

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

PRESENT:  
**THE HON'BLE JUSTICE TIRTHANKAR GHOSH**

**C.R.A. (SB) 38 of 2023  
With  
CRAN 3 of 2024**

***Taimur Sha*  
-versus-  
*The State of West Bengal & Anr.***

For the Appellant : Mr. Tanmay Chowdhury, Adv.,  
Ms. Sulagna Sarkar, Adv.,  
Ms. Ritoprita Ghosh, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.,  
Mr. Sandip Chakraborty, Adv.,  
Mr. Saryati Datta, Adv.

For the Victim/Opposite Party No. 2 : Mr. Satadru Lahiri, Adv.,  
Mr. Safdar Azam, Adv.

**Reserved On : 17.11.2025**

**Judgement On : 02.12.2025**

**Tirthankar Ghosh, J. :-**

The present appeal has been preferred against the judgment and order of conviction and sentence dated 16.02.2023 and 17.02.2023 passed by the Learned Additional Sessions Judge-Cum-Judge, Special Court (POCSO Act), Purba Medinipur at Haldia in connection with POCSO Trial No. 02(06) 2019 corresponding to POCSO Case No. 13 of 2018, arising out of Haldia Women

P.S. Case No. 59/16 dated 16.10.2016 wherein the learned Court was pleased to hold the appellant guilty under Section 8 of the POCSO Act and sentenced him to suffer Rigorous Imprisonment for 4 (four) years and to pay a fine of Rs.10,000/- in default to suffer further Rigorous Imprisonment for a period of 6(six) months.

The genesis of the present case relates to Haldia Women P.S. Case No. 59/16 dated 16.10.2016 which was initiated on the basis of a written complaint furnished by 'Y', mother of the victim girl. In her complaint she alleged that her daughter aged about 11 years and a student of Class IV was playing with the neighbourhood children and at around 10 o'clock, one of the neighbours namely Taimur Sha, aged 42 years came in front of her house and called her daughter. At that time, her husband was not at home. The accused allegedly took the child to the kitchen, removed her clothing and undressed her. Thereafter, he molested her daughter by touching her chest and lower body. When she returned from work the accused fled away after seeing her. As the incident was initially informed to the villagers who assured that they would intervene but no action ensued, she complained to the Police Station and as such there was a delay in lodging the complaint. She prayed that the incident be investigated and necessary action be taken.

Following receipt of the aforesaid information, Haldia Women Police Station Case No. 59/16 was registered for investigation on 16.10.2016 and the case was endorsed to Mousumi Bhattacharyya, Lady Sub-Inspector attached

to Haldia Women Police Station. During the course of investigation, the said Investigating Officer was transferred whereupon Sub-Inspector Pratima Shaw (Bain), was engaged, who took over the investigation and after completion of investigation submitted charge-sheet before the learned Special Court under Section 8 of the POCSO Act. The learned Special Court was pleased to take cognizance of the offence and after supply of copies to the accused, was pleased to frame charge against him, on or about 12.06.2019 under Section 8 of the POCSO Act, 2012. The contents of the charge were read over and explained to the accused, who pleaded not guilty and claimed to be tried.

To establish the charges, prosecution relied upon 7 (seven) witnesses which included P.W.1 'Y' mother of the victim girl; P.W.2 'Z' father of the victim girl; P.W.3 'X' the victim girl; P.W.4 Ejahar Shah, co-villager; P.W.5 Dr. Pranab Dash; P.W.6 Lady Sub-Inspector of Police Mousumi Bhattacharya, first investigating officer of the case; P.W.7 Pratima Shaw (Bain), Sub-Inspector of Police and the second investigating officer of the case.

P.W. 'Y', mother of the victim girl, in her testimony stated that she lodged a complaint on 07.10.2016 before Nandigram Police Station against the accused Taimur Sha. She identified the accused in Court. She deposed that on 07.10.2016 when she was engaged at work in the houses of Narayan Chakraborty and Sukumar Chakraborty, her daughter was playing in the courtyard along with other children. When she returned home at about 10.00 A.M. she found her daughter at the kitchen without any clothing and the

accused molesting and outraging the modesty of her minor daughter. She saw the accused Taimur Sha outraging the modesty of her minor daughter as he was indecently placing his hands on the body of her minor daughter. She saw the accused touching the breasts of her minor daughter at that time he was wearing lungi and a full shirt and she also observed the accused to push his penis in the vagina of her minor daughter. At the relevant time her daughter was aged 13 years. When she attempted to catch hold of the accused, her husband reached home from the ration shop, her daughter became perplexed as her father started calling her, when the accused taking the opportunity fled away. She further clarified that there is no separate kitchen in her house but there is a provision for a kitchen separately with a shed made of straw. She thereafter explained whole of the incident which she saw to her husband as well as her mother-in-law and also to the co-villagers. A village Salish was convened on the date of the incident. In the said salish Sattar Shah, Ejahar Shah, Gopal Dinda and many other persons were present. The incident took place on 07.10.2016 and they went to the local police station on 16.10.2016 as no effective resolution emerged in the village salish. Police interrogated her afterwards and on 16.10.2016 police took her daughter for medical examination. The police authorities also seized the birth certificate of her daughter under a proper seizure list. She identified the written complaint bearing her signature and the same was admitted in evidence. She deposed that the written complaint was prepared as per her instruction by a person who was present at the police station. After the complaint was drafted it was

read over and explained to her and after being satisfied she had endorsed her signature with a different pen. The FIR was duly admitted in evidence. She further identified her signature in the seizure list which was prepared at the time of handing over the original birth certificate of her daughter. The seizure list was admitted in evidence, while the birth certificate was marked as 'X' for identification. She also identified her signature on the medical report, which was admitted in evidence. Police took her daughter to the Court for recording her statement before the Learned Magistrate on the next date. The wearing apparel of her daughter which was found beside her at the time of the incident was seized under a seizure list. She identified her signature in the seizure list which was admitted in evidence. She identified the wearing apparel of her daughter which was marked as MAT Exbt.-I collectively. After the incident she caused the medical examination of her daughter as she is a mentally retarded person since her birth. She identified the disability certificate of her daughter which was issued by the Medical Board of Haldia Sub-Divisional Hospital the same was marked as 'X/1' for identification.

