

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1051 of 2021

Arising Out of PS. Case No.-177 Year-2019 Thana- ARA NAGAR District- Bhojpur

MANISH KUMAR Son of Kumar Mukesh Resident of Village Begampur,
P.S. Ara Town, District - Bhojpur.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur Mr. Imteyaz Ahmad Mr. Ritwaj Raman Mr. Purushottam Kumar
For the Respondent/s	:	Mr. Binod Bihari Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 12-05-2026

1. The present appeal has been preferred against the judgment of conviction, dated 14.12.2020, and the order of sentence, dated 21.12.2020, passed by learned Additional Sessions Judge–VI, Bhojpur, at Ara, in Special Case (POCSO) No. 18 of 2019, arising out of Ara Town Police Station Case No. 177 of 2019, whereby the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act, 2012. The appellant has been sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 30,000/-, and in default of payment of fine, to undergo rigorous imprisonment for one year.



In view of Section 42 of the Prevention of Children from Sexual Offences Act, 2012, and considering that the punishment prescribed under Section 376 of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act, 2012 are substantially overlapping, the sentence has been directed to be imposed only under Section 4 of the Prevention of Children from Sexual Offences Act, 2012.

2. The prosecution case, as per the First Information Report lodged by the victim-informant, aged about 15 years, is that the appellant had befriended her approximately two months earlier, in February 2019. It is stated that on the pretext of marriage, the appellant provided the informant one mobile phone, with SIM card, having number 9507707606, for communicating with her. It is alleged that on 08.02.2019, the appellant called the informant to his residence and forcibly established physical relations with her, while also threatening her not to disclose to anyone. Thereafter, on about five to six occasions, the appellant is alleged to have repeatedly established physical relations with the informant on the pretext of marriage, despite her objections. Owing to such threats, the informant did not disclose the incident to her family members. The informant has further stated that on 29.03.2019, when she went out of her house to purchase samosa, the appellant met her on



the way and took her to his house, but the brother and sister of the informant reached the house of the appellant in search of the informant and with the assistance of neighbours, she was rescued. Thereafter, the informant, along with her brother and sister, went to the police station, where the appellant was also produced before the police.

3. On the basis of the aforesaid written application of the victim-cum-informant, Ara Town Police Station Case No. 177 of 2019, dated 29.03.2019, was registered against the appellant for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act, 2012.

4. Upon completion of the investigation, charge sheet was submitted by the police on 25.05.2019 against the appellant under Section 376 of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act, 2012. Thereafter, on 13.06.2019, cognizance of the offences was taken by the learned Special Court.

5. On 27.06.2019, the learned Trial Court framed charges against the appellant under Section 376 of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act, 2012. The charges were read over and explained to



the appellant in Hindi, to which he pleaded not guilty and claimed to be tried.

6. The prosecution, in order to substantiate its case, has examined as many as five witnesses and exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned herein under:-

List of Prosecution Witnesses :

Prosecution witness no.	Name of witness	Description
1.	X	Informant/ victim
2.	Sahjadi Begum	Sister of victim
3.	Arshad Ali	Brother of Victim
4.	Laxmi Patel	Investigating officer
5.	Dr. Vijayata Prasad	Medical Officer

List of Exhibits on behalf of the prosecution :

Exhibit No.	Description of the Exhibit	Date/proved by
1	Signature of Victim(informant) in Fardbayan dated 29.03.2019	11.07.19/PW 1
2	Signature of Victim on her statement recorded under section 164 of the Code of Criminal Procedure, 1973.	11.07.19/PW 1
2/1	Signature of Sister of the victim on the statement recorded under Section	PW 2



	164 of the Code of Criminal Procedure, 1973.	
3	Mobile CDR and CAF of the appellant	05.09.2019
4	Charge sheet no. 139 of 2019 dated 25.05.2019 in Ara Nagar(Town) PS Case no. 177 of 2019	05.09.2019
5	Medical report of the informant-victim, dated 30.03.2019	09.09.2019-PW 5

7. The prosecution evidence was closed on 26.09.2019. Thereafter, the statement of the appellant was recorded under section 313 (1) (b) of the Code of Criminal Procedure, 1973 on 03.10.2019, in which the appellant denied all the incriminating evidence brought against him.

