

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:
The Hon'ble Justice Shampa Sarkar
And
The Hon'ble Justice Prasenjit Biswas

CRA (DB) 04 Of 2022

**Jiwan Rai
Vs.
The State of West Bengal**

For the Appellant	: Mr. Sourabh Ganguly, Adv. Mr. Abishek Sarkar, Adv.
For the State	: Mr. Aditishankar Chakraborty (erstwhile APP) Mr. Subhasish Misra, Adv.
For the De-facto complainant	: Ms. Rima Sarkar
Hearing Concluded on	: 16.07.2026
Judgment Pronounced on	: 28.08.2026
Judgment Uploaded on	: 28.08.2026

Prasenjit Biswas, J.

1. The judgment and order of conviction dated 27.09.2021 and 28.09.2021 passed by the learned Judge, Special Court (POCSO) cum Additional Sessions Judge, Kalimpong, in Special POCSO Trial No. 12/September/2019, corresponding to Special POCSO Case No. 13/2017 is assailed in this appeal.

2. By passing the impugned judgment the present appellant was found guilty for commission of offence punishable under Section 6 of the POCSO Act, 2012 and was sentenced to suffer rigorous imprisonment for life meaning by imprisonment for the remainder of natural life of the convict along with pay of fine of Rs. 1,00,000/- in default to suffer imprisonment for a term of four years.
3. Being aggrieved by and dissatisfied with the said impugned judgment and order of conviction, the present appeal is preferred at the instance of the appellant/convict.
4. In short compass, the prosecution case may be delineated as follows:

"The instant criminal proceeding was set into motion on the basis of a written complaint lodged by one Man Kumar Rai before Gorubathan Police Station, District Kalimpong. In the said complaint, it was alleged that the victim girl had disclosed to the complainant that her father, namely Jiwan Rai, the present appellant, had subjected her to penetrative sexual assault on several occasions. It was further alleged that, as a consequence of such repeated sexual assaults, the victim became pregnant and, on the date of lodging of the complaint, she was carrying a pregnancy of about five to six months. On receipt of the aforesaid written complaint, Gorubathan P.S. Case No. 44 of 2017 dated 01.09.2017 was registered and investigation was taken up by the

police. During the course of investigation, the statements of the relevant witnesses were recorded, the victim was subjected to medical examination, and other consequential investigative steps were undertaken in accordance with law. Upon completion of the investigation, the prosecuting agency found sufficient materials against the appellant and accordingly submitted charge-sheet against the appellant for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

5. In this case fourteen (14) witnesses were cited from the side of the prosecution and documents were marked as exhibits 1 to 14. Neither any oral nor any documentary evidence was adduced on behalf of the defence.

6. Considered the rival submissions advanced by the parties.

7. PW2 is the victim of the present case and the star witness of the prosecution. Her evidence constitutes the foundation of the prosecution case. In her deposition before the learned Trial Court, PW2 stated that during the period of plantation of Makkai (maize) in the year 2017, the appellant, who is her father, used to come to her room at night when she was sleeping. According to her, the appellant would forcibly remove her clothes, undress himself, lie on top of her and, against her will, committed sexual intercourse with her. She categorically stated that, in such manner the appellant repeatedly committed rape upon her. PW2 further deposed that whenever she

protested or attempted to resist such acts, the appellant assaulted her physically and threatened her with dire consequences in the event she disclosed the incident to anybody. Owing to such threats and intimidation, she remained silent for some time. She specifically stated that her father committed rape on her on three or four occasions.

8. The victim also stated that after a few months she noticed that her stomach had started bulging. This physical change was first noticed by her maternal grandmother, who made enquiries regarding the same. At that stage, PW2 disclosed the entire incident to her grandmother. Thereafter, her maternal uncle, PW1 Man Kumar Rai, and her aunt, PW3 Bimla Rai, came to their house and questioned her about the cause of the bulging stomach. PW2 then informed them that her father had forcibly subjected her to sexual intercourse on several occasions and that she had become pregnant as a consequence thereof.