P.W.2 'Z', father of the victim girl deposed that the incident occurred about three years ago when the accused Taimur Sha who frequently visited their home to collect green coconuts, committed the offence. He identified the accused in Court. He deposed that on the date of the incident, when he returned home from the ration shop, his wife informed that the accused misbehaved with their daughter, as he undressed her and outraged her modesty. His wife disclosed that at the relevant time she was away being

engaged as a maid servant at the house of Sukumar Chakraborty, situated 100 yards away from their house and on the pretext of playing with the children, the accused took their daughter to the kitchen and committed the offence. He did not personally see the accused to run away from his house. However, the accused threatened him of dire consequences and even threatened to kill him in front of the Masjid which is situated near the village pond. He was advised by one Azehar Da of their village to sit for village salish, which was convened but there was no settlement in the said salish as the accused was absent. The club members were present and signatures of some villagers were collected during the salish. As there was no effective result from the salish he and his wife went to Nandigram police station and lodged a complaint. A clerk at the police station wrote out the complaint in exchange of money and his wife signed the same, after the same was read over and explained to her. He identified the signature on the paper but he didn't know why the police asked him to sign the same. He confirmed that on the date when the complaint was filed with the police station, he was interrogated by the police but later on he was never interrogated by the police authorities.

P.W 3. 'X' is the victim girl, she identified the accused in Court and deposed that on the relevant date of occurrence while she was playing with other girls, the accused called her and took her to their kitchen by holding her hand. The accused touched her body in an inappropriate manner and also disrobed her. The victim also stated that the accused removed her wearing apparel and also touched her chest. She confirmed that her statement was

recorded before the learned Magistrate and she was interrogated by the police in connection with the incident.

P.W. 4 Ejahar Shah is a co-villager who deposed that he was acquainted with the victim and her mother, as well as the accused Taimur Sha whom he identified in Court. He reported that the incident occurred on 07.10.2016 at about 10.00 A.M. at the kitchen of PW 1. He deposed that at about 11.00 A.M. 'Y' and 'Z' along with Mangal Dhara came to his house and informed him that when they returned home they saw the accused Taimur Sha touching different parts of the body of the victim in an inappropriate manner. He added before the Court, that he was also told that the accused had touched the breast and private part of the victim. He confirmed of being interrogated by the police authorities during the course of investigation.

P.W. 5 Dr. Pranab Dash, attached to Haldia Sub-Divisional Hospital as Medical Officer deposed that on 17.10.2016, he examined a patient aged about 11 years and on examination he did not find any external injury on the person of the victim. He also did not find any injury on the private parts. He collected the vaginal swab and the same was handed over to a lady constable named Shanti Barik. While the victim was examined her mother was also present. He prepared the medical report after examination of the victim which was identified by him. He identified his signature and the official seal thereto which were admitted in evidence by the learned trial Court.

P.W.6 is Mousumi Bhattacharya, Lady Sub-Inspector of Police who at the relevant time was posted as Officer-in-Charge of Haldia Women Police Station. On 16.10.2016 she received a written complaint from 'Y' and accordingly registered as Haldia Women PS Case No. 59/16 dated 16.10.2016. She identified her endorsement on the FIR which was admitted in evidence. She prepared the formal FIR which was also admitted in evidence. She deposed that she herself took charge of the investigation and examined the de-facto complainant at Haldia Women Police Station and recorded her statement under Section 161 of Cr.PC. At the relevant time, the victim could not speak properly and so her statement could not be recorded. She thereafter visited the place of occurrence with the complainant, prepared rough sketch map with index and examined two local witnesses, whose statements were also recorded under Section 161 of Cr.PC. She identified the rough sketch map which was admitted in evidence. She deposed that in course of investigation on 17.10.2016, she raided the house of accused but could not trace him. The victim was medically examined by a Government doctor and her medical report was also collected from Haldia Sub-Divisional Hospital. On 17.10.2016 she advanced a prayer to CWC Nimtouri, Tamluk for providing an interpreter for the victim. She recorded the statement of the victim girl under Section 161 of Cr.PC with the assistance of an interpreter. Thereafter both the victim and the interpreter were produced before the Haldia Court where the statement of the victim girl was recorded under Section 164 of Cr.PC. She collected the statement of the victim girl and her mother which was recorded under Section

164 of Cr.PC. The wearing apparel of the victim was seized under a seizure list on 17.10.2016, she identified the seizure list which was prepared and signed by her and the same was admitted in evidence. On 30.11.2016 she seized the original birth certificate of the victim under a seizure list and later the certificate was handed over to the mother of the victim on her execution of a zimma bond. She identified the said seizure list which was prepared and signed by her, which was admitted in evidence. She further stated that during the course of investigation on several occasions she raided the house of the accused but could not trace him and on 27.06.2017 she handed over the investigation to another officer due to her transfer.

P.W.7 is Sub-Inspector of Police Pratima Shaw (Bain) who deposed that on 17.07.2017 she was posted at Haldia Women Police Station where she was entrusted with Haldia Women PS Case No. 59/2016 dated 16.10.2016. After receiving the case diary, she conducted the raid on several occasions to arrest the accused but was unsuccessful, the accused subsequently obtained anticipatory bail. During the course of investigation de-facto complainant provided her with a mobile phone number which she forwarded to the Officer-in-Charge CMG Cell, Purba Medinipur for enquiry. As all the relevant materials were earlier collected by the previous investigating officer, she completed the investigation and after consultation with her superior officer she submitted charge-sheet against the accused Taimur Sha under Section 8 of the POCSO Act before the learned Special Court.

