

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.A. (SB) 113 of 2022

Lalu Sk.

-versus-

The State of West Bengal & Anr.

With

C.R.R. 3940 of 2022

The Victim Girl of POCSO Case No. 02 of 2019

-versus-

The State of West Bengal & Anr.

Mr. Soumik Ganguli, Adv.,
Mr. Ranadeb Sengupta, Adv.

...for the appellant in CRA (SB) 113 of 2022) &
Opposite Party No. 2 in CRR 3940 of 2022.

Mr. Mrityunjoy Chatterjee, Adv.,
Mr. Manas Das, Adv.,
Ms. Suchismita Chakraborty, Adv.,
Mr. Arindam Poali, Adv.,
Mr. Arka Roy, Adv.

...for the Respondent No. 2 in CRA (SB) 113 of
2022 & the Petitioner in CRR 3940 of 2022

Mr. Debashis Roy, Ld. P.P.
Mr. Sandip Chakraborty, Adv.,
Mr. Saryati Datta, Adv.

...for the State

Hearing Concluded On : 27.10.2025

Judgement On : 24.11.2025

Tirthankar Ghosh, J. :-

The present appeal has been preferred challenging the judgment and order of conviction and sentence dated 27.07.2022 passed by the Learned Additional Sessions Judge Cum Special Judge under POCSO Act, 2012, Bishnupur, Bankura in POCSO Trial No. 04/2019 in connection with POCSO Case No. 02/2019 and arising out of Bishnupur P.S. Case No. 27/19, wherein the learned trial Court was pleased to convict the appellant under Section 8 of the POCSO Act and sentenced him to suffer rigorous imprisonment for three years and to pay fine of Rs.40,000/- in default to suffer further rigorous imprisonment for three months.

Bishnupur Police Station Case No. 27/19 dated 22.01.2019 was registered for investigation under Section 354/354A/506 of the Indian Penal Code and Section 8/12 of the POCSO Act. The aforesaid case was registered for investigation on the basis of information furnished by the mother of the victim girl 'Y'. The allegations made in the written information addressed to the Officer-in-Charge of Bishnupur Police Station, Bankura were to the effect that the informant's daughter, a student of Class (XI) of Bishnupur High School, aged about 16 years, was on her way for tuition at about 10.00 A.M. on 21.01.2019. While she was on her way, a neighbour namely Lalu Sk. stopped her near Bhatpukur Kalimandir and hurled obscene words, as also forcefully touched her body, including her private parts/ touched her breasts with ill-motive. Being afraid, the informant's daughter started crying, when the accused, being nervous fled away.

The informant alleged that her daughter was mentally disturbed as the accused had been threatening her family via third party to withdraw the complaint, and refrain her from taking any legal steps. Further, the health of the informant's daughter deteriorated consequently, there was some delay in submission of the complaint to the police authorities.

On the basis of the aforesaid complaint Bishnupur Police Station Case No. 27 of 2019 was registered and the investigating officer on completion of investigation submitted charge-sheet against the accused/appellant relying upon number of witnesses as also documents. The charge-sheet was submitted under Section 354, 354A and 506 of the Indian Penal Code and Section 8 of the POCSO Act against the accused-appellant.

On receipt of the charge-sheet, cognizance was taken by the learned Special Court, copies were supplied and consequently charges were framed under Section 8/12 of the POCSO Act. The contents of the charges were read over to the accused person, to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon twelve witnesses which included P.W.1-'Y', mother of the Victim Girl; P.W.2-'X', victim girl; P.W.3-'Z', father of the victim girl; P.W.4- Joydeep Sen, nephew of PW-1, PW-3 and cousin of PW-2; P.W.5- Suman Mondal, friend of PW-4; P.W.6 - Dr. T.K. Pal, Doctor who conducted medical examination of the accused; P.W.7 - Mujaffar Khan, a mason who noticed the accident having taken place; P.W.8- Anwar Ali Khan working as helper to PW-7; P.W.9- Sisir Patra,

teacher of the victim girl and PW-4; P.W.10- Dr. Susanta Roy, Doctor who conducted medical examination of the victim girl; P.W.11- Sanjoy Majhi, ASI of Police, who prepared the formal FIR; P.W.-12 Barnali Sarkar, investigating officer of the case.