9. According to PW2, after learning about the incident from her, PW1 lodged a written complaint before Gorubathan Police Station narrating the allegations against the appellant. PW2 also stated that on 11.11.2017 she delivered a male child at Siliguri District Hospital. She further stated that the child was subsequently given for adoption, although she was unable to state to whom the child had been given. Significantly, PW2 disclosed that she was about 15 years of age at the time of the occurrence and stated her date of birth to be 22.12.2002.

10. The evidence of PW1, Man Kumar Rai, who is the de-facto complainant and maternal uncle of the victim, substantially

corroborates the testimony of PW2. PW1 stated that he lodged the written complaint against the appellant alleging that the appellant had committed rape upon his own daughter on three occasions when she was about 15 years old and that the incidents had occurred inside their house. He deposed that he came to know about the sexual assault only after noticing the bulging stomach of the victim. On being questioned, the victim disclosed to him that the appellant had committed rape upon her repeatedly and had thereby made her pregnant. PW1 further stated that at the time the matter came to light, the victim was five to six months pregnant and that she later gave birth to a son.

11. PW3, Bimla Rai, the wife of PW1 and aunt of the victim, also lent support to the prosecution case. She stated that on 01.09.2017 her husband lodged the complaint after they noticed the bulging stomach of their niece. Upon enquiry, PW2 informed them that the appellant had raped her and that she had become pregnant as a result of such acts. PW3 further stated that on the date of lodging of the complaint the victim was about six months pregnant.

12. PW3 also described the steps taken immediately after the complaint was lodged. According to her, she accompanied her husband to Gorubathan Police Station. After the complaint was lodged, the victim was taken from the police station to Mal Bazar Hospital for medical examination. Following the medical examination, PW2 was taken to an NGO at Siliguri for safe shelter and care. PW3 further stated that on 18.09.2017, the victim was brought from the NGO at

Siliguri to Gorubathan Court for recording of her statement before the Magistrate, and her statement was accordingly recorded there.

13. Ms. Rima Sarkar, learned Advocate for the defactocomplainant submitted that in the present case, the prosecution had been able to establish that the victim was below eighteen years of age at the relevant point of time through cogent documentary as well as oral evidence. The primary evidence regarding her age was the birth certificate issued by the gram panchayat office, which was seized during the course of investigation. The seizure of the said document was duly proved through the seizure list, and thereafter the document was returned to PW3 on execution of a zimanama bond. The seizure list and the zimanama bond were exhibited in the case as Exhibits 5 and 6 respectively.

14. It has been argued by the learned Advocate appearing for the appellant that the prosecution failed to establish the age of the victim as being below 18 years. In support of such contention, reliance has been placed on the decision of the Hon'ble Supreme Court in ***P. Yuvaprakash Vs. State Rep. by Inspector of Police***, reported in **2023 SCC OnLine SC 846**. It has been submitted that no medical or scientific test for determination of the age of the victim was conducted in the present case and, therefore, there was no legally sufficient basis to conclude that the victim was below 18 years of age. According to the learned Advocate, in the absence of a proper age-determination test, one of the essential foundational facts for attracting the

provisions of the POCSO Act remained unproved and, consequently, the conviction of the appellant under the said Act cannot be sustained.

15. Per contra, Ms. Sarkar, learned Advocate appearing for the de facto complainant, relied upon the decision of the Hon'ble Supreme Court in ***Sushil Kumar Tiwari Vs. Hare Ram Sah and Others***, reported in **2025 SCC OnLine SC 1878**, and submitted that, undoubtedly, the victim must be below 18 years of age for an offence under the POCSO Act to be attracted. However, according to her, the determination of age cannot be confined to a medical or ossification test alone when the age of the victim is otherwise satisfactorily established by reliable documentary and oral evidence. It has been contended that, in the present case, the age of the victim has been duly established from the documentary evidence on record, which is corroborated by her own statement and the other oral evidence adduced by the prosecution. Therefore, the mere fact that no separate medical test for determination of age was conducted does not, by itself, render the prosecution case doubtful.

