

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 394 of 2017

Rasomoy Biswas

-Versus-

The State of West Bengal & Anrs.

For the Appellants : **Mr. Arnab Chatterjee,
Mr. Anisur Rahman,
Mr. Dhanasree Biswas.
Ms. Poulami Bose.**

For the State : **Mr. Partha Pratim Das,
Mrs. Manasi Roy.**

Hearing concluded on : **13.08.2025**

Judgment On : **25.09.2025**

Prasenjit Biswas, J:-

1. The instant appeal has been preferred at the behest of the appellant challenging the impugned judgment and order of conviction dated 03.05.2017 and 04.05.2017 passed by the learned Additional District and Sessions Judge, 2nd Court, Krishnagar, Nadia in connection with

Sessions Trial No. IX(VIII) of 2016 arising out of Sessions Case No. 07(01) of 2015(Spl).

2. By passing the impugned judgment this appellant was found guilty for commission of offence punishable under Section 8 of the Protection of Children from the Sexual Offences Act, 2012 along with a fine of Rs. 25000/-, out of which 80% amount is to be paid to the victim as compensation under Section 357 Cr.P.C. and in default of payment, this accused shall have to undergo rigorous imprisonment for three months.
3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is filed by the present appellant.
4. In short, the narrative advanced by the prosecution may be stated as:

“The instant case was started on the basis of a complaint lodged by the defacto complainant (grandfather of the victim) stating, inter alia, that the incident of sexual assault upon the victim took place on 24.01.2015 at about 7 P.M. in the evening. This complainant was intimated about such fact by the mother of the victim on the next day morning. Thereafter, he lodged the FIR against this appellant along with other accused persons. This defacto complainant intimated about such incident to the father of the appellant

but, at about 12 noon on 25.01.2015, the father of the appellant and others came to the house of the defacto complainant armed with deadly weapons and assaulted them. It is stated in the written complaint that this appellant on 24.01.2015 at about 7 P.M. on the date of Saraswati Puja took the victim child to a “lambu” orchard and he removed her pant and kissed on her face and also pressed several parts of her body. The victim informed the matter to her mother. Over that issue the instant case was filed. On the basis of such written complaint a case being Dhantala P.S. Case No. 46/15 dated 25.01.2015 under Section 447/506/34 of the Indian Penal Code and Section 8 of the Protection of Children from the Sexual Offences Act, 2012 has been started against all the accused persons including this appellant.”

5. After completion of investigation charge-sheet was submitted by the prosecuting agency against the accused persons under Section 447/506/34 of Indian Penal Code and Section 8 of the Protection of Children from the Sexual Offences Act, 2012. The Trial Court framed the charge under Section 8 of the Protection of Children from the Sexual Offences Act, 2012 against this appellant/accused and under Section 323/34 of Indian Penal Code against the acquitted accused persons.

6. In this case, thirteen (13) witnesses were cited by the side of the prosecution and documents were marked as exhibits 1 to 7.
7. Neither any oral, nor any documentary evidence was adduced on behalf of the defence.
8. Mr. Arnab Chatterjee, learned Advocate appearing on behalf of the appellant, submitted that the impugned judgment and order of conviction passed by the learned Trial Court is manifestly perverse and cannot be sustained in law. It was contended that the Trial Court relied heavily and exclusively on the statements of the witnesses, notwithstanding the fact that these statements suffer from significant omissions, contradictions, and inconsistencies which materially weaken the prosecution case.
9. Learned Advocate emphasized that the learned Trial Court primarily relied upon the deposition of PW1, the victim. However, PW1 herself admitted in her testimony that much of what she narrated in Court was dictated to her by PW8, the mother of the victim. This admission, according to Mr. Chatterjee, severely undermines the independence and credibility of her testimony. The Trial Court, by relying solely on such a testimony without proper scrutiny, acted in a manner inconsistent with the principles of fair adjudication. Further, it was pointed out that the victim, PW1, also admitted in her deposition that there existed a series of

ongoing litigations and disputes between the appellant and the family of the defacto complainant. Such a background of enmity and rivalry introduces a strong possibility of motive for false implication and casts a shadow of doubt over the prosecution story. The existence of such strained relations, according to learned counsel, ought to have prompted the Trial Court to exercise greater caution in evaluating the evidence.

- 10.** Mr. Chatterjee, learned Advocate also contended that the learned Trial Court erred in placing undue reliance on the statement of PW1 recorded under Section 164 of the Code of Criminal Procedure. It was submitted that a Section 164 statement is meant to be only a corroborative piece of evidence and cannot, by itself, form the sole basis for conviction. In the present case, PW1 herself admitted that prior to making her statement under Section 164, she had been tutored and influenced by PW2, PW8, PW3, and PW6. This clearly shows that her statement before the Magistrate was not entirely the product of her independent recollection but was shaped by the dictation and influence of others.
- 11.** It was further highlighted that PW4 and PW5, who were allegedly present with the appellant and PW1 at the shop, did not support the prosecution's version. Their refusal to corroborate the material aspects of the victim's testimony significantly undermines the prosecution story. In such circumstances, reliance on the uncorroborated testimony of the

victim, particularly when it is admitted that her deposition was influenced and dictated by others, is legally unsafe. Mr. Chatterjee argued that the learned Trial Court's reliance on inconsistent, coached, and partly contradicted statements, coupled with the non-supportive evidence of independent witnesses, renders the impugned judgment perverse. The conviction cannot be sustained, as the foundation of the prosecution case rests on evidence which is inherently doubtful and materially unreliable.

- 12.** Mr. Chatterjee, learned counsel, has further contended that the First Information Report in the present case suffers from serious infirmities. He points out that the F.I.R. was lodged on 25.01.2015 at 19:15 hours and came to be registered under Sections 447/506/34 of the Indian Penal Code together with Section 8 of the POCSO Act. However, despite the mandatory requirement under the Code of Criminal Procedure, as well as the binding directions of the Hon'ble Supreme Court, the case was not transmitted forthwith to the Court of the learned Special Judge. Instead, the records disclose that the matter was forwarded only on 27.01.2015, thereby resulting in an undue and unexplained delay of two days. According to learned counsel, such delay, which stands in violation of statutory safeguards, materially affects the credibility of the prosecution's version. It is further urged that the prosecution has not

furnished any satisfactory explanation as to why the F.I.R. itself was delayed in its lodging. This unexplained lapse, in the submission of the learned counsel, renders the very genesis of the prosecution case doubtful.