The prosecution in order to prove its case also relied upon certain documents which included the written complaint of 'Y', formal FIR, statement under Section 164 Cr.PC of the victim girl, medical document/report relating to the accused and the victim, seizure list, birth certificate, admit card of the victim girl and rough sketch map with index.

P.W.1 'Y', is the mother of the victim girl and the informant, who deposed before the Court that on 22.01.2019 she submitted the written information against one Lalu Sk. with Bishnupur Police Station. She identified the accused in Court and further stated that on the relevant date of incident i.e. 21.01.2019, her daughter was aged about 16 years. She narrated that her daughter was going for tuition at the house of Sisir Patra near Kali Mandir, Bhatpukur, Bishnupur and while her daughter was crossing the main road for entering the narrow lane towards the house of Sisir Patra, her daughter saw the accused standing there. Her daughter knew the accused who used to come for his son's tuition at their house as her brother-in-law's wife used to give private tuition to his son. Accused stopped his daughter and wanted to know where she was going, in response her daughter replied that she was going for tuition and in course of conversation accused disclosed that she had seen the victim girl riding scooty of her father and requested her to ride his scooty. Her daughter

initially refused, but on repeated insistence, she ultimately agreed to ride the scooty and when she started the scooty, the accused all of a sudden sat as a pillion rider. While the scooty proceeded, accused touched the buttock of the minor girl and then on the belly, when the victim girl requested him not to do the same, accused instead of removing his hands rather placed his hands on the breasts of her daughter. Due to shame and fear, she stopped the scooty and somehow returned back to the place where she parked her bicycle. As a consequence of the incident, she started weeping, when the accused asked her several questions and even wanted to know her mobile phone number. At the relevant time, P.W.4, son of her brother-in-law reached the place for his tuition along with a friend named Suman Mondal and on seeing the victim girl weeping, enquired as to what happened to her. On seeing these two boys, accused fled away from the spot with his scooty. At that time victim girl disclosed the incident which happened to her, when the accused again came near to them and P.W. 4 identified him as a resident of Sk. Para. The complainant was informed over phone that the victim girl was weeping, when she advised P.W. 4 to ask her to return home. After returning home, victim girl narrated the incident to her and she immediately informed the matter to her husband who was working at Asansol. On the very same day she went to Sk. Para Masjid and met some people of Sk. Para. She narrated whole of the incident to those people and wanted to know the house of Lalu Sk. She was provided with phone number of Lalu Sk. In presence of the people, she rang the accused Lalu Sk. who abused her. She asked him to come near the Masjid but he did not turn up rather he insulted her over phone. The local people present near the Masjid

were shocked in respect of the incident. She again called her husband over phone who on the very night, could not return home, as such, she along with her minor daughter, at about 8.00 P.M. on 21.01.2019 went to Bishnupur Police Station and orally narrated the incident to a Lady Duty Officer who advised them to submit a complaint in writing. On being advised, they wrote the complaint on the same night and visited the police station on the following day. She along with her husband had been to the police station. She further stated that prior to submitting the written information many people came to her house and threatened her for settling the matter amicably. Being afraid, she verbally intimated the matter to SDO & SDPO, Bishnupur and then decided to visit the Police Station. After the complaint was lodged, police came to their house, interrogated them and brought her daughter to hospital for her medical examination. She signed the medical paper in presence of Police, which on being identified was admitted in evidence as Exbt.-2. Her daughter was produced in Court and her statement was recorded by the Magistrate. Police also seized birth certificate and admit card of Madhyamik examination of her daughter. A seizure list was prepared, she signed the seizure list. Her signature in the seizure list was also admitted in evidence.