16. In case of **Sushil Kumar Tiwari** (supra) the Hon'ble Apex Court held at paragraph 16 interalia that-

"16. As regards the first issue concerning the age of the victim, it is quite understandable that for an offence under the POCSO Act, the victim must be aged under 18 years. In order to prove so, the prosecution has relied upon both oral and documentary evidence. The oral testimony of the mother of the victim, examined before

the Trial Court as PW-3, reveals that the victim was 12 years old at the time of incident. Further, the statement of victim under Section 164 Cr. P.C. also bears an endorsement regarding her age. The concerned ACJM, examined as PW-4, has recorded her age as 13 years. The father of the victim, examined as PW-5, has deposed that the victim's age at the time of incident was 12 years. Insofar as the documentary evidence is concerned, the Transfer Certificate (Annexure P-10) issued by the government school attended by the victim records her date of birth as 03.10.2004, thereby meaning that during the concerned time-frame of the year 2016, the victim was around 12 years old. The medical report dated 01.07.2016 (Annexure P-1) is also relevant on this aspect. The said medical report pertains to the ultrasound examination of the victim and records her age as 15 years."

17. The evidentiary value of the birth certificate issued by the gram panchayat assumes considerable importance because it is a contemporaneous public document relating to the birth of the victim. Significantly, the appellant did not challenge the authenticity, genuineness or correctness of the said birth certificate during the trial. No suggestion was put to the prosecution witnesses that the birth certificate was fabricated, manipulated or incorrectly recorded. In the absence of any such challenge, the document carries substantial

probative value and constitutes reliable evidence for determining the age of the victim.

18. Apart from the documentary evidence, PW2, the victim also stated in her deposition her date of birth. Her oral testimony is consistent with the documentary evidence produced by the prosecution. Thus, the evidence regarding her age is not based upon a solitary document alone; rather, it is supported by the victim's own statement before the Court.

19. The medical evidence adduced through PW13, the examining doctor, further strengthens the prosecution case on the issue of age. PW13 stated in his evidence that, when he examined PW2 on 01.09.2017, she was 15 years old. He also found that PW2 was pregnant for about 24 weeks at the time of examination. The medical examination report was marked as Exhibit 3/a, and the discharge certificate was marked as Exhibit 3/b.

20. The testimony of PW13 is significant for two reasons. First, his assessment that PW2 was about 15 years old is wholly consistent with the age disclosed in the birth certificate and by the victim herself. Secondly, his finding that, the victim was 24 weeks pregnant, corroborates the prosecution case regarding the pregnancy of the minor victim. The medical evidence, therefore, lends assurance both to the factum of pregnancy and to the approximate age of the victim at the relevant time.

21. When the documentary evidence, the oral testimony of PW2 and the medical evidence of PW13 are read together, they form a

consistent and unbroken chain establishing that the victim was below 18 years of age on the date of the occurrence. The birth certificate was duly seized and proved; the victim herself stated her date of birth; and the doctor independently assessed her age to be around 15 years. There is no material contradiction among these pieces of evidence.

22. It is also noteworthy that the defence did not adduce any contrary evidence regarding the age of the victim. Neither any alternative document nor any medical opinion disputing the prosecution case was brought on record by the appellant. In the absence of any effective challenge to the birth certificate or the medical evidence, there is no reason to disbelieve the prosecution's evidence on the question of age. Accordingly, the materials on record clearly establish that PW2 was a minor and was below eighteen years of age at the relevant time. The prosecution has, therefore, satisfactorily proved the minority of the victim in accordance with law.

23. The victim, PW2, has given a clear and specific account of the manner in which she was allegedly subjected to sexual assault by the appellant, who happens to be her own father. She has stated in her evidence that the appellant used to come to her at night when she was asleep. According to her testimony, the appellant would forcibly undress her as well as himself, thereafter lie on top of her and forcibly subjected her to sexual intercourse. The victim has thus described not merely the occurrence in general terms but has narrated the manner in which the acts were committed and the circumstances in which they repeatedly took place.