- 13.** Apart from the procedural lapses, Mr. Chatterjee has also highlighted the contradictions emerging from the testimonies of the prosecution witnesses. Attention has been drawn particularly to PW2 and PW3. PW2, in his deposition, asserted that on 25.01.2015, after the accused persons allegedly attacked their house, he called PW3, who intervened in an attempt to settle the matter, and only thereafter the case was instituted. PW3, however, gave a different version. According to PW3, he had advised PW2 (the de facto complainant) to convey the matter to the mother of the appellant, whereupon PW6, wife of PW2, went to the house of the appellant. It is only thereafter that members of the appellant's family allegedly came to the house of the complainant, assaulted them, and subsequently the F.I.R. was lodged. These inconsistencies between PW2 and PW3, when read in conjunction with the unexplained delay in forwarding and lodging of the F.I.R., cast a serious shadow over the reliability of the prosecution's case and weaken its foundation.
- 14.** It is further said by the learned Advocate that PW1 (victim) has stated in his evidence that she along with this appellant PW5 and PW4 left the

house of PW5 for the purpose of purchasing candle but on dock at the time of giving depositions PW4 and PW5 did not support the version of PW1 that all of them went to purchase candle. It is said that the independent witnesses i.e. PW4, PW5 PW7 and PW9 did not say nothing material for which the story of the prosecution can be believed. It is brought to the notice of this Court by the learned Advocate that deposition of PW6 (grandfather of the victim) is totally contradictory with the deposition of PW2 (defacto complainant) and PW3 (relations of the victim) as well as with the statements as made in the written complaint. It is said that PW12 (doctor) deposed that PW1 (victim girl) stated to him that the appellant introduced his finger in her vagina, but the Investigating Officer in his cross-examination deposed that in the statements of these witnesses there is no note that finger is introduced in the vagina of the victim girl. As per submission of the learned Advocates those contradictions are not minor contradictions for which it can be overlooked. Moreover, these contradictions are major contradictions which definitely affect the root of the prosecutions story. It is said that in a case started under the POCSO Act there is a statutory presumption under Section 29 of the said Act. However, the said statutory presumption cannot be read to mean that the prosecution version is to be treated as gospel truth in every case. In this case, there is parent

absurdities and inherent infirmities in the prosecution version and it is established that there is existence of entrenched enmity between the families of the accused and victim which gives rise to an irresistible inference of falsehood in the prosecution case. In support of his contention, learned Advocate cited a decision rendered by this Court in the case of **Sahid Hossain Biswas -vs- The State of West Bengal**¹.

15. The learned Advocate for the appellant has further urged that the testimony of the victim girl itself is riddled with inconsistencies which strike at the root of the prosecution case. It is pointed out that initially the victim narrated the alleged incident to her parents, and on the basis of such narration, the F.I.R. came to be lodged. Subsequently, during the course of investigation, her statement was recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure. Thereafter, while she was medically examined, she again made a statement before the attending doctor, and subsequently her statement was once more recorded by the learned Magistrate under Section 164 Cr.P.C.
16. According to the submission of the learned Advocate, a comparative reading of these successive statements reveals glaring contradictions and material departures. These contradictions are not of a trivial nature; rather, they go to the very foundation of the prosecution story. The

¹ 2017 SCC Online Cal 5023

variations are such that they alter the substance and character of the allegations, thereby rendering the entire prosecution case doubtful and unreliable.

- 17.** In buttressing this contention, reliance has been placed on authoritative pronouncements of the Hon'ble Supreme Court. Reference has been made to the judgment in ***Digamber Vaishnav & Anr. v. State of Chhattisgarh***², wherein the Apex Court held that material contradictions and embellishments in the testimony of the prosecutrix weaken the prosecution case. Similarly, reliance is also placed upon ***Nirmal Premkumar & Anr. v. State Rep. by Inspector of Police***³, where the Court observed that where inconsistencies in the victim's versions fundamentally alter the core of the allegations, the benefit of doubt must go to the accused.
- 18.** Lastly, it has been contended by the learned Advocate appearing for the appellant that the manner in which the examination of the appellant was conducted under Section 313 of the Code of Criminal Procedure suffers from serious irregularity. Instead of putting distinct and specific questions on each incriminating circumstance appearing in the evidence, the learned Trial Court posed a long, composite and jumbled question to

² (2019) 4 SCC 522

³ (2014) SCC Online SC 260

the appellant. Such a method of examination, it is urged, amounts to denial of the valuable statutory right conferred upon the accused under Section 313 Cr.P.C., which mandates that the accused must be given a fair and clear opportunity to personally explain each piece of evidence against him. According to learned counsel, the violation of this mandatory safeguard has caused prejudice to the appellant in presenting his defence, thereby vitiating the trial itself. Consequently, the impugned judgment of conviction and the order of sentence passed by the learned Trial Court cannot be sustained in the eye of law and deserve to be set aside in their entirety.

- 19.** Mr. Partha Pratim Das, learned Advocate for the State, submitted that there is no substantial material on record which warrants interference with the findings of the learned Trial Court in the impugned judgment and order of conviction. He pointed out that at the relevant time the victim was a minor, and from her deposition it clearly emerges that she was taken to Lambu Orchard by the accused with the intent of committing sexual assault. It was further stated that the appellant opened the pant of the seven-year-old victim, kissed her, committed acts of sexual abuse by sucking her private part, and directed the child to touch his penis. The learned Advocate contended that although there may be minor discrepancies in the evidence, such inconsistencies ought

to be overlooked considering the grave nature of the offence. He emphasized that the victim, being only seven years of age at the time of the incident, gave her statement in simple and unequivocal terms, which inspired the confidence of the Trial Court. Her testimony is thus legally acceptable, especially when it stands corroborated by other witnesses as well as her statement recorded under Section 164 Cr.P.C. Therefore, the learned Advocate argued that the victim's evidence cannot be disbelieved from any perspective.

- 20.** It was further submitted by Mr. Das, the learned Advocate appearing for the State that the collective evidence on record, including the oral testimony of the victim, the medical evidence, and the corroborative material provided by other witnesses, clearly demonstrates that the appellant-accused had the deliberate intention to commit sexual assault upon the victim. According to the State, the circumstances of the case indicate that the accused, with a clear criminal intent (*mens rea*), took the victim girl to Lambu Bagan and engaged in acts of sexual assault, including sucking the vagina of the victim and directing her to touch his penis. It is further contended that the accused also removed the victim's pant and touched her vagina, thereby confirming his deliberate intent to commit the offence.