P.W.2, 'X', is the victim girl who deposed that on January, 2019 she was a student of Class XI and her date of birth is 18.12.2002. She identified her birth certificate, Admit Card of Madhyamik examination which was admitted in evidence. On 21.01.2019 at 10:00 A.M. when she was proceeding to the house of Sisir Patra in a narrow lane just before

Bhatpukur near Kali Mandir, she saw the accused was standing there along with his scooty. Accused wanted to know from her as to where she was proceeding when she replied that she was going for tuition. Accused informed her that he had seen her to ride the new scooty of her father and offered her to ride his scooty. She refused such proposal but accused repeatedly insisted to ride his scooty, as such considering the age of accused she agreed to ride the scooty after locking her bicycle. When she started the scooty of accused, all of a sudden accused sat as a pillion rider which took her by surprise, however she proceeded with the scooty. She noticed after sometime accused started touching her buttock and belly. When she asked him to remove his hands, as she felt uneasy to ride the scooty, without paying heed to the same, accused touched her breast with his hands. Immediately she stopped the scooty and ran towards her bicycle. When she was running towards her bicycle, accused wanted to know whether she had a mobile or not, and whether she would again come to the same place for tuition. Accused also made some obscene and offensive remarks. She started weeping in front of the bicycle, as the incident was unfortunate and unexpected to her, since the accused was of the same age as her father. She felt insulted by such act of the accused. After some time, her cousin brother, P.W. 4, along with his friend, Suman Mondal, came there for tuition and they wanted to know from her the reasons for her weeping, when she narrated the entire incident. While she was narrating such incident, accused crossed them, when she pointed the accused to P.W. 4 and his friend, P.W. 4 informed her that the accused is Lalu Sk. of a neighbouring locality named Sk. Para. PW 4 informed the incident to her

mother, when her mother advised her to return home. Accordingly, she along with PW 4 returned home and narrated the entire incident to her mother. She became depressed and suffered from mental and physical trauma. Her mother informed the incident to her father, who was posted at Asansol being a railway employee. In the evening, her mother went to Sk. Para in search of Lalu Sk. and she was shown the house of Lalu Sk. and also provided with his phone number. Her mother called Lalu Sk. who threatened her. Her mother thereafter returned home. On the same night, she along with her mother had been to the Police Station and narrated the entire incident to the Lady Duty Officer who asked them to submit a written complaint. Her mother wrote the complaint at their house as stated by her. Then, her mother went to the police station to submit the written complaint but they did not receive the same and informed verbally that they would look after the matter. On 22.01.2019 some associates of the accused came to their house and threatened them for not proceeding further as the case cannot be proved. They were also offered for settlement by an influential person of the locality. Being afraid, her mother informed such incident to the SDO and SDPO, Bishnupur, who assured her mother that they would take appropriate steps. In the afternoon on 22.01.2019 her father returned home and thereafter her parents went to the police station with the written complaint with certain modifications. In the evening, police came to their house for investigation. All the family members were interrogated and their statements were recorded. Accordingly on 23.01.2019, she was taken to Bishnupur District Hospital for medical treatment along with her mother, where she narrated the entire incident to the medical officer. She signed on

a paper, which she identified in Court ,the same was admitted in evidence. After medical examination, she returned home. On 24.01.2019, she was taken to Court where she gave her statement before the learned Magistrate. Learned Court recorded her statement and read over the same to her. She along with the learned Magistrate signed the statement. She identified her signature, both in the report as well as in the statement. She also deposed that few months ago accused came to their house along with his son for giving tuition by her sister-in-law. She also stated that earlier she had seen the accused as a passer-by and identified him in Court.

P.W.3. 'Z', is the father of the victim girl, who deposed that he had a son and a daughter who are presently aged about 24 years and 18 years respectively. He proceeded to state that his daughter was born on 18.12.2002 and he was residing for his job at Asansol while his wife resided with his daughter at Bishnupur. His son was staying at Kerala for the last five years for his studies and occasionally visited the house at Bishnupur. On 21.01.2019 at about 11.30 A.M. he received a call from his wife who informed him over phone that when his minor daughter was proceeding for tuition with her bicycle at about 10.00 A.M. to 10.15 A.M. when she reached near Bhatpukur, Kalimandir, she was stopped by one Lalu Sk. The accused requested her to ride his scooty as he had seen her riding a scooty. Initially, his daughter refused to ride the scooty of Lalu Sk. but due to his insistence and request, his daughter obeyed the request of Lalu Sk. and while she started to ride the scooty, then all of a sudden, without her knowledge, Lalu Sk. sat on her back as a pillion rider and placed his hands