24. The victim has further stated that whenever she objected to the conduct of the appellant, he used to beat her and threaten her with dire consequences if she disclosed the matter to anyone. This part of her testimony assumes considerable importance while considering her conduct and the absence of immediate disclosure. The evidence indicates that the victim was subjected not only to sexual violence but also to physical assault and intimidation. Such circumstances furnish a natural explanation as to why a minor victim may remain silent and may not immediately disclose the occurrence to other members of the family or persons outside the family, especially when the perpetrator is her own father.

25. Significantly, the testimony of PW2 has not been materially shaken in cross-examination. The defence had the opportunity to test her version by cross-examination, yet no material contradiction or inconsistency has been brought out which would render her account inherently improbable. Her evidence regarding the manner in which the appellant allegedly committed the acts, the threats administered by him and the circumstances in which the occurrence took place, has substantially remained intact.

26. It is also relevant to consider the physical circumstances of the household as disclosed by the victim during cross-examination. She stated that there were three rooms in their house. She further stated that she used to sleep in one room with her younger sister, Sapna, while her brother used to sleep in the kitchen. This aspect of her evidence, far from rendering the prosecution case improbable,

provides the factual setting in which the alleged occurrences are said to have taken place. The appellant, being her father and residing in the same household, had natural and unrestricted access to the victim during the night. The fact that other family members were present in different portions of the house does not, by itself, make the victim's account improbable, particularly when she has specifically stated that the appellant used to threaten her and that she was afraid to disclose the occurrence.

27. It has been contended on behalf of the appellant that no DNA test or DNA profiling was conducted in the present case and that, in the absence of such scientific evidence, the prosecution case ought to be viewed with suspicion. We are unable to accept the said contention as an absolute proposition. The mere fact that DNA profiling was not conducted cannot, by itself, lead to the conclusion that the prosecution has failed to establish the charge, particularly when there is other cogent, reliable and legally admissible evidence available on record which merit independent consideration.

28. In this connection, reliance may appropriately be placed on the decision of the Hon'ble Supreme Court in ***Sunil v. State of M.P.***, reported in **(2017) 4 SCC 393**, wherein, while considering the effect of non-conduct of DNA profiling, the Hon'ble Supreme Court observed, inter alia, in paragraph 4 that the provisions of Section 53-A Cr.P.C. and the earlier decision in ***Krishan Kumar Malik v. State of Haryana***, reported in **(2011) 7 SCC 130**, do not lay down a proposition that failure to conduct a DNA test of the samples collected

from the accused, or failure to prove a DNA profiling report, would necessarily result in the failure of the prosecution case. The Supreme Court further explained that Section 53-A Cr.P.C. essentially facilitates the prosecution in proving its case. A positive DNA test may constitute clinching evidence against an accused; however, where DNA profiling has not been conducted, the Court is still required to examine the weight and probative value of the other materials and evidence brought on record by the prosecution.

29. Thus, in a case where DNA profiling has not been undertaken, the proper approach is not to mechanically treat the absence of DNA evidence as a fatal defect, but to examine whether the remaining evidence, particularly the testimony of the victim, is reliable, consistent and inspires confidence. If the other evidence on record establishes the essential ingredients of the offence beyond reasonable doubt, the mere non-availability of DNA evidence cannot operate as an automatic ground for acquittal.

30. The absence of DNA evidence, therefore, has to be considered against this evidentiary background. The prosecution is not required to establish the charge by producing every conceivable category of evidence. The law recognises different forms of evidence, and the Court has to determine the reliability and cumulative effect of the evidence actually brought on record. Where the testimony of the victim is found to be trustworthy and consistent and is supported by the surrounding circumstances and other evidence, the absence of DNA profiling cannot be elevated into a fatal deficiency.