Learned advocate appearing for the appellant referred to the evidence adduced by the prosecution and submitted that there was inordinate delay in lodging the complaint and no satisfactory explanation has been furnished for belatedly informing the police authorities. It was argued that the testimony of P.W.1 and P.W.2 is exaggerated; further the victim girl was tutored for settling personal scores with the appellant. To that effect, learned advocate drew the attention of the Court to the evidence of P.W.4 namely Ejahar Shah a co-villager, who in his cross-examination was confronted that the appellant was victimised because of political rivalry. Additionally, it was submitted that the victim's version was inconsistent, which varied from her previous statement, and fails to inspire confidence for satisfying the statutory requirements in order to arrive at a conclusion of guilt under Section 7 of the POCSO Act. It was further contended that the First Information Report was registered on the basis of written information furnished by the mother of the victim and the mother of the victim herself was a post occurrence witness. Her testimony as such is based on hearsay and cannot be considered as substantive evidence. Appellant also contended that the evidence presented before the Court is so vague and sketchy that it would be unsafe to draw the presumption available under Section 29 and 30 of the POCSO Act. It was argued that prosecution has failed to establish the statutory ingredients required under Section 7 of the POCSO Act, and the requisite 'sexual intent' as is incorporated under Section 11 of the POCSO Act.

It was finally contended that the oral testimony of P.W.1, P.W.2 & P.W.3 suffer from material contradictions which touches the foundational facts of the prosecution case and it would be unsafe to rely on such evidence to convict any person. As such the judgment and order of conviction and sentence passed by the Learned Trial Court calls for interference and the same ought to be set aside.

Learned advocate appearing on behalf of the victim placed reliance upon both the oral and documentary evidence in the case. It was argued that the sole testimony of the prosecutrix alone is sufficient to sustain conviction of the appellant. To that effect learned advocate pointed that the victim, P.W.3 was aged 13 years at the time of incident and her statement under Section 164 of the Code of Criminal Procedure as well as her deposition before the Court are consistent in material particulars regarding the manner in which the offence was perpetrated. There are some minor discrepancies which cannot be considered to be material contradictions for which the appellant can be absolved of the charges. The plea of tutoring/improvement and or exaggeration in the testimony of the victim is an attempt to weaken the prosecution case. It is a settled principle of law that human memory is subject to have certain minor omissions which is different from material contradictions, as such the Court while adjudicating a case under the POCSO Act, where the child is the only vital witness and whose sole testimony can be relied upon has to balance the mode, manner and the nature of the offence committed. In the present case, the minor victim consistently narrated regarding the accused having

taken her to the kitchen, disrobing her and touching her private parts. Considering the tender age of the child, the time period which lapsed between the date of the incident and her deposition in Court it would not be out of place to state that the sexual intent of the accused as has been stated before the Judicial Magistrate and before the learned trial Court are at such variance that the same would materially affect the prosecution case.

According to the learned advocate, prosecution successfully established the charge under Section 8 of the POCSO Act. It was emphasized that at no stage of the proceedings accused raised any probable defence except a feeble plea of political rivalry, which was not pursued subsequently at the stage of Section 313 of the Code of Criminal Procedure when all incriminating materials were placed. In order to fortify his argument learned advocate relied upon *Ganesan -versus- State*, reported in (2020) 10 SCC 573, reference was made to paragraphs 10 to 12 which reads as follows:

*“10. In the present case, the appellant-accused has been convicted by the learned trial court for the offence under Section 7, punishable under Section 8 of the POCSO Act. We have gone through the entire judgment passed by the learned trial court as well as the relevant evidence on record, more particularly the deposition of PW 1 father of the victim, PW 2 mother of the victim and PW 3 victim herself. It is true that PW 2 mother of the victim has turned hostile. However, PW 3 victim has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined. We do not see any good reason not to rely upon the deposition of PW 3 victim. PW 3 aged 15 years at the time of deposition*

*is a matured one. She is trustworthy and reliable. As per the settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.*

**10.1.** *Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , it is observed in paras 9 to 14 as under: (SCC pp. 195-98)*

*“9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)*

*‘16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the*

*charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'*

*10. In State of U.P. v. Pappu [State of U.P. v. Pappu, (2005) 3 SCC 594 : 2005 SCC (Cri) 780] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other*

*evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)*

*‘12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.’*

*11. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] , this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix*

*is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)*

*‘8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance*

*on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.*

...

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*21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'*

*(emphasis in original)*

*12. In State of Orissa v. Thakara Besra [State of Orissa v. Thakara Besra, (2002) 9 SCC 86 : 2003 SCC (Cri) 1080] , this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the*

*prosecution case, particularly where the witnesses had not seen the commission of the offence.*

13. In *State of H.P. v. Raghubir Singh* [*State of H.P. v. Raghubir Singh*, (1993) 2 SCC 622 : 1993 SCC (Cri) 674] this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* [*Wahid Khan v. State of M.P.*, (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan* [*Rameshwar v. State of Rajasthan*, 1951 SCC 1213 : AIR 1952 SC 54] .

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

**10.2.** In *Krishan Kumar Malik v. State of Haryana* [*Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

**10.3.** *Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi) [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] . In para 22, it is observed and held as under: (SCC p. 29)*

*“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre 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.”*

**11.** *On evaluating the deposition of PW 3 victim on the touchstone of the law laid down by this Court in the aforesaid decisions, we are of the opinion that the sole testimony of the PW 3 victim is absolutely trustworthy and unblemished and her evidence is of sterling quality.*

**12.** *Therefore, in the facts and circumstances of the case, the learned trial court has not committed any error in convicting the accused, relying upon the deposition of PW 3 victim. The learned trial court has imposed the minimum sentence provided under Section 8 of the POCSO Act. Therefore, the learned trial court has already shown the leniency. At this stage, it is required to be noted that allegations against the accused which are proved from the deposition of PW 3 are very serious, which cannot be permitted in the civilised society. Therefore, considering the object and purpose of the POCSO Act and considering the evidence on record, the High*

*Court has rightly convicted the accused for the offence under Section 7 of the POCSO Act and has rightly sentenced the accused to undergo three years' RI which is the minimum sentence provided under Section 8 of the POCSO Act."*

Learned advocate further placed reliance upon *State -versus- Deepak Biswas* reported in 2024 SCC OnLine Cal 552. Attention of the Court was drawn to paragraphs 2,6,10,16,17,19,20 and 23 to 26 which reads as follows:

*"2. The genesis of the case relate to Diglipur Police Station Case No. 78/19 dated 01.08.2019 which was registered for investigation under Section 5/6 of the POCSO Act, 2012 read with Section 376 AB/506 of the Penal Code, 1860. The registration of the aforesaid case was pursuant to the statement of the victim aged about sixteen years ten months and twenty days recorded by the inspector/Officer-in-charge of the Police Station wherein the victim stated that she was residing with her parents in the rented house in Shibpur and both of them were engaged as labours. When she was nine years old, she was admitted at Seva Niketan situated at Dairyfarm, where she studied from class I to VI at Dairyfarm Hindi Medium School. Her mother was assaulted and forced to bring her back to the house from Seva Niketan in the year 2017 and she was admitted at Government School Keralapuram. She alleged that one day when her mother was not at home, her father patted on her body and when she ignored the same, she was threatened and forced to have physical relationship. She was further asked not to divulge the matter to anyone or else she would be killed along with her mother. Being afraid, she did not divulge such incident to her mother and thereafter, whenever her mother went out for work, her father forcibly used to have physical relationship with her. On*

30.07.2019, when she went to the house of her maternal grandmother (which was in a nearby place) her father came there, called her and ordered her to go to the house. At about 12 : 30 P.M. her father patted on her body and asked her to take his private part in her mouth and at about 13.00 hours when she came out running, one of the neighbours wife stopped her. She narrated about her father's behavior. Thereafter, at night, the said neighbour-grandma narrated the incident to her mother and on 01.08.2019 her mother and the said neighbour took her to CHC, Diglipur, for treatment where the doctor, after the treatment, asked them to inform the police and then they went to the Police Station for reporting the incident. She alleged that since 2017, her father on number of occasions had physical relationship with her when nobody was there at home, as such she prayed for proper investigation against her father.

**6.** PW 1, 'Y' the mother of the victim girl in her deposition before the Court stated that the victim 'X' is her daughter and the accused is her husband. As her husband was unable to maintain her daughter, she was sent to Seva Niketan Ashram, Port Blair and when she was studying in class VI, her husband forced her to bring her back from Ashram. She was admitted thereafter at Keralapuram School, Diglipur where she studied from class VI. Subsequently, disturbance started between her and her husband and as a result her daughter could not appear in the final examination of class VIII and thereafter started residing at the house. She used to leave for work when her daughter would mostly stay at her mother's (Grandmother) house. Her husband opposed the daughter to be sent to her maternal grandmother's home and suddenly in the month of July 2019 when she woke up in the morning, her daughter told her that she wanted to say something. However, at that point of time

her husband came there and, as such, her daughter/victim could not narrate anything to her. On 30 July, 2019 her daughter/victim rang her and told her to meet Sandhya in the evening. She along with her daughter went to Sandhya's house and it was Sandhya from whom she came to know that her husband had been forcing physical relationship with her daughter. She asked her daughter regarding the incident, but she did not say anything to her. She was also not ready to come back home and stated that if she returned at her home, her father would kill her. Her daughter on 30.07.2019 went to her grandmother's home and on 01.08.2019 she took her daughter to CHC Diglipur for medical examination suspecting that something wrong has been committed with her and from CHC Diglipur she along with her daughter went to Police Station Diglipur. Police recorded the statement of the victim in her presence, when Sandhya Das was also present. Thereafter, she came to know that her husband forced physical relationship with her daughter several times, since long. She also came to know that when her daughter used to return home during holidays, while staying at the Ashram, her husband used to make physical relationship with her. The police authorities read over the statement of the victim which they recorded. She identified her signature on the said document which was marked as Exhibit 1/1. She was also handed over with Xerox copy of the birth certificate and the Aadhar card of her daughter which the police seized by way of seizure list. She identified her signature which was marked as Exhibit 4/1. After medical examination, the victim was handed over to her and she signed on the memorandum which was marked as Exhibit 5/1, she identified her husband/accused in Court. In the cross examination, she stated that she was married with the accused twenty two years ago. She had two sons and two daughters. Victim happens to be her third child and she had never seen any illicit relationship with the her

husband and her daughter, nor did she hear that her husband had any illicit relationship with any lady. She heard regarding the incident from Sandhya and thereafter from her daughter at Police Station Diglipur.

**10.** PW 5 'X' is the victim who deposed that police recorded her statement and the same was read over to her when she signed the same. She identified her signature which was marked as Exhibit-1/4. She was medically examined at CHC, Diglipur and after her medical examination, she was asked to sign on the medical examination report. She identified her signature in Court in the Medico Legal Examination Report which was marked as Exhibit 2/1. She stated that she gave her statement before the learned Magistrate at Mayabunder in presence of her mother which was recorded by the learned Magistrate, the same was read over and she signed the same. She identified her signatures in her statement under Section 164 Cr. P.C. which were marked as Exhibit - 7/1 and 7/2 respectively. She narrated that her father as well as her mother worked as labourers under a contractor and she read from class I to class VI at Seva Niketan, Dairyfarm, Port Blair where she stayed at the hostel. Her father pressurized her mother to bring her back from the hostel and she was accordingly brought back and admitted to Keralapuram school in class VII. She used to attend the school from her home and after a few days, her father stopped her from attending school. Her father intended to sell her at Kolkata. When her mother asked her father as to why he stopped her from attending school, her father assaulted her mother. In the absence of her mother, her father inserted his penis in her private part and used to do such act twice a day. Her father used to go for work once in a week only and used to be present at the house. She stated that her father sexually abused her continuously. One day, her father

brought her to his house from the house of her maternal grandmother (nani) at about 12.00 noon and inserted his penis in her mouth and when she removed her mouth, her father assaulted her, thereafter her father tried to insert his penis in her private part, but she fled away from the house and went to her maternal grandmother's house. Her maternal grandmother asked her why she returned, however, she did not disclose anything. When she was going to the house of her maternal grandmother Sandhya saw her running and in the evening Sandhya came and asked her as to what happen to her, when she disclosed about the acts of her father. On the following day, Sandhya took her to CHC Diglipur for medical checkup and thereafter her statement was recorded at the police station. She identified her father/accused in Court.