on her belly. His daughter asked the accused to remove his hands which was ignored by the accused, who thereafter intentionally placed his hands on her chest. Being ashamed, his daughter stopped the scooty and returned back towards her bicycle, when the accused wanted to know from her as to when she would attend her tuition and also wanted her phone number. While his daughter was weeping, his nephew and one of his friend arrived there for tuition in the house of Sisir Patra, when she narrated the incident to them. While they were speaking amongst themselves, Lalu Sk./accused again appeared at a distance, his nephew recognized the accused, thereafter his nephew and his daughter both returned home. Time and again, he spoke over phone with his wife over the matter and on 22.01.2019 at about 2.30 P.M., he returned home at Bishnupur from Asansol. After returning home, he found his wife absent at the house and came to know from his daughter that his wife went to meet SDO and SDPO Bishnupur. His daughter reported to him whole of the incident and thereafter when his wife returned home at about 3 to 3.30 P.M, she again reiterated the incident which was earlier disclosed to him over phone. At about 4 to 4.30 P.M., he along with his wife had been to the police station and in his presence, he wanted to know what action has been taken on the written complaint. On the previous night as the police did not receive the complaint, his wife added some facts in the written complaint and submitted the same in the Police Station on 22.01.2019. On the same night, at about 6 to 6.30 pm, police came to their house, interrogated all of them and recorded their statement and on the following day that is 23.01.2019, medical examination

of his daughter was done and on 24.01.2019 statement of his daughter was recorded in Court. Witness identified the accused in Court.

P.W.4 is Joydeep Sen, who deposed that P.W.1 and P.W.3 are his aunt and uncle and the victim girl, P.W.2 is his cousin sister. The witness narrated that on 21.01.2019 at about 10.15 A.M. he was to attend his English tuition at the house of Sisir Patra at Bhatpukur, Bishnupur. PW.2, his cousin sister, was also a student in the same tuition and at around 10.00 to 10.15 A.M when he was proceeding for coaching after completion of another tuition, near Bhatpukur, Kalimandir he noticed his sister was weeping and shivering while standing with her bicycle. She disclosed that a person has misbehaved with her and uttered abusive languages to her. On further enquiry, she pointed out towards the person standing at a distance, whom he identified as Lalu Sk. of Sk. Para. He also disclosed that the accused caused physical harassment to her by touching her in an indecent manner. He informed the matter to his aunt- P.W.1 who instructed him to return home with his sister. He went to the house of Sisir Babu and informed that he would not attend the tuition on that day. At that time his friend Suman Mandal was also with him. All of them returned home. He narrated whole incident to his aunt. He was also interrogated by the police in connection with the case. He identified the accused in Court.

P.W.5 is Suman Mandal who stated that he is a friend of Joydeep Sen i.e. P.W.4. On 21.01.2019 in the morning he went to the house of one of his friend at Bhatpukur and at about 10.00 to 10.15 A.M when he was returning at the crossing of Bhatpukur he met with Joydeep who was going

to the house of Sisir Babu for tuition. Both of them noticed that Joydeep's cousin sister was weeping in a narrow lane near Bhatpukur, Kali Mandir. On enquiry, she divulged that an aged person misbehaved and uttered abusive languages to her, she also disclosed that the accused caused physical harassment and touched her in an indecent manner. She also pointed towards the person/accused who was standing at a distance with his scooty, whom P.W.4 identified as Lalu Sk. of Sk. Para. P.W.4, Joydeep over phone informed his aunt P.W.1 who advised them to return home. Joydeep also informed Sisir Babu that they would not attend the coaching class on that day. All of them returned to the house of P.W.1. He was interrogated by the police in connection with the case. He also identified the accused in Court.

P.W.6 is Dr. T.K. Pal, a Medical Officer attached to Bishnupur District Hospital, who deposed that on 29.01.2019 he was posted in the same Hospital and on that day he examined the accused Lalu Sk. in connection with Bishnupur Police Case No. 27/2019 dated 22.01.2019. The accused was identified by Sub-Inspector Barnali Sarkar of the Police Station. On examination he opined that the accused is capable of committing sexual intercourse. The original medical report was prepared by him in his own handwriting, he identified his signature, and the official seal in Court, which was admitted in evidence.