31. The decision in **Sunil(supra)** makes the position clear. The Supreme Court specifically held that where DNA profiling has not been done in a given case, the weight of the other materials and evidence on record must still be considered. The focus, therefore, has to be shifted from the absence of one particular scientific test to the quality and reliability of the evidence which is actually available before the Court.

32. In the present case, the evidence of PW2 is direct evidence of the occurrence. She has narrated the acts allegedly committed by the appellant and has attributed the same specifically to him. Her testimony is also consistent with the circumstances disclosed by the other prosecution witnesses. More importantly, the defence has not been able to shake the material portions of her testimony in cross-examination. In such circumstances, it would be contrary to the principle laid down by the Hon'ble Supreme Court to discard the prosecution case merely because DNA profiling was not undertaken.

33. It is also necessary to distinguish between the absence of DNA evidence and the existence of evidence inconsistent with the prosecution case. The present case is not one where a DNA test was conducted and the same yielded a result favourable to the appellant. Rather, no DNA profiling was undertaken. The consequence of such non-conduct, as explained by the Supreme Court, is that the Court must examine the other evidence on record. It does not follow that the appellant acquires an automatic benefit of doubt merely because the prosecution did not produce a DNA report.

34. The circumstances disclosed by the victim regarding the arrangement of the rooms in the house also provide a coherent explanation of the opportunity available to the appellant. She and her younger sister were sleeping in one room, while her brother was sleeping in the kitchen. The appellant, being the father and a member of the household, could enter the room at night without creating circumstances which would necessarily attract immediate suspicion. The victim's account that she was threatened and intimidated further explains why she did not disclose the occurrence at the earliest opportunity. In the facts of the present case, the testimony of PW 2 stands on a different footing from a case resting merely upon suspicion or circumstantial inference.

35. The statement of the victim recorded under Section 164 Cr.P.C., marked as Exhibit-4, assumes considerable significance in the present case. In the said statement, the victim has clearly narrated when and in what manner the incident occurred. Her statement contains a specific account of the occurrence and the circumstances in which she was subjected to rape. The narration is not vague or omnibus in nature; rather, the victim has described the relevant circumstances with sufficient clarity. The statement recorded before the learned Magistrate, therefore, cannot be discarded or its evidentiary significance cannot diminish merely by isolating one particular aspect of her subsequent conduct.

36. An important feature of the statement is that the victim has herself explained why she did not raise an alarm at the time of the

occurrence. She has clearly stated that she was beaten and threatened by her father and, owing to such assault and intimidation, she did not scream. This explanation assumes considerable importance while appreciating her conduct. The absence of an immediate outcry cannot be considered in isolation or treated as an independent circumstance sufficient to discredit her version. Her conduct has to be assessed in the context of the circumstances in which she was placed, particularly her tender age, her vulnerability the trauma she had suffered and the fact that the alleged perpetrator was her own father. She had no reason to falsely implicate her father at the cost of her own dignity, emotional well-being and reputation of her family. Knowing that the family would be ruined, she came up with the truth in front of her family members.

37. It has been contended by the learned Advocate for the appellant that P.W.14, the Investigating Officer of the case, was not questioned specifically regarding the time, date, manner, and place of arrest of the appellant, and that such omission creates a serious infirmity in the prosecution case.

38. Upon consideration of the evidence, it appears that P.W.14, in his examination-in-chief, narrated the investigation chronologically from the endorsement of the written complaint/FIR up to the submission of the charge-sheet. Although the record does not disclose any detailed evidence regarding the precise time, date, manner, and place of arrest of the appellant, such omission, in the facts of the present case, cannot be treated as fatal to the prosecution.

39. The law is well settled that, every omission or irregularity in the course of investigation does not necessarily vitiate the trial. The crucial question is whether such omission has caused prejudice to the accused or has affected the core of the prosecution case. The arrest of an accused is essentially a step in the process of investigation; unless the legality of the arrest itself is in issue, or unless the prosecution seeks to rely upon any material recovered pursuant to the arrest, the absence of detailed evidence regarding the circumstances of arrest does not by itself render the prosecution case unreliable.