8. The defence adduced seven witnesses on its behalf. List of defence witnesses are being mentioned hereunder in tabular form:-

List of Defence Witnesses :

Defence witness no.	Name of witness	Description
1.	Rajkishore Singh	Neighbour
2.	Kumar Mukesh	Father of Appellant
3.	Satyanarayan Singh	Neighbour
4.	Savita Devi	Mohalla Person
5.	Kanchan Devi	Neighbour



6.	Sanjay Kumar	Neighbour
7.	Nikhil Kumar	Neighbour

9. Learned Counsel for the appellant has, at the very outset, submitted that the judgment of conviction is against the weight of evidence and has been rendered on mere presumption of guilt. It is contended that the prosecution has failed to prove its case beyond reasonable doubt inasmuch as the testimonies of the prosecution witnesses suffer from material contradictions and inconsistencies.

10. It is further submitted that the version of the informant, as reflected in the First Information Report, her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, and her deposition before the learned Trial Court, is replete with contradictions and material improvements at every stage. Such variations, particularly with regard to the manner and timing of the alleged occurrence, cast serious doubt on the veracity of the prosecution case and would go to suggest that the same is false, concocted, and engineered. In these circumstances, the testimony of the prosecutrix becomes unreliable, and it is, thus, argued that she cannot be treated as a “sterling witness.”

11. It is further submitted that the medical evidence does not support the allegation of rape. The examining doctor did not



find any spermatozoa, either live or dead. The medical report also indicates that the age of the victim was assessed to be between 17 to 19 years. During cross-examination, the doctor opined that the victim could be above 18 years and below 19 years. The doctor further noted the absence of any signs suggestive of sexual intercourse or rape at the time of examination and indicated that the victim might be habituated to sexual intercourse.

12. On this basis, it is contended that the finding of the learned Trial Court regarding the age of the victim is wholly unsustainable in law and has resulted in grave miscarriage of justice. The conviction of the appellant, under the provisions of of the Prevention of Children from Sexual Offences Act, 2012, is entirely dependent upon the proof of the victim being a minor; however, the prosecution has miserably failed to establish the same in accordance with the established principles. It is further argued that no proper age determination of the victim was carried out in accordance with the mandate of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the provisions of the of the Prevention of Children from Sexual Offences Act, 2012 could only be invoked only after foundational facts, including the minority of the victim, are duly established by the prosecution. In the present case, as the age of the victim has



not been proved in accordance with law, therefore, the provisions of the Prevention of Children from Sexual Offences Act, 2012, will not be attracted.

13. It is also submitted that the relationship between the informant/victim and the appellant was consensual in nature, which continued for over a year. There is no material on record to indicate that any consent, if given, was obtained on the basis of false promise of marriage or under any misconception of fact from the very inception. In such circumstances, the essential ingredients of the offence under Section 376 of the Indian Penal Code is missing in the present case.

14. It is next submitted that the appellant and the informant belong to different religious communities. In such situations, it is not uncommon for social pressure and external interference to play a significant role, which may lead to escalation of disputes and subsequent criminal litigation.

15. In view of the aforesaid facts and circumstances, it is submitted that the impugned judgment of conviction is fit to be set aside as the prosecution has miserably failed to prove its case beyond reasonable doubts.

16. In support of his submissions, learned Counsel for the appellant has placed reliance on the decisions of this Court as