P.W.7, Muzaffar Khan, deposed that two years ago at around 10.30 a.m., when he was working as a mason at Bhatpukur area and was

proceeding towards a tea stall for a cup of tea at college more, he noticed an accident took place in a narrow lane and some students were proceeding for tuition. One scooty was lying on the road and he helped to park the same. The claimant of the scooty was a male person who was also present there. He identified the said person in Court. However, the witness stated that whether any incident occurred or not prior to the said accident was not within his knowledge.

P.W.8, Anwar Ali Khan, deposed that he was working as the helper of P.W.7 at Bhatpukur area and was also proceeding towards a tea stall for a cup of tea at College more. He noticed an accident had taken place in a narrow lane and some students were proceeding for tuition. He also helped for parking the scooty which was lying on the road. The claimant of the scooty was a male person who was present at the spot. He identified the said person in Court. However, he stated that he was not aware whether any incident occurred or not prior to the said accident.

P.W.9, Sisir Patra is a resident of Malanchapara, Bishnupur and is a private tutor by profession. He deposed that he taught students at his residence and the victim girl along with Joydeep Sen and other students used to take tuition from him about two years ago. He taught them English language and literature. He also deposed that about two years ago he came to know from mother of the victim girl that the victim girl was molested by a person who is a resident of Sk. Para.

P.W. 10, Dr. Susanta Roy is a Medical Officer attached with Bishnupur District Hospital who deposed that on 23.1.2019 he was in the same

hospital and was on duty. At the relevant day, the victim girl was produced before him in connection with Bishnupur Police Station Case number 27/2019 dated 22.01.2019 being identified by her mother and Lady Constable namely Tanushree Kalindi. The victim girl complained to him that one person named Lalu Sk. of Akunjee Para at Bishnupur molested her on 21.01.2019 at 10.00 am near Bhatpukur, Bishnupur. He identified the medical report which was written in his own handwriting bearing his official seal. The said report was admitted in evidence.

P.W.11 is Sanjoy Majhi, a Sub-Inspector of Police attached to Sonamukhi Police Station, who deposed that on 22.01.2019 he was posted at Bishnupur Police Station as ASI. On that day, he received a written complaint from P.W.1 and as per order of the then Inspector-in-Charge, he registered Bishnupur P.S. Case No. 27/19 dated 22.01.2019 under Section 354, 354A, 506 IPC and Section 8/12 of the POCSO Act. He identified his signature on the written complaint which was admitted in evidence. He also stated that he filled up the formal FIR and signed the same. He also identified the signature of the Inspector-in-Charge and the complainant, i.e. P.W.1. The said formal FIR was admitted in evidence. He further stated that as per instruction of the Inspector-in-Charge the case was endorsed to Lady S.I. Barnali Sarkar .

P.W. 12, Barnali Sarkar is the Officer-in-Charge of Hirbandh Police Station who on 22.01.2019 was posted at Bishnupur police station as sub-inspector of police. On that date, she was endorsed with Bishnupur P.S Case No. 27/19 dated 22.01.2019 for carrying out the investigation. She

perused the written complaint and formal FIR, examined the complainant as also the minor victim girl, recorded their statements at police station. She visited the place of occurrence, prepared rough sketch map with index. She identified the rough sketch map with index, which was admitted in evidence. She also recorded the statement of witnesses who were present near the place of occurrence and even after conducting raid could not trace the accused. On 23.01.2019, medical examination of the victim girl was done and she signed the document. She identified her signature on the medical document which was admitted in evidence. On 24.01.2019 the accused was arrested and forwarded to Court. Medical examination of the accused was done and her signature was also obtained in the said document. She identified her signature which was admitted in evidence. On 24.01.2019 statement of the victim girl was recorded under Section 164 Cr.PC. She collected the copy of the statement. She also seized the original birth certificate and Madhyamik Admit Card of the victim girl on 01.02.2019 by preparing a seizure list. She identified the seizure list which was admitted in evidence. She further stated that the original documents were handed over to the mother of the victim after preparation of Jimmanama. She identified the Jimmanama which was admitted in evidence. She also seized the scooty bearing registration No. WB-88A 6347 on 01.02.2019. A seizure list was prepared. She identified the seizure list along with her signature on the same which was admitted in evidence. She also examined the other available witnesses who were acquainted with the facts of the case. After completion of investigation and after obtaining permission from the superior officer, she submitted charge-sheet bearing No. 45/2019 dated

28.02.2019 under Section 354, 354A, 506 IPC and Sections 8/12 of the POCSO Act against the accused Lalu Sk. @ Khora.