40. In the present case, the prosecution case rests primarily on the substantive evidence adduced during trial, including the testimony of the victim and other prosecution witnesses. The defence has not been able to demonstrate that any prejudice was caused to the appellant because the Investigating Officer was not specifically questioned on the particulars of arrest. Nor has it been shown that any contradiction, recovery, confession, or other incriminating circumstance depended upon proof of the exact time, date, manner, or place of arrest.

41. It is also significant that the defence had the opportunity to cross-examine P.W.14. If the defence considered the particulars of arrest to be material for its case, appropriate questions could have been put to the witness during cross-examination. The absence of such questioning cannot subsequently be used to contend that the entire prosecution case is rendered doubtful.

42. Therefore, while it is true that the evidence on record does not specifically disclose the time, date, manner, and place of arrest of the

appellant, such omission relates only to a collateral aspect of the investigation and does not affect the credibility of the substantive prosecution evidence. In the absence of any demonstrated prejudice to the appellant, the omission cannot be held to be fatal to the prosecution case.

43. It is now well settled that in cases involving sexual offences, the testimony of the prosecutrix stands on a higher pedestal and does not require corroboration as a matter of law, provided it inspires confidence and is found to be reliable. In **Deepak Kumar Sahu v. State of Chhattisgarh**, reported in **2025 SCC OnLine SC 1610**, the Hon'ble Supreme Court reiterated the settled principle that the sole testimony of the victim can form the basis of conviction if it is trustworthy and free from material infirmities. The Apex Court observed that where the evidence of the victim does not suffer from any basic infirmity, and the factor of probability does not render her version improbable or unworthy of acceptance, the Court is fully justified in recording a conviction solely on the basis of her testimony.

44. Applying the aforesaid principle, it is evident that once the testimony of the victim inspires confidence and there is nothing on record to show any material contradiction, embellishment, or inherent improbability affecting the core of the prosecution case, the absence of corroborative evidence cannot be treated as fatal. Therefore, in view of the law laid down in **Deepak Kumar Sahu** (supra), a conviction can legally be founded solely on the evidence of the victim, provided her

testimony is found to be credible, reliable, and worthy of acceptance by the Court.

45. It would be unrealistic to expect a minor victim subjected to such an occurrence to react in accordance with any established standard of conduct. A child may respond to fear and violence by becoming silent, submissive or psychologically overwhelmed. The capacity to resist, raise an alarm or immediately seek assistance depends upon several factors, including age, emotional maturity, the degree of intimidation and the relationship between the victim and the alleged perpetrator. In the present case, the victim has specifically stated that she was beaten and threatened. Such physical assault and threats furnish a natural and plausible explanation for her failure to scream.

46. The circumstance that the appellant was the father of the victim is of particular significance. A father ordinarily occupies a position of trust, authority and protection in the life of a minor child. A child is expected to look towards her father for care, affection and security. If that very relationship is abused and converted into a means of exercising fear and control, the psychological consequences for the child may be profound. The victim was not merely confronted with a physical act; she was allegedly subjected to such conduct by a person upon whom she was dependent and from whom she was entitled to expect protection. It is also significant to note that the mother had left the family and was residing elsewhere for the past six to seven years as per the deposition of the witness.

47. The psychological impact of such an occurrence upon a minor cannot be underestimated. A child may experience fear, confusion, helplessness, shame and emotional shock, particularly when the person responsible is a close family member. The child may not possess the maturity to comprehend the enormity of what was happening or the ability to formulate an immediate course of action. The trauma may manifest itself through silence rather than resistance. It would, therefore, be inappropriate to draw an adverse inference merely because the victim did not scream at the relevant time.

48. The Court is required to appreciate the conduct of a minor victim in a realistic manner. Human reactions to traumatic experiences cannot be reduced to a fixed formula. There may be circumstances in which a victim cries for help or immediately discloses the incident; there may equally be circumstances in which a victim remains silent because of fear, threats, shame or psychological shock. Particularly in cases involving a minor and a close family member, the absence of an immediate outcry cannot be treated as a decisive test of credibility.