- 21.** The learned Advocate for the State argued that these acts, when viewed in totality, establish both the physical *actus reus* and the requisite *mens rea* of the appellant, satisfying the essential elements of the offence under the relevant provisions of law.
- 22.** On the basis of the above submissions, the learned Advocate urged that the appeal challenging the impugned judgment and order of conviction passed by the learned Trial Court lacks merit and is liable to be dismissed. The State submitted that the evidence presented before the Trial Court, including the victim's testimony and medical corroboration, sufficiently substantiates the prosecution case and warrants upholding the conviction and sentence imposed on the appellant.
- 23.** After a thorough consideration of the arguments advanced by the learned counsel on either side, and upon a detailed scrutiny of the evidence and materials on record, I proceed to record my findings
- 24.** In the context of an offence alleged under the provisions of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act"), it is well-recognized that the statutory presumption enshrined under Section 29 of the Act operates in favour of the prosecution. The legislative purpose underlying this presumption is to ensure that the child-victim, who is inherently vulnerable, is not subjected to undue hardship in proving the commission of the offence.

By providing the prosecution a prima facie advantage in establishing the culpability of the accused, the statute seeks to safeguard the interests of the child and to facilitate the effective enforcement of justice. However, it is imperative to note that the presumption under Section 29 is not absolute. It cannot be interpreted to mean that the prosecution's version is to be accepted uncritically or as incontrovertible truth. The well-settled principle in criminal jurisprudence is that statutory presumptions are rebuttable in nature. The accused is entitled to challenge the presumption either by adducing positive evidence to contradict the prosecution story or by relying upon inherent improbabilities, contradictions, and inconsistencies within the prosecution case itself. The presumption merely shifts the initial evidentiary burden onto the accused but does not obliterate the Court's duty to conduct a careful and reasoned evaluation of the evidence.

- 25.** The statutory scheme under Section 29 ensures that while the prosecution receives an evidentiary advantage, the Court remains bound to exercise judicial caution. Conviction cannot be sustained solely on the basis of the presumption; it must be founded upon credible, cogent, and trustworthy evidence that demonstrates the guilt of the accused beyond reasonable doubt. The presumption, therefore, functions as a procedural aid to the prosecution, but the ultimate determination of guilt requires

rigorous scrutiny of the totality of evidence on record. In effect, Section 29 strikes a balance between the protective intent of the POCSO Act and the fundamental principle of criminal jurisprudence that the accused cannot be convicted without credible proof of culpability. While the presumption assists the prosecution in proving the commission of an offence against a child, it cannot substitute for the obligation of the Court to ensure that the conviction rests upon evidence that is consistent, reliable, and capable of withstanding judicial scrutiny.

- 26.** In the case of ***Sahid Hossain Biswas*** (*supra*), the coordinate Bench of this Court has observed and clarified important principles regarding the operation of statutory presumptions under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). It was held, *inter alia*, that a careful and conjoint reading of the relevant statutory provisions, in the context of the definitions contained in the Act, makes it clear that in a prosecution under the POCSO Act, the accused is required to prove the “contrary.” In other words, once the foundational facts constituting the offence are established by the prosecution, the accused bears the burden of demonstrating that he did not commit the offence and that he is innocent. The Court emphasized that in order to invoke the presumption in favour of the prosecution under Section 29, the foundational facts of the case must first be established through admissible evidence. This

entails that the prosecution must first lead evidence to show the occurrence of the act constituting the offence, the identity of the accused, and the circumstances under which it took place. Only upon the establishment of these essential facts does the statutory presumption arise and shift the evidentiary onus onto the accused to prove the contrary.

- 27.** The rationale behind this approach is clear: a presumption of law is not self-operating and does not arise in a vacuum. The Court, in that report, underscored that the statutory presumption does not relieve the prosecution of its primary duty to establish the foundational facts through evidence. Until these facts are made out, the presumption cannot operate to place a burden on the accused. Once the foundational facts are established, the presumption serves to assist the prosecution by shifting the evidentiary burden to the accused to demonstrate his innocence. The observations in *Sahid Hossain Biswas* reinforce the principle that the presumption under Section 29 of the POCSO Act is procedural and conditional. It arises only after the prosecution has led evidence establishing the foundational facts of the offence. The accused may then attempt to rebut the presumption by adducing evidence or pointing out inherent improbabilities, contradictions, or deficiencies in the prosecution case. Until such foundational facts are proved, the

presumption cannot be invoked to draw adverse inference against the accused.

- 28.** In the course of her cross-examination, PW1, Priyanka Biswas, disclosed material facts which cast a serious light on the background and context of the present case. PW1 specifically stated that there exists a long-standing land dispute between the family of the appellant and the family of the defacto complainant, and that several litigations are currently pending between the two families. She further revealed that PW3, Golok Chandra Biswas, is her 'tawai' and also a Panchayat Member. It was admitted that Golok Biswas had been elected to the panchayat, defeating the acquitted accused of this case, Amaresh, in the election. These circumstances, taken cumulatively, reveal a clear pattern of deep-seated enmity and infringed hostility between the families of the appellant and the victim. The existence of such animosity is not a peripheral or irrelevant fact; it has direct bearing on the veracity and credibility of the prosecution story. In criminal jurisprudence, the Court is obliged to take judicial notice of the possibility that cases may be foisted against individuals where enmity, rivalry, or prior disputes exist. Enmity, though often a double-edged sword, can provide the motive either for the commission of an offence or for the fabrication of false allegations against an innocent person.

- 29.** In the present case, the record clearly indicates strained relations and ongoing litigation between the families of the accused and the victim. In such circumstances, the Court is required to exercise heightened caution before accepting the prosecution's narrative at face value, particularly when the case rests heavily on the testimony of the victim. The statutory presumption under Section 29 of the Protection of Children from Sexual Offences (POCSO) Act, 2012, while intended to confer a legal advantage to the prosecution, cannot override the fundamental principle that the guilt of an accused must be proved beyond reasonable doubt.
- 30.** It is a settled principle of criminal law that a statutory presumption cannot be permitted to substitute for substantive evidence. Nor can it be invoked as a shield to protect a prosecution case that is weak, inconsistent, or inherently doubtful. To treat the prosecution case as sacrosanct merely because a presumption exists would run contrary to the essence of criminal jurisprudence, which mandates fairness to the accused as a constitutional guarantee.
- 31.** In the instant case, PW1 herself disclosed facts pointing to enmity between the two families. This disclosure significantly strengthens the possibility that the present case may have been foisted, wholly or in part, as a result of such rivalry. Consequently, the Court must weigh the statutory presumption against the backdrop of these circumstances and

cannot rely on it to ignore the reasonable possibility of false implication. The presence of prior disputes and family animosity is a vital circumstance that materially affects the assessment of credibility and the overall reliability of the prosecution's version. Therefore, while the statutory presumption provides the prosecution a procedural advantage, it cannot and should not override the need for judicial caution where the evidence is potentially tainted by enmity and motive for false implication. In such circumstances, the possibility of fabrication cannot be brushed aside, and reliance on the victim's uncorroborated testimony, without careful scrutiny, would be unsafe.