Mr. Sengupta, learned advocate appearing on behalf of the appellant drew the attention of the Court to the contradictions which were appearing in evidence including the First Information Report. According to the learned advocate, there has been improvement of facts which were introduced for the first the time in Court and the learned trial Court relied upon such evidence to arrive at its conclusion. Learned advocate specifically drew the attention of the Court to the First Information Report and submitted that although FIR need not be encyclopaedia of facts, but narration of specific vital events and circumstances are required before a case is registered. According to the learned advocate there were omissions of such vital facts, which touches the very genesis of the prosecution case. In order to fortify such arguments, learned advocate relied upon **Ram Kumar Pandey - versus- State of Madhya Pradesh** reported in (1975) 3 SCC 815. Attention of the Court was drawn to paragraph 9 and 10 which states as follows:

“9. No doubt, an FIR is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9-15 p.m. on March 23, 1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the FIR We think that omissions of such important facts, affecting the

probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

10. *Even Joginder Singh, PW 8, was not an eyewitness of the occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as "Pappi") rushed out of his house by opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened, Pappi had stated that Suresh and Pandey had injured him. It is clear from the FIR that Joginder Singh had met Uttam Singh before the FIR was made. Uttam Singh did not mention there that any dying declaration, indicating that the appellant had also injured Harbinder Singh, was made by Harbinder Singh. The omission to mention any injury inflicted on Harbinder Singh by the appellant in the FIR seems very significant in the circumstances of this case. Indeed, according to the version in the FIR, Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on Harbinder Singh must also have been inflicted in the lane outside."*

It was pointed out on behalf of the appellant that the victim girl P.W.2 in her examination-in-chief stated that the written complaint was prepared by her mother as per her narration. It was contended that surprisingly, in spite of such facts being divulged by P.W.2 there were vital omissions, which were subsequently brought on record by the prosecution witnesses, which is bound to cast a shadow of doubt on the prosecution's case itself. To that effect, learned advocate submitted that the cross-examination of the investigating officer as well as the victim girl would reveal the major

inconsistencies. Learned advocate thereafter drew the attention of the Court to the cross-examination of the investigating officer of the case which reflects the following:

“F) PW2 did not state to me that Lalu Sk. wanted to know from her whether she would go for tuition in the night or not.

G) PW2 did not state to me that her cousin from the spot over phone informed the incident to her mother who advised them to return back home or she stated that her cousin pointed out the accused as Lalu Sk.

H) PW2 did not state to me "few months back Lalu Sk came to our house alone with a request for giving tuition to his son by my Boudi Ankita Sen. But I told him that my Boudi is not at the house"

I) PW2 did not state to me "in the evening my mother went to Sk. Para in search of Lalu Sk. One person informed that he left the house and also provided his phone number to my mother and she rang him and in response he told that he could not done anything more and threatened my mother whatever she would like to do".

J) PW2 did not state to me "n the following morning ie 22.01.2019 some associates of Lalu Sk. came to our house and threatened us not proceed further and case would not be proved",

K) PW3 did not state to me that over telephonic he came to know any incident.

L) PW4 did not state to me that his sister reported to him that the accused has misbehaved and uttered abusive languages to her. He also did not state to me that his Kakima advised them to return back home immediately.”