**16.** The learned Special Court, on an appreciation of the evidence, was pleased to acquit the accused. The issues which weighed with the learned Special Court/Trial court are as follows:—

**“15. FINDINGS OF THE COURT:**

On careful perusal of the materials available in the record and on submission made by Ld. Counsel for the parties, it appears that regarding forcible penetration by the accused person about few years back, no iota of evidence is found to reach the conclusion that the accused is guilty to the charges. Moreover, it appears from the deposition of one Sandhya that she saw the incident of ran away by the victim but the victim did not tell anything immediate after the incident to Sandhya and subsequently Sandhya came to learn about the incident. The role of Sandhya in this aspect appears to be dubious. Victim did not tell anything after the alleged incident immediately so question of forcible penetration does not and

*cannot arise at all and the medical evidence with regard to aggravated penetrative sexual assault in the recent past is also missing paramountly. The investigation by ASI is irregular in the POCSO Act. As per mandate of the POCSO Act the investigation should be done preferably by lady Sub Inspector.”*

**17.** *Learned advocate for the state/appellant Ms. A.S. Zinu submits that the victim, PW 5 in her examination-in-chief categorically stated regarding the sexual assault being inflicted by the accused continuously and the same was in the absence of her mother, the veracity of which was not tested in the cross examination. It was further submitted on behalf of the state that the victim was consistent in her statement with regard to the sexual assault both in her deposition before the Court as well as statement which was recorded under Section 164 of the Cr. P.C. before the learned Judicial Magistrate. Only bare suggestions were put forward at the time of cross-examination on behalf of the accused. The medical examination report do corroborate the oral version of the victim which is consistent throughout, from the stage of investigation and also in her deposition before the Court. Learned advocate, on the issue of law, submitted that the trial court ignored the provisions of Section 29 and 30 of POCSO Act and erroneously arrived at its finding of acquittal without any cogent reasons and as such the order of acquittal is liable to be set aside as the same is beyond the scope of law. In order to substantiate her case, learned advocate relied upon the cases of Shri. Lalmalsom Kaipeng v. State of Tirupura (Division Bench) being CRL A (J) 34 of 2019; State of HPO v. Manga Singh, (2019) 16 SCC 759; State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384; Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635; State of Karnataka v. Manjanna, (2000) 6 SCC 188 : AIR*

2000 SC 2231; *State (Delhi Administration) v. Dharampal*, (2001) 10 SCC 372 : AIR 2001 SC 2924; *SC Bahri v. State of Bihar*, 1995 Supp (1) SCC 80 : AIR 1994 SC 2420; *Shobhit Chamar v. State of Bihar*, (1998) 3 SCC 455 : AIR 1998 SC 1693.

**19.** *Before proceeding with the merits of the appeal, it would be relevant to consider the settled proposition of law as has been decided by the Hon'ble Supreme Court in case of Ganesan v. State*, (2020) 10 SCC 573. The relevant paragraphs are set out as follows:

“10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in *Vijay [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639]*, it is observed in paras 9 to 14 as under : (SCC pp. 195-98)

“9. In *State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210]* this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under : (SCC p. 559, para 16)

‘16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care

*and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'*

10. In *State of U.P. v. Pappu* [*State of U.P. v. Pappu*, (2005) 3 SCC 594 : 2005 SCC (Cri) 780] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a

*factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under : (SCC p. 597, para 12)*

*‘12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.’*

*11. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316], this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is*

*more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under : (SCC pp. 394-96 & 403, paras 8 & 21)*

*‘8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a*

*requirement of law but a guidance of prudence under given circumstances. ...*

*\*\*\* 21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'*

*(emphasis in original)*

*12. In State of Orissa v. Thakara Besra [State of Orissa v. Thakara Besra, (2002) 9 SCC 86 : 2003 SCC (Cri) 1080], this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.*

*13. In State of H.P. v. Raghubir Singh [State of H.P. v. Raghubir Singh, (1993) 2 SCC 622 : 1993 SCC (Cri) 674] this Court held that there is no legal compulsion to look for any other evidence to*

*corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. [Wahid Khan v. State of M.P., (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan [Rameshwar v. State of Rajasthan, 1951 SCC 1213 : AIR 1952 SC 54].*

*14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”*

*10.2. In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61], it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*

*10.3. Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi) [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750]. In para 22, it is observed and held as under : (SCC p. 29)*

*“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre 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.”*

**20.** *In this case, there is a consistent version of PW 5, the victim, wherein she had narrated regarding the manner in which she was sexually abused, corroboration to that effect is seen from the medical examination report which has been marked as Exhibit-2. An assessment of the said report reflects that the victim narrated before the doctor which is set out in verbatim as follows:*

*“The victim, ‘X’, told that when she was 7 years old, her father, xxx, attempted to sexually exploit her but couldn't do it. Then she was admitted in Seva Niketan Ashram in Port Blair at 8 years of age. During that time when she used to visit her home on leave, her father used to take her to jungle and attempted to sexually exploit her. He used to ask her to ‘suck’ and ‘eat’ his penis, following which he used to ejaculate inside her mouth, threatening to beat her up if she spitted out anything. In case when the child used to uncontrollably vomit, he used to beat her up with his hand, fist and also kick her violently, this used to happen everyday during her leave period from Aashram, though he couldn't, during that period, was able to make complete vaginal intercourse with her. During this period the victim's family was residing in Shanti Nagar.*

*In 2016, ‘X’ took TC from the school she was studying in Port Blair and came & joined a govt. school in Keralapuram. Their new residence was a rented house in Shibpur. She went to school for 7<sup>th</sup> & 8<sup>th</sup> standard, during which period not attempt was made due to lack of opportunity as the mother used to be there. She left school after 8<sup>th</sup> standard and from next day onwards he again started sexual exploitation with her.*

*After her mother used to leave for work, he used to close the doors and threaten her, and if she refused, she was dragged inside her house, then she was forcefully undressed by him and then he used to lift up his 'Lungi' and used to do complete vaginal intercourse with her. He also used to press her buttocks and chest violently. He used to force her to take his penis in her mouth and masturbate in her mouth and used to hit her violently if she vomited. This used to happen twice daily everyday at home for last year, including the time of her menstruation."*

**23.** *We have considered the version of the witnesses before the learned trial court and analysed the same. On an appreciation of such evidence, we find that the victim was consistent in her version on the following aspects:*