- 32.** In the present case, the testimony of the victim girl itself suffers from inherent infirmities which seriously dent the credibility of her version. I have already said that PW1 (victim girl) during her cross-examination has fairly admitted that there exist long-standing disputes between her family and the accused persons. This witness further stated that one of her relatives had advised her mother to lodge the instant FIR. This fact itself creates a cloud of suspicion about the genesis of the prosecution case, since the initiation of the criminal proceedings appears to be motivated by extraneous considerations rather than a spontaneous outcry of a genuine victim.

- 33.** More importantly, the victim candidly conceded in cross-examination that prior to making her statement before the Court, she was tutored by her mother and narrated the entire sequence of events before the Court. Such an admission goes to the very root of the matter. It suggests that the statement of the victim was not the product of her independent memory or free will, but was instead a reproduction of what was dictated to her by her family members. The evidence of the prosecutrix, if found to be natural, consistent and trustworthy, can form the sole basis of conviction. However, when her testimony is found to be the result of tutoring, embellishment or motivated exaggeration, the same cannot inspire confidence of the Court. In the evidence, the victim herself disclosed that she was guided, instructed and prompted by others in making allegations and it shakes the foundation of the prosecution story and renders her evidence unreliable.
- 34.** In view of these material admissions, the testimony of the victim girl loses its evidentiary sanctity. It cannot be treated as a truthful or voluntary account of the incident. Rather, it creates a strong probability that the allegations were conceived and articulated at the instance of her relatives, particularly her mother (PW8), with whom the accused persons had pre-existing disputes. Therefore, the evidence of the victim does not

inspire the confidence of the Court and it would be highly unsafe to base any conviction solely upon such tutored and motivated testimony.

- 35.** PW2, Manik Biswas, who is both the grandfather of the victim and the complainant named in the FIR, occupies a pivotal position in the assessment of the credibility and reliability of the prosecution case. His testimony assumes considerable significance because he is the first informant of the alleged incident and, as a close relative of the victim, provides the primary account of the circumstances leading to the lodging of the FIR. According to PW2, the alleged incident occurred on 24.01.2015 at approximately 7 P.M. He further deposed that he was not immediately informed of the occurrence. It was only on the following day, 25.01.2015, that his daughter-in-law, PW8 (the mother of the victim), brought the matter to his attention. Upon receiving this information, PW2 stated that he approached the father of the appellant and requested him to counsel and admonish his son with a view to resolving the matter amicably. However, the timeline provided by PW2 reveals certain inconsistencies and raises questions regarding the promptness and spontaneity of the complaint. As per his own version, later on 25.01.2015, at around 12 noon, all the accused persons allegedly came to his residence, armed with lathis, and attempted to assault the family. Only after this purported incident of alleged retaliation did PW2 proceed

to lodge the present complaint with the police. In the context of evaluating the prosecution's case, PW2's testimony is thus central. It provides the initial narrative for the prosecution, but the material discrepancies in timing and the sequence of events necessitate careful scrutiny. Any delay or gap in reporting, coupled with the circumstances of the alleged retaliation, has the potential to affect the weight and reliability of the prosecution story, making it essential for the Court to examine PW2's deposition critically in relation to other evidence on record.

- 36.** This sequence of events as narrated by PW2 is not free from serious doubts. In the normal course of human conduct, if such a grave allegation of sexual assault upon a child had indeed been disclosed to PW2 on 25.01.2015, the immediate and natural reaction would have been to approach the police or other lawful authorities without any delay. Instead, PW2 himself admits that rather than initiating criminal action, he chose to merely inform the father of the appellant and sought an admonition of the accused and such conduct is highly unnatural and casts a shadow upon the spontaneity and genuineness of the prosecution's version. It is said by PW2 that on the next day of the incident this appellant along with the other accused persons attacked their house and thereafter he called PW3 who tried to settle the dispute

and thereafter, the case was filed. It creates a strong impression that lodging of the F.I.R. was not prompted by the alleged sexual offence itself but rather as a retaliatory measure arising out of attack by the accused person. In the above backdrop the statement of PW2 instead of strengthening the prosecution case, raises significant inconsistencies which undermine the credibility of the written complaint. In this case, the incident took place on 24.01.2015 at about 7 P.M. in the evening and the case was registered on 25.01.2015 at 19:15 hrs. under Section 447/506/34 Indian Penal Code and under Section 8 of the POCSO Act. The FIR was forwarded before the learned Special Judge on 27.01.2015 and there is no explanation offered by the prosecution to explain such delay.

- 37.** In *Bijoy Singh & Anr. v. State of Bihar*,⁴ the Hon'ble Supreme Court categorically held that a delay in sending a copy of the First Information Report (FIR) to the jurisdictional Magistrate under Section 157 Cr.P.C., by itself, may not automatically render the entire prosecution case doubtful. However, such delay is certainly not to be ignored; rather, it casts a duty upon the Court to be on its guard and to carefully examine whether the version ultimately narrated in Court was indeed the same version that was initially reported in the FIR, or whether it was a version

⁴ (2002) 9 SCC 147

evolved subsequently after deliberation, consultation, or even manipulation so as to implicate persons who may not have been concerned with the commission of the alleged crime. The statutory mandate under Section 157 Cr.P.C. is clear and unequivocal: the earliest report of a cognizable offence must be immediately forwarded to the Magistrate empowered to take cognizance. The object behind this requirement is to provide an assurance that the FIR was promptly recorded and that it represents the unembellished, spontaneous account of the complainant. Any delay in compliance with this statutory obligation, unless properly and satisfactorily explained by the prosecution, raises a reasonable suspicion that the FIR may not have been lodged at the time claimed, and that it could have been manipulated or tailored to suit a particular version.