well as the Supreme Court, in the cases of **Nirmal Premkumar and Another v. State Represented by Inspector of Police**, reported in **2024 INSC 193**, **Biswajyoti Chatterjee v. State of W.B.**, reported in **(2025) 5 SCC 749**, **Rajak Mohammad v. State of H.P.**, reported in **(2018) 9 SCC 248**, **Amol Bhagwan Nehul v. The State of Maharashtra and Another**, reported in **2025 SCC Online 1230**, **Prithivirajan v The State Rep. by The Inspector of Police** [SLP (Crl.) No.12663 of 2022], **Sonu Keshri v. State of Bihar**, reported in **2025 SCC Online Pat 3497**, **Sukumar Jana v. State Of Bihar**, reported in **2023 SCC Online Pat 6183**, **Munna Kumar v. State of Bihar 2023**, reported in **SCC Online Pat 7035**, **Ravindra Musahar v. State of Bihar and Others** [Criminal Appeal (DB) No. 694 Of 2021], **Dinesh Malakar v. State Of Bihar and Others** [Criminal Appeal (DB) No. 255 Of 2023], **Jarnail Singh v. State of Haryana**, reported in **(2013) 7 SCC 263**, and **P. Yuvaprakash v. The State represented by the Inspector of Police**, reported in **(2024) 17 SCC 684**.

17. On the other hand, learned Additional Public Prosecutor submits that the learned Trial Court, after considering the entire materials available on record, has rightly convicted the appellant inasmuch as the prosecution witnesses examined have duly supported its case. The deposition of the informant/victim is



wholly credible and trustworthy and the sole testimony of the victim, is sufficient to form the basis of conviction of the appellant.

18. It is further submitted that the testimony of the victim stands corroborated in material particulars by the prosecution evidence. Any apparent contradictions or inconsistencies in her evidence are minor and trivial in nature, which, in no way, will affect the core of the prosecution case or the overall credibility of the witness. Such discrepancies, it is urged, are liable to be discarded in the interest of justice.

19. Learned Additional Public Prosecutor finally submits that there is no illegality in the impugned judgment conviction, warranting any interference of this Court. The appeal is devoid of any merit and fit to be dismissed.

20. I have heard learned Counsel for the parties and have perused the materials available on record.

21. It would be apposite to discuss the oral/documentary evidence as available on record to re-appreciate the evidence for just and proper decision of the present appeal.

22. PW 1 (the informant/victim), in her examination-in-chief, has deposed that she had instituted the present case and submitted a written application before the police. She stated that



the contents of the said application were written by the brother of a boy who had come with her, and that she had put her signature thereon. The said written application has been marked as Exhibit-1. She further deposed that on 08.02.2019, the appellant called her over the phone and asked her to come to a samosa shop, and thereafter requested her to accompany him to his house on the pretext of introducing her to his parents. However, upon reaching his house, she found that no one else was present in the house of the appellant. She stated that the appellant then removed her clothes and committed rape upon her, and on that very day, he raped her six times on the false pretext of marriage. The witness further stated that she was interrogated by the police, medically examined by a doctor, and her statement was recorded under Section 164 of the Code of Criminal Procedure, 1973, in the presence of her sister. She asserted that the said statement was made voluntarily and without any coercion. She identified her signature on the said statement as well as that of her sister, which have been marked as Exhibits 2 and 2/1 respectively.

23. In her cross-examination, the witness (PW 1) deposed that on the date of occurrence, the appellant met her at a samosa shop and thereafter the appellant took her to his house despite her protest that she was not willing to go there. She further



deposed that in her statement under Section 164 of the Code of Criminal Procedure, 1973, she had not stated that she resisted when the appellant took her to his house; rather, she did not resist when the appellant was sexually assaulting her in his house. She further deposed that her brother had forbidden her for going to the house of the appellant. This witness (PW 1) further deposed that she was not willing to go to the house of the appellant, but he lured her on the promise of marriage and took her there. She further deposed that her brother and sister are witnesses in this case and no person from the locality has been made witness.

24. This witness (PW 1) further deposed that the clothes worn by her at the time when she went to the house of the appellant were neither seized by the police nor did she hand over any clothes to the police. She deposed that she went to the police station on the same day at about 5:45 PM to lodge the case regarding the alleged incident. She stated that she went to the police station on her own without consulting anyone, remained there after lodging the case, and on the next day, she was medically examined by the doctor and also her statement, under Section 16 of the Code of Criminal Procedure, 1973, was recorded. She further deposed that on the date of the occurrence, while she was present at the house of the appellant, her brother



reached there and when the door was not opened, he along with his companions entered the house by jumping over the boundary wall and caught them. Thereafter, when the accused refused to marry her, she went to the police station and lodged the present case.