- a) She was earlier studying at Seva Nikatan, Dairyfarm, Port Blair up to class VI and her father compelled her to leave the school and she was brought back to the house from the hostel and was admitted at Keralapuram school in class VII. After some days, her father stopped her from attending the school and was intending to sell her at Kolkata. When her mother raised the issue of stopping her from going to school, her father assaulted her mother.*
- b) In the absence of her mother, her father inserted his penis into her private part and used to do such act twice a day. Her father continuously sexually abused her.*
- c) One day, she was brought back from her maternal grandmother's house at about 12.00 noon by her father who inserted his penis in her mouth and when she removed her mouth she was assaulted by her father and thereafter when her father tried to insert his penis in her private part she fled away from the house and went to her maternal grandmother's house.*

- d) *When she was going to her grandmother's house Sandhya saw her running and in the evening she came and asked her what happen with her when she disclosed the acts done by her father. She was thereafter taken to CHC Diglipur for medical checkup and her statement was recorded at the Police Station.*
- e) *On the aforesaid aspects, no question was asked in course of the cross examination on behalf of the accused and only few suggestions were offered for the purpose of dislodging her version which the victim was able to resist and she could not be shaken on any issue at the time of cross examination. It is reiterated that so far as the incident relating to sexual assault inflicted by the father of the victim is concerned on the said subject, her version in the FIR, in her statement under Section 164 Cr. P.C. and before the doctor were consistent and on the said issue no cross examination was done on behalf of the accused to test the truth attached to her statement.*
- f) *The medical evidence which has been discussed above is overwhelming corroborative piece of evidence in respect of the accusations which have been leveled against the accused.*

**24.** *The learned trial court did not deal with any of the issues and only relied upon attending circumstances to arrive at its finding of acquittal. In fact the learned trial court failed to consider that the trial of the offence were under the provisions of the POCSO Act. Section 29 of the POCSO Act which refers to presumption as to certain offences is set out as follows.*

*“29. Presumption as certain offences. - where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or*

*attempted to commit the offence, as the case may be unless the contrary is proved.”*

**25.** *The said section refers to Section 5 of the POCSO Act and the learned trial court should have take into account that one of the charges for which the accused was tried was under Section 6 of the POCSO Act which is punitive provision for commission of offence under Section 5 of the said act.*

**26.** *It would be pertinent to state that Section 29 refers to the standard of evidence as ‘shall presume’ and ‘unless the contrary is proved’. As such, the learned trial court should have taken into account that when the standard of evidence in favour of the prosecution is ‘shall presume’ and a factual basis is laid down on the basis of the deposition of victim then the onus shifts upon the accused to rebut such facts which have surfaced in course of evidence. The presumption laid down in the Act is presumption of law and is distinguishable from a presumption of fact where the Court can exercise its discretion of ‘may presume’ in respect of certain state of affairs. As such, once the obligation of the prosecution is discharged with the aid of presumptions of law or fact, it would be the duty of the accused to adduce such evidence to show reasonable possibility of non existence of the presumed fact. In this case, neither by way of cross examination nor by way of adducing any evidence, the accused has been able to create circumstances from where a court can infer non existence of the facts narrated/deposed by the victim and corroborated by way of medical evidence. Having regard to the same, we are of the opinion that the judgment and order of acquittal dated 13<sup>th</sup> August, 2021 passed by the learned Special Judge (POCSO Act) North and Middle Andaman, Mayabunder in connection with Special (POCSO) ST No. 35 of 2019*

*corresponding to Special POCSO Case No. 20 of 2019 calls for interference and the same, as such, is set aside.”*

On behalf of the victim reference was made to the decision of *Chandan Das @ Shibu -versus- State of West Bengal* reported in 2023 SCC OnLine Cal 1041 and emphasis were laid on paragraphs 2,5,21 to 23 which reads as follows:

*“2. Mogra P.S. case no. 245/18 dated 05.09.2018 was registered for investigation under Section 341/354/354B of the Penal Code, 1860 and Section 8 of the POCSO Act on the basis of a letter of complaint by one ‘Y’ addressed to the Officer-in-charge of the said Police Station. It was alleged that elder daughter of ‘Y’ namely ‘X’ (aged about 12 years) went to a shop for purchasing cake and other food stuffs along with her younger sister. ‘X’ came across accused Chandan Das (Shibu), who provoked her to lie on bed with him. He compelled her to be naked and touched on sensitive parts of her body by removing her clothes/dress. Such incident took place at about 05.00 pm on 05.09.2018. ‘X’ revealed such humiliating act to her and also to her grandmother. Victim expressed to ‘Y’ (mother) that she was feeling pain at her breast which she subsequently informed to her husband and neighbours, who became aware regarding such untoward incident. She therefore, requested to take action against Chandan Das (Shibu).*

*5. PW1, ‘X’ is the victim girl. She deposed before the Court that her mother ‘Y’ lodged a written complaint at Mogra PS against Chandan Das alias Shibu. She called the accused as “Dadu”. She was born on 29.10.2006 and the incident took place on 05.09.2018 at about 05.00 pm. She narrated that at the relevant time she was*

going to a shop for buying some cake for her sister who was in her lap. At the time of returning from the said shop, Shibu called her in his house and after giving some snacks to her sister she asked her to go inside the room for bringing some more snacks. When she went inside the room she compelled her to lay on bed and thereafter pressed her breast and after disrobing her when he noticed that she had period he left her and then she returned home. After returning home she narrated the entire fact to her mother and grandmother. She alleged that due to such act of the accused she suffered chest pain and informed the matter to her mother. Her mother took her to Mogra police station for lodging complaint. On the same date police came to their house and interrogated her regarding the incident. Her mother handed over a pink top and violet colour hot pant which belonged to her to the police authorities. Police seized the same on proper seizure list and she also signed therein. Beside her, her parents also signed on the seizure list. She identified her signature on the seizure list which was marked as Ext.1. She deposed that the wearing apparels were handed over by the police by her mother because she were wearing those clothes on that day. She identified both the clothes which were shown to her and the same was marked as MAT Ext.I and Ext.II respectively. She also identified the accused Chandan Das alias Shibu in Court. The victim girl deposed that she was sent to Chinsurah Hospital for medical examination where she was accompanied by her father. She identified her signature on the medical report which was marked as Ext.2. She was also produced before the learned Magistrate for recording her statement under Section 164 Cr. P.C. She made the statement voluntarily and she was never tutored for the same. After she made her statement to the learned Magistrate, the learned Magistrate read over the contents to her and thereafter she signed on every page of