- 38.** In the present case, the delay in sending the copy of the FIR assumes particular importance when viewed alongside the conduct attributed to PW2, the defacto complainant. The testimony of PW2 discloses circumstances which appear highly improbable and inconsistent with the normal and natural conduct expected of a victim's guardian in such a situation. Instead of approaching law enforcement promptly and decisively, PW2 engaged in conduct which suggests hesitation, consultation, and attempts at settlement, thereby delaying the setting of

the criminal law into motion. When these two circumstances are considered cumulatively i.e. the unexplained delay in forwarding the FIR to the Magistrate and the improbable conduct of PW2, they constitute a vital link which undermines the credibility of the prosecution version. The delay shakes confidence in the spontaneity and authenticity of the FIR, while the conduct of PW2 introduces a strong possibility of deliberation and afterthought in the prosecution story.

39. Thus, applying the principle laid down in ***Bijoy Singh (supra)***, the Court is bound to view the prosecution case with caution. The unexplained delay, coupled with the unnatural behaviour of the defacto complainant, is a material infirmity which creates serious doubt about the truthfulness of the prosecution version and entitles the accused to the benefit of such doubt.
40. In his deposition, PW2 has made certain admissions which strike at the root of the prosecution case and cast a serious cloud of doubt over its veracity. According to the prosecution, the alleged incident is said to have occurred on the night of 24.01.2015. However, PW2 himself candidly admitted in his evidence that at the time of the alleged occurrence, he was sleeping in his residence and had no direct knowledge of the events. Thus, his testimony does not constitute an eye-witness account but is at best a narration of what was subsequently conveyed to him by PW8, the

mother of the victim. PW2 has deposed that immediately after the alleged occurrence, PW8 rushed to his house and disclosed the incident to him. This makes PW2 only a hearsay witness, as his knowledge is based solely on the disclosure allegedly made by PW8, and not on any fact witnessed personally by him. The evidentiary value of such testimony is inherently weak and cannot form the foundation of a conviction in the absence of corroboration by independent and trustworthy evidence. What is even more significant is the subsequent conduct as narrated by PW2 himself. He admitted in categorical terms that, following the disclosure by PW8, his own wife went to the house of the appellant and informed the appellant's mother about the alleged incident. Further, PW2 has acknowledged that he then called one Golak Biswas, a local member, and that the said member tried to mediate and settle the dispute between the parties. This sequence of events, emerging from the mouth of PW2, indicates that the matter was initially sought to be resolved privately through local intervention rather than being immediately reported to lawful authority. Such conduct does not appear to be the natural reaction of persons in the face of a serious offence, but instead reflects an attempt to settle scores within the village through compromise or mediation.

- 41.** The very involvement of the panchayat member (PW3) at this preliminary stage of the matter raises a reasonable probability that the initiation of criminal prosecution was not the spontaneous and natural outcome of the alleged incident but rather a product of strained relations or existing disputes between the parties. This inference gains further strength when the deposition of PW2 is read alongside the testimony of PW3. Both witnesses, though purporting to speak about the same sequence of events, have contradicted each other on material particulars. Such contradictions not only dilute their evidentiary worth but also erode the credibility of the prosecution story. In criminal law, where the entire case hinges upon the credibility of witnesses, the presence of material contradictions and the admission of attempts to “settle the matter” through local intervention is a factor of immense significance. The deposition of PW2, far from corroborating the case of the prosecution, introduces a serious element of doubt about the genuineness of the allegation and the manner in which the case was projected before the Court. When such infirmities exist in the prosecution evidence, the benefit of doubt necessarily accrues to the accused.
- 42.** In the present case, the evidence of PW2 and PW3 assumes significance because both these witnesses claim to have been directly connected with the immediate events surrounding the alleged occurrence and the

subsequent lodging of the FIR. However, on careful scrutiny of their depositions, it becomes evident that their versions are not only inconsistent but also mutually destructive, thereby striking at the root of the prosecution case. PW2 has stated in his examination that on 25.01.2015, after the accused persons had allegedly attacked his house, he called PW3 with the object of resolving the matter. According to PW2, it was only after this alleged assault that PW3 attempted to mediate between the parties and, when such attempt failed, the case came to be lodged. In other words, the sequence of events narrated by PW2 is that: first, there was an attack by the accused on his house, thereafter; PW3 was called to intervene and mediate, only then, as a result of the failure of such mediation, the case was filed. On the other hand, PW3 narrated an altogether different and irreconcilable version. PW3 deposed that he was the one who advised PW2 to inform the mother of the appellant about the alleged occurrence. Acting on such advice, the wife of PW2 (PW6) went to the house of the appellant and disclosed the matter to the appellant's mother. PW3 further stated that only thereafter, the family members of the appellant came to the house of PW2 and allegedly committed assault, and it was only after this incident that the FIR was lodged. Thus, according to PW3, the sequence of events was: he advised PW2 to inform the appellant's mother of the alleged incident, pursuant to

such advice, PW6 went and conveyed the matter, thereafter, the family members of the appellant came and allegedly assaulted PW2's family and finally, the FIR was lodged.

- 43.** It is, therefore, clear that the versions of PW2 and PW3 cannot stand together. While PW2 insists that the alleged assault preceded the involvement of PW3, the testimony of PW3 suggests exactly the opposite, that the advice to inform the appellant's mother and the visit by PW6 preceded the alleged assault. These two narratives are not merely inconsistent in minor details but are diametrically opposed on the crucial point of what exactly triggered the subsequent events and how the FIR came to be lodged. Such contradictions go far beyond the scope of trivial discrepancies that can be ignored on account of lapse of time or errors of memory. Instead, they cut into the very foundation of the prosecution story, because they raise serious doubt about the genesis of the incident and the actual circumstances in which the FIR was filed. When two key prosecution witnesses, who were closely associated with the preliminary developments, give contradictory versions about the sequence of events, the Court is left without any reliable assurance as to which version, if any, represents the truth.
- 44.** These mutually destructive statements also cast a shadow over the credibility of both witnesses and give rise to a reasonable inference that

the prosecution case has not been presented with clarity, consistency, or candour. On the contrary, the shifting narratives strongly suggest embellishments, afterthoughts, or even a manufactured version to suit a particular line of prosecution. In such a situation, where the evidence of two key witnesses fundamentally contradicts each other on the genesis and lodging of the FIR, the prosecution version cannot be accepted as trustworthy. The benefit of such serious doubt must necessarily go to the accused.