25. In reply to the Court question, the witness (PW 1) stated that she and the appellant belong to different religions inasmuch as she is a Muslim, whereas the appellant is a Hindu. She further stated that her neighbour, Santosh Bhabhi, had introduced her to the appellant, and that on the day he established sexual relations with her, he had deceived her on the promise of marriage. She stated that when the accused later refused to marry her, she became upset and went to the police station to lodge the case along with her brother. She further stated that she has not met the appellant after lodging of the case.

26. It is pertinent to mention here that in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, the informant has stated that the appellant used to visit the house of her neighbour (bhabhi) adjacent to her residence, where she first came into contact with him. She further stated that she became acquainted with him in January, 2019. The appellant insisted on giving her a mobile phone, which she initially refused



to accept; however, upon his persuasion, she accepted it. Thereafter, they began conversing regularly and she began to like him. She further stated that when her family came to know about their association, they subjected her to physical assault.

27. This witness (PW 1) further stated that on 08.02.2019, the appellant took her to his house on the pretext of introducing her to his parents; however, no one was present there, and he did something wrong to her. **On that day, she did not resist.** She further stated that thereafter, on a Friday, when she had gone to buy samosas, she again met him. He said to her, “Reshma, why are you sad? Your brother has taken away your phone; I will give you a new one.” She stated that she would follow her brother’s advice and not talk to him, but ignoring her brother’s words, she again went with him to his house. There, on that day, he again tried to do something wrong to her; however, at that moment, her elder sister’s daughter and her brother arrived. Her brother was knocking on the door, but he did not allow it to be opened and stated that if they came from the roof, they would hang themselves. She stated that her brother then reached there, and thereafter all of them went to the police station and brought appellant along with themselves.



28. This witness has further stated that on the said Friday night, the appellant had taken her to his house on the pretext of buying her a new mobile phone, and at that time, she had gone on her own will. She also stated that even at present, if he is ready to marry her, she is willing to marry him; however, after reaching the police station, he started refusing the marriage.

29. Now, coming to the testimony of sister of the informant (PW 2). This witness, in her examination-in-chief, deposed that the victim is her sister, aged about 15 years and date of incident is 29.03.2019. On the said day, while the witness was staying at her in-laws' house, the victim had gone to the market at about 2:00 PM along with the PW 2's daughter Tamanna to purchase samosa. At the market, the appellant took the victim and witness's daughter to his house, from where he sent PW 2's daughter back from the doorstep and kept the victim inside. The PW 2's daughter informed this witness, who then directed her to inform her uncle. Thereafter, the PW 2's brother went to the house of the appellant, along with Tamanna, and finding the door locked, started knocking it and when the door was not opened, the PW 2's brother entered the house of the appellant through the terrace and opened the main door from inside. Upon entering, it was found that the appellant and victim were inside a room, which was



locked, and they refused to open it. On the direction of one Munna Mahto, the door was forcibly broke opened by the PW 2's brother. After entering, the victim disclosed that the appellant had done wrong to her 4-5 times on the basis of false promise of marriage. The police was then informed, and the victim was taken to the police station where she submitted a written complaint. This witness further stated that the accused persons attempted to induce them into a compromise by offering ₹ 2,00,000, which they refused, insisting instead that the accused marry the victim.

30. In her cross-examination, this witness (PW 2) deposed that no person from the locality had seen the victim accompanying the appellant from the shop to his house. She further deposed that she had never visited the appellant's house prior to the alleged incident. This witness admitted that she did not notice any stains, injuries, or blood marks on the victim's clothes. She further acknowledged that she had signed the written complaint without reading its contents and was unaware of what had been written therein or who had drafted it. She denied the suggestion that no such incident had taken place, the case was falsely instituted for the purpose of extortion or she had deposed falsely before the Court.