*the statement. She identified her signatures which were marked as Ext.3 series.*

**21.** *Before proceeding further the statement of the victim under Section 164 of the Code of Criminal Procedure which was recorded by the learned Judicial Magistrate requires to be taken into consideration. It is reflected from the said statement that the learned Magistrate after assessing the voluntariness and the capacity of the victim to understand the events asked her to state the facts. The victim as such narrated before the Magistrate that at 05.00 pm at the earlier date she along with her sister proceeded to a shop for purchasing cake and while returning Shibu dadu called her, when she went at that time the accused gave her sister some snacks at the varandah where she sat. The accused thereafter took her to his bedroom and laid her on his bed, thereafter he pressed her breast and disrobed her, however, as she had her period the accused could not rape her. She felt pain on her breast and on returning home she divulged the incident to her mother.*

**22.** *In this case on an assessment of the records it is found that defence did not adduce any evidence and when specific questions were asked, by the Special Court/trial Court to the accused he did not answer any incriminating materials which were appearing against him. Accused's three answers being 'false', 'I am innocent' and 'I do not know'. Therefore only material which the accused tried to confront with the prosecution witnesses for rebutting the prosecution evidence was by in respect of PW2 and PW5. In cross-examination the only suggestion which was advanced to PW2 'Y' was that they had taken money from the accused and subsequently they did not repay the same, as such they have initiated the criminal case which was denied by PW2 and PW5. In respect of PW5 the*

*same nature of suggestion was advanced that he took loan from the accused and in order to avoid repayment of loan he instituted the criminal case, which was denied by him.*

**23.** *In this case the deposition of the victim assumes primary importance as has been submitted on behalf of the complainant that the status of such victim is equivalent to an injured witness. The comparison of her deposition before the trial Court and her statement recorded under Section 164 of the Code of Criminal Procedure before the learned Magistrate are one and the same, although they were recorded after a length of time. The three issues which makes out an offence in the case are that the victim 'X' was called by the accused, he compelled her to lay on the bed and her body parts were touched. So far as this part of the evidence is concerned there are no materials to suggest that the accused by way of cross-examination could dislodge this fact. Having regard to the same and the reasons assigned by the learned trial Court, I am of the view that there is no scope for interfering in the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Court, Chinsurah, Hooghly in connection with Sessions Trial (SPL) No. 24/19 dated 24.04.2019 corresponding to Sessions Case (SPL) No. 29/18. As such, the said judgment and order of conviction and sentence dated 01.09.2022 and 02.09.2022 is hereby affirmed."*

Learned advocate further relied upon the decision in *Attorney General for India -versus-Satish* and another reported in (2022) 5 SCC 545. Reference was made to paragraphs 38 to 40 which states as follows:

**“38.** *The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialised or held insignificant or peripheral so as to exclude such act from the purview of “sexual assault” under Section 7. As held by this Court in Balram Kumawat v. Union of India [Balram Kumawat v. Union of India, (2003) 7 SCC 628] , the law would have to be interpreted having regard to the subject-matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law.*

**39.** *It may also be pertinent to note that having regard to the seriousness of the offences under the POCSO Act, the legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that “culpable mental state” includes intention, motive, knowledge of*

*a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Sections 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, “sexual intent” would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of “culpable mental state” on the part of the accused.*

**40.** *This takes the Court to the next argument of Mr Luthra that there being an ambiguity, due to lack of definition of the expressions “sexual intent”, “any other act”, “touching” and “physical contact”, used in Section 7, coupled with the presumptions under Sections 29 and 30 of the Act, the reverse burden of proof on the accused would make it difficult for him to prove his innocence and, therefore, the POCSO Act must be strictly interpreted. In the opinion of the Court, there cannot be any disagreement with the said submission of Mr Luthra. In fact it has been laid down by this Court in a catena of decisions that the penal statute enacting an offence or imposing a penalty has to be strictly construed. A beneficial reference of the decisions in Sakshi v. Union of India [Sakshi v. Union of India, (2004) 5 SCC 518 : 2004 SCC (Cri) 1645] , in R. Kalyani v. Janak C. Mehta [R. Kalyani v. Janak C. Mehta, (2009) 1 SCC 516 : (2009) 1 SCC (Cri) 567] and in State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (2014) 9 SCC 632 : (2014) 5 SCC (Cri) 249] be made in this regard. However, it is equally settled legal position that the clauses of a statute should be construed with reference to the context vis-à-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject-matter. The Court cannot be oblivious to the fact that the impact of traumatic sexual assault committed on children of tender age could endure*

*during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable. Therefore, considering the objects of the POCSO Act, its provisions, more particularly pertaining to the sexual assault, sexual harassment, etc. have to be construed vis-à-vis the other provisions, so as to make the objects of the Act more meaningful and effective."*

It was contended on behalf of the victim that the prosecution has duly established the case within the framework of law and as such no interference is called for in respect of the judgment and order of conviction and sentence passed by the learned trial Court.

Learned advocate for the State submitted that the sole testimony of the victim is sufficient to sustain a finding of guilt, and the present case is confined only under Section 8 of the POCSO Act. The accused was required to rebut the prosecution's case, either by establishing his absence or by discrediting the reliability of evidence, which he failed to do. Prosecution relied upon seven witnesses out of which the testimony of the victim assumes importance as the incident happened in seclusion. There was no reason for falsely implicating the accused and the victim remained consistent in narrating the facts, including the place of occurrence. It was further argued that the accused intended to magnify certain minor inconsistencies which have no legal bearing. Even if the first limb of Section 7 of the POCSO Act is not attracted, the offence committed by the accused do fall within the second limb of

provision. There is no scope for interference as the statutory presumptions under Section 29 and 30 of the POCSO Act comes into operation once the testimony of the victim establishes the foundational facts for an offence under Section 7 of the said Act is concerned. Consequently, the prosecution has proved its case and there is no justification for interference in respect of the judgment and order of conviction and sentence passed by the learned trial Court.

Having taking into consideration the arguments advanced by the learned advocate appearing on behalf of the appellant, State as well as victim/de-facto complainant, it becomes necessary to examine the basic principles of law. Such assessment is necessitated as the submissions of the appellant highlighted certain minor contradictions and or inconsistencies in the version of the victim.