Learned advocate thereafter drew the attention of the Court to the cross-examination of the different witnesses and tried to establish that the incident complained of and the manner in which the evidence has been placed before the Court do not inspire confidence and cannot be said to be a case where the prosecution has been able to establish the facts beyond all reasonable doubt, thereby calling for interference by this Court. According to the learned advocate, the burden of proving innocence shifts upon the accused only when the prosecution is able to lay down the foundational facts. However, the quality of evidence, particularly the manner in which the facts of the case have been embellished, do reveal the veracity of the evidence, particularly with regard to the truth attached to the incident in view of independent witnesses i.e. PW.7 and PW.8 who narrated a different version so far as the incident is concerned, as such, it is emphasised on behalf of the appellant that an order of conviction cannot be passed if the prosecution fails to establish the foundational facts even in a case under the POCSO Act. To that effect learned advocate relied upon the judgement of ***Rang Bahadur Singh -versus- the State of UP reported in (2000) 3 SCC 454***. Reference was made to paragraph 22 which reads as follows:

“22. The amount of doubt which the Court would entertain regarding the complicity of the appellants in this case is much more than the level of reasonable doubt. We are aware that acquitting the accused in a case of this nature is not a matter of satisfaction for all concerned. At the same time we remind ourselves of the time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused.

A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits. We really entertain doubt about the involvement of the appellants in the crime.”

Lastly, it was contended on behalf of the appellant that having regard to the entirety of the facts as laid down by the prosecution, no man of ordinary prudence would believe the facts of the case and as such, it would not be justified to base a conviction on such testimony of witnesses, including that of the victim girl. It was prayed that interference of this Court is called for and the order of conviction and sentence imposed by the learned trial Court should be set aside.

Mr. Datta, Learned Advocate appearing on behalf of the State submitted that the appreciation of evidence in a case under the POCSO Act is completely different from other offenses particularly those under the Indian Penal Code or Bharatiya Nyaya Sanhita (BNS), 2023. It was argued on behalf of the State that it was the victim girl who has faced the trauma and an unnecessary emphasis should not be made on the statement of the mother of the girl, i.e. P.W.1, who was merely a scribe and wrote the complaint only on the version narrated to her by P.W.2, the victim girl. According to the State, the evidence of P.W.2, victim girl remained unshaken in cross-examination and she has been consistent in her version, both in the examination-in-chief as well as in cross-examination. In fact, in spite of repeated cross-examination, she stood firm and corroborated the earlier facts which were narrated by her. Learned Advocate for the State

also drew the attention of the Court to the evidence of the other witnesses and emphasized that in this case, the sole testimony of the victim is enough for establishing a case of sexual assault as contemplated under Section 7 which is punishable under Section 8 of the POCSO Act. It was categorically stated that there was no inconsistency in the version of the trial Court and there is no scope for the appeal Court to interfere with the judgment and order of conviction and sentence.

Mr. Mrityunjoy Chatterjee, learned Advocate appearing on behalf of the de-facto complainant/opposite party No. 2 in the appeal and the petitioner in the revisional application submitted that the learned trial Court failed to appreciate the evidence of the victim and without assigning any cogent reasoning imposed minimum punishment. In order to substantiate his argument learned Advocate placed the deposition of the victim girl and emphasized that her version had been consistent and she was unshaken inspite of rigorous cross-examination by the defence. The thrust of arguments were mainly on the fact of the victim being touched in an indecent manner which has been proved by the prosecution and no reasons having been assigned by the learned Special Court for imposing minimum punishment thereby calling for interference by this Court for enhancing the sentence.

I have taken into account the submission of the respective parties and on an assessment of the same I find from the evidence as well as other materials on record the following circumstances emerging:-

- (a)** P.W.1 being the mother of the victim girl did not state in the FIR relating to the incident of the accused offering the victim to ride the scooty.
- (b)** The charge which was framed by the learned trial court was on two grounds :-

 - (i) With sexual intent to touch the breast of the victim girl.
 - (ii) With sexual intent talked in slang language with the victim girl, here also the incident relating to the scooty is absent.
- (c)** The victim girl in her deposition before the Court categorically stated that her mother drafted the written complaint which has been treated as FIR and there were certain modifications made.
- (d)** The victim girl in her statement before the learned Magistrate narrated regarding the incident of the accused offering and insisting her to ride the scooty. In the same statement she also stated that all of a sudden the accused jumped as a pillion rider when she started the scooty and touched her waist when she felt uncomfortable and as such asked accused to remove his hands. According to the victim the accused instead of removing his hands placed it on an upper side.
- (e)** The investigating officer during her cross-examination however, stated that P.W.1 in her statement alleged that the accused touched the breast of her daughter.
- (f)** P.W.7 and P.W.8 in their evidence stated that the scooty was lying on the road and they noticed that an accident had taken place in the narrow lane.