- 45.** In the present case, the prosecution has examined PW4 and PW5, who, according to the case made out by the prosecution itself, were the most material and independent witnesses. Their importance lies in the fact that, as per the version of the victim (PW1), both these witnesses were allegedly present with her at the crucial juncture immediately before the occurrence of the alleged incident. Thus, the testimony of PW4 and PW5 was vital for lending assurance and corroboration to the version of the victim and to establish the chain of circumstances leading to the alleged commission of offence by the appellant. The deposition of the victim (PW1) specifically records that on the relevant day, the appellant, after calling PW4 and PW5, was proceeding to purchase a candle and thereafter requested those two witnesses to call the victim. Acting on such request, the victim went along with the appellant, PW4 and PW5, in

order to purchase the candle. The victim further stated that the candle was not available at the shop and that instead, the appellant purchased 'gujia'. According to her, the appellant then sent back PW4 and PW5 to their house with the assurance that he wanted to talk privately with the victim, and thereafter, the appellant took her away and committed the alleged act. From this statement, the role of PW4 and PW5 becomes pivotal, because their presence at that very stage is not only narrated by the victim but is also the connecting link between the victim and the appellant before the alleged incident. Therefore, their corroboration was indispensable to fortify the prosecution version and to inspire confidence in the testimony of the victim.

- 46.** However, when PW4 and PW5 entered the witness box, both of them categorically denied any knowledge about the incident or the facts narrated by the victim. Their depositions make it clear that they did not support the prosecution case at all. Such a stand by PW4 and PW5, who were otherwise independent witnesses without any demonstrated enmity or bias either against the victim or the prosecution, creates a serious dent in the prosecution case. If the version of the victim were to be accepted in its entirety, there appears to be no reasonable or plausible explanation why PW4 and PW5 would refuse to depose about such a

natural and simple fact, namely their presence with the victim and the appellant on the relevant day.

- 47.** The categorical denial by PW4 and PW5 not only fails to corroborate the statement of the victim but in effect undermines it, as their silence and denial strike at the very root of the prosecution story. In criminal jurisprudence, when independent witnesses who are claimed to be present at a crucial stage do not support the prosecution version, the evidentiary value of the testimony of the victim, especially when it stands alone and is not otherwise corroborated, becomes doubtful. The absence of corroboration on such a material point renders the statement of the victim unsafe for placing implicit reliance. Thus, the failure of PW4 and PW5 to corroborate the version of the victim has the effect of shaking the very foundation of the prosecution case. Their denial creates a grave doubt about the genesis of the prosecution story itself and makes the testimony of the victim unworthy of full reliance, thereby entitling the accused to the benefit of doubt.
- 48.** PW8, Sona Biswas is the mother of the victim and a careful scrutiny of evidence of this witness reveals the material inconsistency not only with PW2 and PW6 but also with the facts narrated in the written complaint. The victim herself stated in her deposition that on the following morning

i.e. 25.01.2015 she disclosed the incident to her mother (PW8) and her grandparents (PW2 and PW6).

- 49.** In examining the credibility of the prosecution case, the statements of PW6 (the grandmother of the victim) and PW8 (the mother of the victim) assume crucial importance, because both of them claim to have received the earliest disclosure from the victim after the alleged incident. However, a close scrutiny of their depositions reveals a clear divergence which materially affects the consistency of the prosecution story. PW6, the grandmother of the victim, stated in her deposition that the victim narrated the incident to her. From her evidence, it appears that she portrays herself as the direct recipient of the disclosure, without suggesting that such disclosure had first been made to the mother (PW8). On the other hand, the victim herself in her testimony stated that she had disclosed the matter both to her mother (PW8) and her grandparents (PW2 and PW6). This suggests a sequence where the victim narrated the occurrence in the presence of both her mother and grandparents. However, PW8 presents a different version. According to PW8, the victim first narrated the incident to her, and it was only thereafter that she informed the matter to PW6. Thus, the testimony of PW8 is inconsistent both with the version of the victim and with the statement of PW6. While PW6 asserts that the victim directly narrated the incident to her, PW8

maintains that the information reached PW6 only after she (PW8) had been told by the victim. These inconsistencies are not minor or peripheral in nature; they strike at the sequence of the earliest disclosure of the alleged incident, which is always a matter of substantial evidentiary value. The principle of *res gestae* attaches importance to the spontaneity and immediacy of such disclosures, as they are considered less likely to be concocted. Therefore, any confusion or contradiction as to whom the victim first confided in, and in what manner, creates serious doubt about the reliability of the prosecution case.

50. When the victim, PW6, and PW8 narrate different versions about the very first disclosure of the incident, it becomes difficult for the Court to ascertain the true sequence of events. These contradictions cannot be brushed aside as minor lapses of memory, because they relate to the core aspect of the prosecution story, namely, who was the first recipient of the victim's disclosure and how the matter surfaced in the family. The divergence suggests either embellishment or a lack of truthful consistency in the evidence, thereby undermining the prosecution's version of events. In such circumstances, where the testimonies of the mother and grandmother of the victim are at variance not only with each other but also with the statement of the victim herself, the credibility of the prosecution evidence as a whole suffers. The inconsistencies cast a

serious shadow on the prosecution story and create a reasonable doubt which must necessarily enure to the benefit of the accused.

- 51.** The evidence of PW2, Manik Biswas, the grandfather of the victim, stands in notable contradiction to the testimony of PW8, the mother of the victim, thereby raising serious questions regarding the reliability and credibility of the prosecution case. PW2 deposed that at the time of the alleged incident, he was asleep at his residence and that the victim girl, immediately thereafter, rushed to his house and disclosed the incident directly to him. According to his testimony, he was the first person informed of the occurrence, and all subsequent actions, including approaches to the family of the appellant and the lodging of the FIR, flowed from this initial disclosure.
- 52.** In stark contrast, PW8 stated in her deposition that the victim, upon regaining composure, narrated the incident to her first. She contended that it was only after she was informed by the victim that the matter came to the attention of PW2, her father-in-law. This sequence of events directly contradicts the narrative presented by PW2, thereby creating mutually inconsistent versions regarding the timing and manner of the disclosure of the alleged incident. Such inconsistency is far from being a trivial discrepancy. The Court must treat these mutually contradictory accounts with considerable caution, particularly because PW2 and PW8

are both close relatives of the victim and their testimonies form the backbone of the prosecution case. When two primary witnesses provide irreconcilable accounts on a fundamental aspect, namely, who was first informed of the incident, it casts a shadow of doubt on the accuracy and truthfulness of their statements.