31. PW 3, the brother of the victim, has deposed that the victim is his sister, aged about 17 years, and on the said date, between 4:00 PM to 5:00 PM, he was present at his shop when his sister had gone to a samosa shop along with his niece (sister's daughter). He further deposed that the appellant was already present there and took his sister along with the niece towards his house, whereafter his niece was driven away from outside the house. He further deposed that the niece returned home and narrated the occurrence, upon which he, along with his family members, proceeded to the house of the appellant. Finding the door closed and not being opened, they broke it open and recovered his sister from inside, where a large number of persons had already assembled. The victim informed him that the appellant had done something wrong to her, following which the police arrived and took the appellant to the police station. Thereafter, the victim returned home and later in the evening went to the police station, where the case was instituted, she put her signature on the written report and this witness has also put his thumb impression as a witness. He further deposed that prior to the present occurrence, the accused had established physical relations with his sister on the false promise of marriage.



32. In cross-examination, this witness (PW 3) admitted that he did not see the appellant taking the victim from the shop and he is not an eye-witness to the occurrence. He further deposed that he came to know about the incident from his niece and thereafter proceeded to the place of occurrence. He further deposed that upon reaching there, a crowd of about 60 persons had already gathered; however, he did not enter the house of the appellant where the alleged occurrence had taken place. He deposed that the police arrived about 15 minutes later; however, his statement was not recorded at the place of occurrence. He further admitted that he had not given any prior statement to the police and he is deposing before the Court for the first time. He also deposed that although he had been informed that the appellant had allegedly established physical relations with his sister, he is unable to specify the dates of such incidents.

33. On a careful examination of the record, it emerges that the version of the prosecutrix, as reflected in the First Information Report, her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, and her deposition before the learned Trial Court, is not consistent with each other on material particulars.



34. In the First Information Report, the victim has alleged that on 08.02.2019, the appellant forcibly established physical relations with her and threatened her not to disclose the incident. It is further alleged that thereafter, on about five to six occasions, the appellant repeatedly established physical relations with her on the pretext of marriage despite her objection. It has also been stated that on the subsequent date of occurrence, i.e., 29.03.2019, the appellant again took her to his house, though no untoward incident occurred on that day.

35. However, in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, the victim has given a materially different version. She has stated that she had developed acquaintance and regular contact with the appellant through a mobile phone given by him, and used to like him. She further stated that on 08.02.2019, when the appellant took her to his house on the pretext of introducing her to his parents, no one was present there and he did something wrong to her; however, she has categorically stated that she did not resist on that occasion. She has further expressed her willingness to marry the appellant, if he agrees.

36. In her deposition before the learned Trial Court, the prosecutrix (PW 1) has further improved her version by stating



that the appellant committed rape upon her and on the very same day, subjected her to sexual intercourse as many as six times. However, in her cross-examination, she has admitted in paragraph 10 that she did not resist this act done by the appellant. She has also admitted that the case was instituted only after the appellant refused to marry her.

37. This clearly indicates that the First Information Report was not a consequence of the alleged incident alone, but was triggered by the subsequent refusal of marriage, thereby casting doubt on the allegation that the consent, if any, was vitiated from the inception. PW 1 has also admitted that she was in a relationship with the appellant and came in contact with him through a known person. She has further acknowledged that the appellant belongs to a different religion.

38. Coming to the testimony of PW 2 (sister of the victim), this Court finds that her evidence also suffers from material inconsistencies and inherent improbabilities. In her examination-in-chief, she has stated that the victim was about 15 years of age at the time of occurrence and the victim, along with her daughter, had gone to purchase samosa, from where the appellant allegedly took the victim to his house. However, in her cross-examination, PW 2 has made certain admissions which



materially affect the prosecution case. She has stated that she was married in the year 2004, at which time the victim was a student of Class II and studying in an Anganwadi school. This statement, if taken at its face value, renders the prosecution version regarding the minority of the victim highly doubtful. She has further admitted that she had put her signature on the written complaint without reading its contents and was unaware as to who had drafted the same, thereby diminishing the evidentiary value of the FIR as a reliable and voluntary account of the occurrence.