Taking into account the aforesaid facts it is seen that before the learned Judicial Magistrate the victim girl did not specifically state that the accused had touched her breast at the time when she was riding the scooty.

If P.W.1, P.W.4 and P.W.5 are taken to be the witnesses to whom the victim divulged at the first instance, from the evidence of P.W.1, P.W.4 and P.W.5 it will not be clear as to what misbehaviour or indecent act was committed at the behest of the accused. While P.W.4 and P.W.5 complained of misbehaviour, physical harassment and touched the person of the victim girl indecent manner, on the other hand, P.W. 1 mother of the victim girl in the written complaint restricted herself to accusations of obscene words being used and forcefully touching the body including the breast of the victim girl with ill motive. But so far as the attending facts are concerned the same has not been stated in the FIR. Legally it is a settled proposition of law that FIR need not be encyclopedia of facts but at the same time it is required that the statement of facts must be made in such a manner that the true story is reflected in respect of the incident. Nevertheless, there is another principle to be followed by the Court of law while deciding cases of such nature is relating to the sole testimony of the victim. So far as the victim is concerned, I find difference from her deposition in Court at the time of trial and her narration of facts before learned Magistrate under Section 164 Cr.PC. So far as touching of the body of victim is concerned in an indecent manner, such facts cannot be ruled out in the present case but so far as the facts relating to touching her breast are concerned the same is not very convincing. Section 29 and Section 30 of the POCSO Act definitely

incorporate provisions relating to presumption but the foundational facts are to be placed by the prosecution in such a manner that it inspires confidence to take the aid of such presumption.

It would be pertinent at this stage to refer to a judgment of the Hon'ble Supreme Court in ***Nirmal Premkumar & Anr. -Versus- State Rep. by Inspector of Police*** reported in **2024 SCC OnLine SC 260**. In paragraph 21 of the said judgment it was observed as follows:

“21. Taking a close look at the overall picture, the inference which could reasonably be drawn is that the prosecution's case has been marked by lacklustre efforts, revealing a poorly executed endeavour that gives rise to substantial doubts regarding the integrity of the case. The material contradictions apparent in the depositions of prosecution witnesses, including the victim, significantly undermine the credibility of the prosecution version. These inconsistencies in the prosecution's narrative, render it considerably doubtful. On the face of such evident discrepancies, recording conviction becomes untenable, as the foundation of the case crumbles under the weight of doubt. While we might have chosen to overlook other contradictions and solely relied on the victim's account, considering her as a ‘sterling witness’, her version appears muddled and prevaricated, much less coherent. It is precisely these inconsistencies and contradictions, which are material, that compel us to reject the case set up by the prosecution before the Special Court with which the High Court concurred adopting a flawed approach.”

On an assessment of the overall evidence relied upon by the prosecution particularly P.W.1 and P.W.2, I am of the view that there are material inconsistencies and contradictions in the version of the witnesses

apart from embellishments being made before the Court from their previous statements which were initially stated before the Police Authorities at the time of initiation of the FIR before the learned Judicial Magistrate as also before the Investigating Officer of the case. Added to the version of the said witnesses the evidence of P.W.4 and P.W.5 do not inspire any confidence. Further the deposition of P.W.7 and P.W.8 portrays a different picture of the incident. Considering the totality of the materials presented by the prosecution, I am of the opinion that the prosecution has failed to lay down the foundational facts for attracting the provisions of Section 29 and 30 of the POSCO Act. The sole testimony of the victim girl or her relations do not lay down a consistent state of facts which could convince this Court to curtail the liberty of the appellant.

Consequently, the judgment and order of conviction and sentence dated 27.07.2022 calls for interference by this Court and the same as such is set aside.

Accordingly, CRA (SB) 113 of 2022 is allowed.

In view of the findings made above there is no scope to interfere with the revisional application, as such, CRR 3940 of 2022 is dismissed.

Pending connected application, if any, is consequently disposed of.

The appellant is acquitted from all the charges.

The appellant is on bail as such he is discharged from the bail bonds.

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.

(Tirthankar Ghosh, J.)