49. The trauma becomes still more grave when the alleged offender is the father of the victim. The home, which ought to be the safest environment for a child, is alleged to have become the place where she experienced fear and violation. The person who should have been her protector used his parental authority to subject her to sexual assault and thereafter silence her through physical abuse and threats. Such circumstances are capable of causing a deep psychological

wound, and the Court cannot ignore this aspect while assessing her conduct.

50. At the same time, the Court must remain guided by the evidence on record and not by emotion alone. The psychological consequences of the occurrence are relevant because they assist the Court in understanding the conduct of the victim; they do not substitute the requirement of proof. In the present case, however, the victim has given a specific account of the occurrence in her statement under Section 164 Cr.P.C. and has also furnished a clear explanation for her failure to raise an alarm. Her statement, therefore, has to be assessed as a whole rather than by extracting one circumstance from its context.

51. It is profitable to quote the following observation of the Hon'ble Apex Court in case of **Vijaya Singh and Another Vs. State of Uttarakhand** reported in **2024 SCC Online SC 3510-**

"28. Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special

purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 Cr.P.C. does not apply to a statement under Section 164 Cr.P.C. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to

be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record.”

52. When the statement recorded under Section 164 Cr.P.C., marked as Exhibit-4, is read in its entirety, it reveals a coherent account of the occurrence and the circumstances surrounding it. The victim has stated when and how the incident happened and has explained that she did not scream because she was beaten and threatened by her father. There is, therefore, a reasonable and natural explanation for the absence of an immediate outcry. Such conduct, viewed in the context of her age and the relationship with the appellant, cannot by itself furnish a ground to reject her version.

53. Accordingly, the statement of the victim under Section 164 Cr.P.C. deserves to be considered with due regard to her tender age, her vulnerability and the psychological circumstances in which she was placed. Her silence cannot be equated with consent or treated as evidence that the occurrence did not take place. The explanation of physical assault and threats, coupled with the inherent psychological trauma of being subjected to such conduct by one's own father, provides a coherent basis for understanding her behaviour. The alleged betrayal of the parental relationship makes the occurrence particularly grave, and the victim's conduct has to be assessed against that painful reality rather than through an artificial expectation of how a minor ought to have reacted.

54. The statement of the victim finds material corroboration from the evidence of PW1, the de-facto complainant. PW1 has stated in his evidence that he noticed that the stomach of the victim was bulging and, upon making an inquiry, PW2 disclosed to him that her father, namely the appellant Jiwan Rai, had committed rape upon her on three occasions, as a result of which she had become pregnant. Thus, the disclosure made by the victim to PW1 was not an isolated circumstance but was preceded by a circumstance noticed by PW1 himself, namely, the visible bulging of the victim's stomach. The evidence of PW1, therefore, lends assurance to the testimony of the victim on the material aspect of the prosecution case.

55. It has been argued on behalf of the appellant that the evidence of PW3, Bimla Rai, the maternal aunt of the victim, suffers from inconsistency with regard to the date on which she came to know about the occurrence. It has been pointed out that, in her cross-examination, PW3 stated that on 01.09.2017 she came to know about the incident and that on the following day, i.e. on 02.09.2017, they went to lodge the FIR. According to the learned Advocate for the appellant, if PW3 had already acquired knowledge of the occurrence on 01.09.2017, the prosecution ought to have lodged the FIR on the same day and the intervening delay casts doubt upon the prosecution case.

56. We are unable to accept such contention. PW3 is admittedly a rustic village woman and there is nothing on record to suggest that she was conversant with dates and the precise reckoning of time in the

manner expected of a formally educated person. Her evidence has to be appreciated having regard to her social background and the circumstances in which she came to know about the occurrence. A mere discrepancy or imprecision regarding the date cannot, by itself, be treated as a material contradiction when the witness has otherwise narrated the relevant sequence of events in a consistent and natural manner.