- 53.** In the present case, the irreconcilable versions of PW2 and PW8 on a foundational fact, the initial disclosure by the victim, undermine the very foundation of the prosecution narrative. Such contradictions weaken the evidentiary value of their testimonies, and in the absence of independent corroboration, the Court cannot safely rely on either account as establishing the truth of the alleged occurrence. The inconsistencies, therefore, create a reasonable doubt regarding the prosecution story, which must be resolved in favour of the accused.
- 54.** In the present case, the testimony of PW12, Dr. Sudip Kumar Das, assumes significance. PW12 deposed that the victim girl disclosed to him that the appellant had introduced his finger into her vagina. On the face of it, such a statement, if accepted, would lend strong support to the prosecution case, as it directly touches upon the gravamen of the charge. However, when this testimony is examined in juxtaposition with the evidence of the Investigating Officer (PW13), a glaring contradiction emerges which strikes at the very credibility of the prosecution story.

PW13, the Investigating Officer, during his cross-examination, categorically admitted that in the statements of the witnesses recorded during investigation, there is no mention whatsoever that the appellant had inserted his finger into the vagina of the victim. This admission is highly material. It reveals that the specific allegation of insertion of finger, which the victim allegedly narrated to PW12, does not find place either in the FIR, in the statements recorded under Section 161 Cr.P.C., or in the statement of the victim under Section 164 Cr.P.C. before the Magistrate. The introduction of such a vital allegation at a later stage before the medical officer, without any corroboration from the contemporaneous materials collected during investigation, raises a serious doubt about the truthfulness and consistency of the prosecution version. This inconsistency cannot be treated as a mere minor variance; rather, it goes to the root of the case, because it introduces a new element which was absent in the foundational documents of the prosecution.

- 55.** The disclosure made before PW12 thus stands completely uncorroborated. None of the witnesses examined by PW13 supported this aspect, nor does the FIR make any reference to it. The belated appearance of this allegation strongly suggests embellishment or exaggeration, likely introduced to strengthen the prosecution case. The

principle is well settled that when contradictions arise between medical and ocular evidence, particularly on a point central to the charge, the reliability of the prosecution case becomes doubtful. It is unsafe to base a conviction on such shaky ground.

- 56.** In the present case, the conviction has been based almost entirely on the sole testimony of the victim. It is true that in law, a conviction can rest on the sole evidence of the victim, if such testimony is wholly reliable and inspires confidence. The Hon'ble Supreme Court in **Digamber Vaishnav (supra)** has held that the evidence of a child witness can form the basis of conviction if it is trustworthy, and there is no absolute rule that corroboration is required in every case. However, the Court has also emphasized that, as a matter of prudence, corroboration is desirable, particularly when the evidence suffers from inconsistencies or does not stand firmly on its own.
- 57.** Here, the contradiction between the evidence of PW12 and PW13 on a material aspect, coupled with the absence of any mention of insertion of finger in the FIR, in the victim's earlier statements, or in other witnesses' depositions, makes the prosecution case vulnerable. The inconsistency raises a real probability that the allegation of insertion was subsequently introduced as an afterthought. Thus, when the medical evidence does not harmonize with the ocular and documentary evidence, and when the

testimony of the victim is not corroborated on such a crucial point, it becomes unsafe to rest a conviction solely on the uncorroborated version of the victim. Prudence demands that in such circumstances, the benefit of doubt must necessarily go to the accused.

- 58.** In her deposition, PW1, the victim, made a categorical statement that during the course of the alleged incident, while she was struggling to free herself from the clutches of the appellant; she bit the appellant on his hand. This assertion assumes considerable evidentiary significance because it introduces a physical circumstance that, if true, could be objectively verified through independent medical examination. The presence or absence of an injury on the person of the appellant is not a matter of speculation; it is a fact capable of scientific verification and would have served either to corroborate or to discredit the victim's version. It is an admitted position that the medical examination of the appellant was in fact conducted by the investigating agency, and the report thereof was available during investigation. Yet, despite being such a vital document, the said medical examination report was never exhibited in Court nor brought on record in accordance with law. This omission is not a trivial lapse but a serious lacuna which strikes at the core of the prosecution's duty to present the whole truth before the Court.

- 59.** If the statement of PW1 were truthful, the medical examination report would naturally be expected to disclose the existence of a bite mark or at least some form of injury on the appellant's hand. The failure to produce this report, despite its availability, leads to a legitimate inference that the report, if exhibited, might not have supported the prosecution case. In law, the deliberate withholding of material evidence gives rise to an adverse inference against the prosecution under Section 114(g) of the Indian Evidence Act, 1872, that evidence withheld would, if produced, have gone against the prosecution's version. This omission thus casts a serious shadow over the veracity of the victim's testimony. When the prosecution itself refrains from producing such an objective and decisive piece of evidence, it materially undermines the reliability of the version sought to be projected. In a case hinging largely on the testimony of the victim, corroboration by independent and scientific evidence, wherever available, becomes essential to inspire confidence.
- 60.** The non-production of the appellant's medical examination report deprives the Court of the opportunity to objectively test the truth of the victim's statement. This failure is not a mere irregularity but one that shakes the very foundation of the prosecution case. In the absence of such corroboration, and in the face of the adverse inference arising from the withholding of the report, it becomes unsafe to base a conviction

solely upon the uncorroborated and doubtful testimony of PW1. Therefore, the deliberate non-production of the appellant's medical report, which could have conclusively confirmed or disproved the victim's version, is fatal to the prosecution. It not only renders the prosecution case suspect but also entitles the appellant to the benefit of doubt.

- 61.** PW9, Gour Hari Rajbangshi, was examined by the prosecution as an independent witness in the present case. Ordinarily, the testimony of such an independent witness carries significant evidentiary value, as it is presumed to be free from bias or partisan interest. However, in his deposition, PW9 categorically stated that he had no knowledge about the case. In other words, he did not support the prosecution story in any manner. What is particularly striking is that despite PW9 completely disowning the prosecution narrative, he was not declared hostile by the prosecution. When a prosecution witness resiles from his earlier statement or fails to support the prosecution, the prosecution has the liberty to cross-examine him after declaring him hostile under Section 154 of the Indian Evidence Act. This enables the prosecution to test the veracity of his testimony and to confront him with his prior statements, if any. The failure to declare PW9 hostile therefore assumes significance, as it indicates that the prosecution chose not to challenge or discredit his

evidence, thereby tacitly accepting his statement that he knew nothing about the occurrence.