In *State of U.P -versus- M.K. Anthony* reported in (1985) 1 SCC 505 it was observed some minor variations in the language employed by the witness while giving evidence before the committing Magistrate and before the Sessions Court in respect of the extrajudicial confession, if the substance remains intact, the testimony cannot be permitted to be totally rejected. The Hon'ble Apex Court emphasised that while appreciating the evidence of witness, the proper approach would be whether the evidence of the witness taken as a whole carries a ring of truth. Once such an impression is formed, the evidence should be examined in light of the deficiencies, drawbacks and infirmities

pointed out in the evidence as a whole and evaluate them to find out whether it is against the overall tenor of the evidence given by the witness or the evaluation of the evidence is unworthy of belief.

In *Bharwada Bhoginbhai Hirjibhai -versus- State of Gujarat* reported in (1983) 3 SCC 217 it was held by the Hon'ble Apex Court that much importance cannot be attached to minor discrepancies and the reasons were assigned in paragraph 5 of the said judgment, which is as follows:

*“5. It appears that the parents of PW 1 as well as parents of PW 2 wanted to hush up the matter. Some unexpected developments however forced the issue. The residents of the locality somehow came to know about the incident. And an alert woman social worker, PW 5 Kundanben, President of the Mahila Mandal in Sector 17, Gandhinagar, took up the cause. She felt indignant at the way in which the appellant had misbehaved with two girls of the age of his own daughter, who also happened to be friends of his daughter, taking advantage of their helplessness, when no one else was present. Having ascertained from PW 1 and PW 2 as to what had transpired, she felt that the appellant should atone for his infamous conduct. She therefore called on the appellant at his house. It appears that about 500 women of the locality had also gathered near the house of the appellant. Kundanben requested the appellant to apologize publicly in the presence of the women who had assembled there. If the appellant had acceded to this request possibly the matter might have rested there and might not have come to the court. The appellant, however, made it a prestige issue and refused to apologize. Thereupon the police was contacted and a complaint was lodged by PW 1 on September 19, 1975. PW 1 was*

then sent to the Medical Officer for medical examination. The medical examination disclosed that there was evidence to show that an attempt to commit rape on her had been made a few days back. The Sessions Court as well as the High Court have accepted the evidence and concluded that the appellant was guilty of sexual misbehaviour with PW 1 and PW 2 in the manner alleged by the prosecution and established by the evidence of PW 1 and PW 2. Their evidence has been considered to be worthy of acceptance. It is a pure finding of fact recorded by the Sessions Court and affirmed by the High Court. Such a concurrent finding of fact cannot be reopened in an appeal by special leave unless it is established : (1) that the finding is based on no evidence or (2) that the finding is perverse, it being such as no reasonable person could have arrived at even if the evidence was taken at its face value or (3) the finding is based and built on inadmissible evidence, which evidence, if excluded from vision, would negate the prosecution case or substantially discredit or impair it or (4) some vital piece of evidence which would tilt the balance in favour of the convict has been overlooked, disregarded, or wrongly discarded. The present is not a case of such a nature. The finding of guilt recorded by the Sessions Court as affirmed by the High Court has been challenged mainly on the basis of minor discrepancies in the evidence. We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by learned Counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious :

“(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

- (2) *Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprised. The mental faculties therefore cannot be expected to be attuned to absorb the details.*
- (3) *The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.*
- (4) *By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.*
- (5) *In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.*
- (6) *Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.*
- (7) *A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him —*

*Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.””*

The Court further held that discrepancies which do not strike at the core of the matter and undermine the fundamental version of the witnesses, should not be attached with undue significance, especially when the balance of probabilities weighs in favour of the credibility of the witnesses.

In *Inder Singh -versus- State (Delhi Administration)* reported in (1978) 4 SCC 161 the credibility of testimony of witness was elaborately dealt with by the Hon'ble Apex Court, paragraphs 2 & 3 are relevant which reads as follows:

*“2. Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic.*

**3.** *We are satisfied that the broad features of the case, the general trend of the testimony and the convincing array of facts which are indisputable, converge to the only conclusion that may be reasonably drawn, namely that the accused are guilty. Theoretical possibilities may not shake up, fancied weaknesses may not defeat, when verdicts are rested on sure foundations. Stray chances of innocence haunting the corridors of the court cannot topple concurrent findings of guilt.”*

Having considered the facts of the present case particularly the contentions raised by the appellant regarding variation in the testimony of the victim, it is evident that the incident took place in the year 2016 whereas the deposition relied upon was recorded in the year 2022. The intervening lapse of time naturally accounts for minor factual inconsistencies which cannot be given undue weight. The other issues which have been canvassed relating to political rivalry has not been substantiated by the appellant himself and is a subsequent afterthought plea which was confronted to a neighbour or co-villager and none of the parents were confronted with such question. Such plea was also not pursued during the examination of the accused under Section 313 of the Code of Criminal Procedure.

In light of the principles of law set out above, and upon careful consideration of the testimony of victim, I am of the opinion that the evidence carries with it an inherent ring of truth which cannot be disregarded or lightly set aside.

Consequently, I hold that the prosecution has been able to prove the case and as such no interference is called for in respect of the judgment and order of conviction passed by the learned Trial Court. It is reflected from the records of the case that the petitioner was in custody for about one year and six months after the sentence was pronounced by the learned Trial Court. The incident complained, occurred in the year 2016. More than nine years have passed since the incident has taken place. Having considered the time period which has lapsed and the period for which the appellant has suffered during the pendency of the appeal, in the fitness of circumstances, the sentence which was imposed by the learned Trial Court is reduced to Rigorous Imprisonment for three (3) years. However, the fine amount imposed by the learned Trial Court would remain unchanged.

Accordingly, CRA (SB) 38 of 2023 is dismissed, with the sentence being partially modified.

Pending applications, if any, stands disposed of.

Records reflect that the appellant was on bail during the pendency of appeal. His bail bond stands cancelled and he is directed to surrender immediately before learned Trial Court, to undergo rest of the sentence.

Department is directed to send back the Trial Court Records immediately. A copy of the judgment be forwarded to the learned Trial Court immediately for compliance regarding the directions given above.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

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**(Tirthankar Ghosh, J.)**