws relating to determination of age of the prosecutrix/victim under the POCSO Act. For all these reasons, we set aside the impugned judgment and order of the learned trial court with respect to Sartaj Alam @ Md. Sartaj Alam (appellant in Cr. Appeal (DB) No. 12 of 2023) and Abdul Rahim Ansari (appellant in Cr. Appeal (DB) No. 937 of 2022) giving the benefit of doubt.

40. This Court has been informed that the appellant in Cr. Appeal (DB) No. 12 of 2023, namely, Sartaj Alam @ Md. Sartaj Alam is in incarceration, he shall be released forthwith, if not wanted in any other case. So far as the appellant in Cr. Appeal (DB) No. 937 of 2022, namely, Abdul Rahim Ansari is concerned,



he is on bail, he and his sureties are discharged from the liability of the bail bond.

41. Both the appeals are allowed.

42. A copy of this judgment together with the trial court’s records shall be sent down to the learned trial court.

43. We acknowledge the assistance rendered by Mr. Sriram Krishna, learned Advocate in Cr. Appeal (DB) No. 937 of 2022 and Ms. Akanksha Malviya, learned Advocate in Cr. Appeal (DB) No. 12 of 2023 as Amicus Curiae. In token of their assistance, we direct that they shall be paid a sum of Rs. 15,000/- (Rupees Fifteen Thousand Only) each by the Patna High Court Legal Services Committee within one month from the date of receipt of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

(Ajit Kumar, J)

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CAV DATE	
Uploading Date	12.08.2025
Transmission Date	12.08.2025