- 62.** Other witnesses of the prosecution, namely PW4, PW5, and PW7, also did not extend support to the prosecution case. Like PW9, these witnesses too failed to corroborate the allegations, yet the prosecution refrained from declaring them hostile. The cumulative effect is that a substantial part of the prosecution's own evidence stands against it, untested and unchallenged. In such circumstances, the conduct of the prosecution in not declaring these witnesses hostile raises a serious question on the credibility and consistency of the case sought to be presented. If these witnesses truly turned uncooperative or resiled from their earlier versions, it was incumbent upon the prosecution to confront them. The failure to do so not only weakens the evidentiary value of the case but also creates an inference that the prosecution itself was not confident about sustaining its version through cross-examination of its own witnesses. Thus, the evidence of PW9, coupled with the non-supportive testimonies of PW4, PW5, and PW7, all remaining unchallenged by the prosecution, shakes the very foundation of the prosecution case and renders it highly doubtful in the eyes of law.
- 63.** In the instant case, one of the most glaring infirmities which strike at the root of the prosecution story is the inordinate delay in lodging the First

Information Report (FIR). It is well-settled in criminal jurisprudence that prompt lodging of the FIR is of paramount importance, as it reflects the spontaneity of the complainant and minimizes the chances of fabrication or embellishment. Any unexplained or inadequately explained delay in lodging the FIR not only weakens the credibility of the prosecution version but also renders the case vulnerable to serious suspicion. Here, the prosecution has failed to furnish any cogent or satisfactory explanation for such delay. No compelling circumstances have been brought on record to justify why the complainant or the family members of the victim did not approach the police immediately after the alleged incident, particularly when the offence alleged is of a serious nature. The silence and inaction for over 24 hours cannot be lightly brushed aside, because in the natural course of human conduct, a victim or the relatives would ordinarily seek immediate recourse to law enforcement in such situations. The absence of any reasonable explanation for the delay leads to an inference that the FIR may not have been the product of an immediate and truthful disclosure but rather the result of deliberation, consultation, and possibly embellishment. Such afterthoughts can distort the true version of events and cast a shadow of doubt on the authenticity of the prosecution case. It also creates a possibility of false implication, as the time-gap provides ample opportunity for concoction or

exaggeration. The prejudice caused to the accused in such circumstances is evident. The FIR is the foundation of the prosecution case, and when its very lodging is shrouded in unexplained delay, the reliability of the subsequent investigation and the evidence collected there-under becomes questionable. The credibility of the complainant's account is seriously undermined, and the chain of events projected by the prosecution loses its force.

- 64.** Thus, the unexplained delay in registering the FIR is not a mere procedural irregularity but a substantive defect which goes to the root of the matter. It strikes at the reliability of the prosecution story, makes it susceptible to grave suspicion, and materially prejudices the case against the accused. In the absence of a cogent explanation, such delay is fatal to the prosecution and entitles the accused to the benefit of doubt.
- 65.** Moreover, in this case, the examination of the appellant under Section 313 of the Code of Criminal Procedure, 1973 is also not in accordance with law. It is a settled principle that the examination of the accused under Section 313 Cr.P.C. is not a mere formality, but a substantive statutory right conferred upon the accused to personally explain any circumstance appearing in evidence against him. The provision serves a dual purpose: first, it enables the Court to put the incriminating evidence directly to the accused in simple and clear terms; and second, it provides

the accused with an opportunity to present his defence, if any, in relation to those circumstances.

66. In the present case, however, the record reveals that the manner in which the questions were put to the appellant was wholly unsatisfactory. The questions framed were long, complicated, and bundled with several facts together, making it extremely difficult, if not impossible, for any person, much less a lay accused, to understand them properly. Instead of framing short, specific, and clear questions corresponding to each incriminating circumstance, the Court resorted to putting lengthy, composite questions, thereby defeating the very object of Section 313. It is trite law that each material circumstance appearing against the accused must be put to him distinctly, in a form which he can readily understand, so that he may have an effective opportunity to offer his explanation. If the questions are vague, confusing, or too lengthy, it cannot be expected that the accused would be able to appreciate their import or give meaningful answers. Such an examination is reduced to a mere ritual and ceases to be a fair opportunity, thereby resulting in denial of the valuable statutory right of the accused.

67. In the present case, the defective manner of conducting the examination under Section 313 Cr.P.C. amounts to a violation of the appellant's statutory right. The prejudice caused is self-evident, because the

appellant was deprived of the opportunity to explain the specific incriminating circumstances relied upon by the prosecution. When the questions themselves are incomprehensible, no proper or effective answer can be expected from the accused. Thus, the non-compliance with the mandatory requirements of Section 313 Cr.P.C. vitiates the fairness of the trial. It not only undermines the defence of the accused but also affects the validity of the conviction based on such an irregular examination. In law, the accused cannot be convicted on the basis of incriminating circumstances which were never properly put to him for explanation. Therefore, the defective and illegal manner of conducting the Section 313 Cr.P.C. examination in the present case constitutes a serious violation of the statutory right of the appellant and materially prejudices the defence.

- 68.** In view of the above facts and circumstances and discussion made above I am of the opinion that there is illegality and material irregularity in the impugned judgment and order of conviction for which it is liable to be set aside.
- 69.** Accordingly, the instant appeal be and the same is hereby **allowed**.
- 70.** The impugned judgment and order of conviction dated 03.05.2017 and 04.05.2017 passed by the learned Additional District and Sessions Judge, 2nd Court, Krishnagar, Nadia in connection with Sessions Trial

No. IX (VIII) of 2016 arising out of Sessions Case No. 07(01) of 2015(Spl) is hereby set aside.

- 71.** The appellant is on bail. He is to be discharged from bail bonds and be set at liberty, if he is not wanted in connection with any case..
- 72.** In accordance with the mandate of Section 437A of the Code of Criminal Procedure (Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023), it is incumbent upon the appellant to furnish bail bonds, accompanied by suitable sureties. Such bonds, once executed, shall remain in full force and effect for a period of six months, ensuring the presence of the appellant as required by law and securing the due administration of justice.
- 73.** Let a copy of this order along with T.C.R. being sent down to the Trial Court immediately.
- 74.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)