39. PW 3 (brother of the victim) has deposed in a manner which materially contradicts the versions of both, PW 1 and PW 2. He has stated that the age of the victim was about 17 years and has mentioned the date of occurrence as 28.03.2019. In his examination-in-chief, he has further deposed that the victim first returned home and thereafter went to the police station in the evening, which is inconsistent when compared with the version of PW 1 that she had proceeded directly to the police station from the house of the appellant. In his cross-examination, PW 3 has admitted that he did not enter the house of the appellant and the police had arrived at the place of occurrence in his presence. He has also stated that although he had been informed that the appellant had allegedly established physical relations with his



sister on about six occasions, he is unable to specify the dates of such incidents. Significantly, he has, for the first time before the Court, stated that on 28.03.2019 at about 05:30 PM, his sister, along with his niece, had gone to purchase samosas, which introduces an improvement in his version and further undermines its reliability.

40. The contradictions emerging from the testimonies of PW 1, PW 2, and PW 3 with regard to the time, manner of occurrence and the subsequent sequence of events are substantial and strike at the root of the prosecution case. These are not mere minor discrepancies attributable to lapse of memory, but material inconsistencies which create a serious doubt about the veracity and reliability of the prosecution story.

41. The medical evidence of the doctor (PW 5) also does not lend support to the prosecution case. The doctor has categorically stated that no spermatozoa, either live or dead, was detected. Although the hymen was found ruptured, the doctor has opined that there were no signs suggestive of rape at the time of examination and that the victim appeared to be habituated to sexual intercourse. In cross-examination, the doctor has further assessed the age of the victim to be between 18 to 19 years. This medical opinion not only weakens the allegation of forcible sexual



assault, but also casts a serious doubt on the prosecution's assertion regarding the minority of the victim.

42. In view of the aforesaid inconsistencies, contradictions, lack of medical corroboration, doubtful age determination and falsification of the prosecution case by documentary evidence, this Court finds that the prosecution has failed to establish its case beyond reasonable doubt. The evidence of the prosecutrix does not inspire confidence and cannot be termed as of sterling quality so as to sustain conviction on its sole basis.

43. The Supreme Court, in case of **Krishan Kumar Malik v. State of Haryana**, reported in (2011) 7 SCC 130, has held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae.

44. The Supreme Court, in paragraphs 31 and 32 of **Krishna Kumar Malik** (supra), has held as under:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to



be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellants guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellants.”

45. In the case of ***Rai Sandeep v. State (NCT of Delhi)***, reported in **(2012) 8 SCC 21**, the Supreme Court found totally conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a ‘sterling witness’, the Court opined as under:

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



whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all



other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

46. The Supreme Court, in the case of ***Ganesan v. State***, reported in **(2020) 10 SCC 573**, held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

47. The aforesaid decisions indicate that where witnesses are found to be neither completely trustworthy nor entirely unreliable, the Court must make a careful effort to ascertain the true origin of the incident. A victim may be treated as a "sterling witness" and her testimony can be relied upon without additional corroboration, provided its quality and credibility are of an exceptionally high standard. The statement of the prosecutrix should remain consistent throughout, from the initial version to the oral evidence, barring minor discrepancies, and should not



give rise to any doubt regarding the prosecution's case. Although, in cases of sexual offences, the testimony of the victim is generally sufficient, a version that is unreliable or inadequate, suffering from evident shortcomings and gaps, may render it difficult to sustain a conviction.

48. In the present case, even the medical evidence fails to support the prosecution version creating a serious doubt about the occurrence. When the medical expert clearly states that there is no clinical indication suggestive of rape, the Court is required to examine the prosecutrix's testimony with greater caution. The inconsistencies between the ocular and medical evidence create uncertainty which goes to the root of the prosecution case.

49. In the case **Sadashiv Ramrao Hadbe v. State of Maharashtra**, reported in (2006) 10 SCC 92, the Supreme Court held that when the version of the prosecutrix is not of sterling quality and is inconsistent with the medical evidence, and when the surrounding circumstances render the prosecution story doubtful, the accused is entitled to the benefit of doubt. The Court further held that conviction cannot be sustained where the prosecution has failed to prove its case beyond reasonable doubt.

50. Applying the aforesaid legal principles to the facts of the present case and in light of the settled principle of law that



conflicting versions of the prosecutrix, from what was stated in the First Information Report and what was deposed before Court and statement recorded under Section 164 of the Code of Criminal Procedure, 1973, results in material inconsistencies and cannot be relied upon and also considering the unequivocal medical evidence of PW 5 indicating absence of injuries or signs of sexual assault, also do not corroborate with the versions of the prosecutrix, I am of the view that the prosecution has failed to establish the charge beyond reasonable doubt. Consequently, the appellant is entitled to be accorded, at least benefit of doubt.

51. The age determination of the victim was not done in accordance with the procedure laid down under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

52. In the case of **Jarnial Singh** (supra), the Supreme Court has held that the procedure provided for determination of age of a juvenile in conflict with law should be adopted for determination of the age of the victim of a crime also, because there is hardly any difference, in so far as issue of minority is concerned, between the child in conflict with law and the child who is the victim of a crime.

53. Similar view has been expressed by the Supreme Court, in a recent decision, in the case of **P. Yuvaprakash** (supra)



referring to Section 34 of the Prevention of Children from Sexual Offences Act, 2012 and Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

54. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, deals with presumption and determination of age, and reads as follows:

“94. Presumption and determination of age.-

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;



(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

55. The Supreme Court, in **P. Yuvaprakash** (supra), has held as follows:

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;



(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board”.

56. With regard to the minority of the victim, no document was brought on record by the prosecution, i.e. school/ matriculation certificate and/or the date of birth certificate, duly issued by the Municipality or the Panchayat. The victim has been directly medically examined, in which the doctor has assessed her age between 18 and 19 years.

57. The Supreme Court has in many cases have taken the view that radiological examination for the purpose of age determination is not very reliable and there is always a possibility of an error of plus and minus two years.

58. Reliance may be placed on the decisions of the Supreme Court in the case of **Ram Suresh Singh v. Prabhat Singh and Another**, reported in **(2009) 6 SCC 681** and **Om Prakash v. the State of Rajasthan and Another**, reported in **(2012) 5 SCC 201**. Further, in the case of **Rajak Mohammad v. H.P.**, reported in **(2018) 9 SCC 248**, it has also been laid down that the age determination on the basis of radiological examination



may not be accurate determination and thus sufficient margin on either side has to be allowed.

59. Paragraph 9 of the **Rajak Mohammad** (supra) is being quoted herein below:

“9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”

60. In the case of Court on its **Own Motion Vs. NCT of Delhi**, reported in **2024 SCC OnLine Delhi 4484**, the Division Bench of Delhi High Court framed two questions and answered the same as under:

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

(i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test? Ans : In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on ‘bone age



ossification report', the upper age given in 'reference range' be considered as age of the victim.

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

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

61. Applying such principle laid down by the Supreme Court and the Delhi High Court, the upper age of the victim is raised to 21 years and thus the victim can be safely considered to be major, thereby excluding the applicability of the provisions of the Prevention of Children from Sexual Offences Act, 2012.

62. Since this court arrived at the conclusion that PW 1, i.e. the victim, cannot be treated as a sterling witness, however, the case of the prosecution is that the appellant established physical relations with the victim on the pretext or false promise of marriage is also not supported by any cogent or reliable evidence inasmuch as the prosecution, right from the beginning, failed to establish that from the very inception intention of the appellant was not to marry with the victim. It is an admitted position that the appellant and the victim belonged to different religions, and even if a consensual relationship existed between them, the subsequent failure of the relationship to culminate into marriage may have



been on account of social and religious differences between them. Mere failure to marry, in such circumstances, cannot *ipso facto* lead to the conclusion that the consent was obtained by misconception of fact so as to attract the offence under Section 376 of the Indian Penal Code. Hence, the conviction of the appellant under Section 376 of the Indian Penal Code is unsustainable in the eyes of law.

63. In the result, and for the reasons discussed above, this appeal succeeds. The impugned conviction of the appellant by the judgment, under appeal, and the consequential sentence, passed under the impugned order, are hereby set aside. The appellant is held not guilty of the offence, for which he stood convicted, and is acquitted of the same under benefit of doubt.

64. The appellant is already on bail. The bail bonds of the appellant are hereby cancelled and his sureties shall stand discharged.

65. The Registry is directed to return the Lower Court's Record forthwith along with a copy of this judgment.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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