57. In fact, the alleged discrepancy is satisfactorily explained by PW3 herself. She categorically stated in her cross-examination that after coming to know about the incident, she, along with her husband, PW1, went to lodge the FIR on the following day. Therefore, even if her statement is taken at its face value, that she came to know about the occurrence on 01.09.2017 and the FIR was lodged on 02.09.2017, the same cannot be said to be inconsistent with her version. Rather, her evidence itself explains the sequence of events and removes the basis of the submission advanced on behalf of the appellant.

58. It is well settled that the testimony of a rustic or village witness cannot be subjected to mathematical precision in respect of dates, time or minor details, particularly when such details do not go to the root of the prosecution case. While appreciating oral evidence, the Court is required to examine the testimony as a whole and determine whether the core of the prosecution version remains intact. Minor discrepancies, errors in dates, or variations attributable to lapse of time and the ordinary manner in which a rustic witness recollects events cannot be elevated to the status of material contradictions

unless they create a serious dent in the substratum of the prosecution case.

59. In the present case, the deposition of PW3, when read as a whole, clearly indicates that she had vividly narrated the relevant circumstances. She stated that, after the fact came to her knowledge, she accompanied her husband, PW1, and that the FIR was lodged on the following day. Thus, the so called discrepancy concerning the date does not affect the substance of her testimony. There is no reason to discard the otherwise consistent and natural account of PW3 merely because she was unable to state the dates with mathematical exactitude. The Court is required to separate the grain from the chaff and to assess whether the discrepancy affects the core of the prosecution case. In our considered view, it does not.

60. The appellant has further sought to create doubt by referring to the evidence of PW4, who stated that he came to know about the incident from PW1, the de-facto complainant. Such submission, in our view, does not advance the case of the appellant. The evidence of PW3 itself provides a clear and natural explanation as to how the incident became known in the village. PW3 stated in her cross-examination that her husband, PW1, called the villagers and thereafter she, PW2 (the victim) and others went to Mal Bazar Hospital. In such circumstances, it is entirely natural that a co-villager, such as PW4, would come to know about the occurrence from PW1, who was the de-facto complainant and one of the persons who had initially come to know about the incident.

61. There is, therefore, nothing inherently suspicious in PW4 stating that he learnt about the incident from PW1. On the contrary, his evidence fits into the sequence emerging from the testimony of PW1 and PW3. PW1 noticed the physical condition of the victim, made an inquiry and came to know from the victim about the alleged sexual assault. Thereafter, the matter was communicated to the persons in the locality, the victim was taken to the hospital and steps were taken for lodging the FIR. It is thus reasonably explained as to how PW4 came to know about the incident. The fact that PW4 was not an eyewitness to the occurrence and learnt about it from PW1 does not render his evidence unreliable; rather, his evidence is relevant only to the extent of explaining the subsequent circumstances and the manner in which the occurrence came to light.

62. It is also important to bear in mind that the evidence of PW4 is not being relied upon as substantive evidence of the commission of rape itself. His statement that he came to know about the incident from PW1 merely explains the chain of events following the disclosure made by the victim. The substantive evidence regarding the occurrence has to be assessed principally on the testimony of the victim and the surrounding circumstances, including the evidence of PW1 and PW3. Viewed from that perspective, the fact that PW4 received the information from PW1 cannot be treated as a circumstance creating doubt in the prosecution case.

63. Thus, when the evidence of PW1, PW2 and PW3 is considered in its entirety, a coherent and natural sequence emerges. The victim

disclosed the occurrence; PW1 noticed the physical condition of the victim and, upon inquiry, came to know about the rape committed by the appellant upon her daughter; PW3 thereafter became aware of the incident and accompanied PW1 and the victim; the victim was taken to Mal Bazar Hospital; and the FIR was lodged on the following day. PW4's evidence that he came to know about the occurrence from PW1 is consistent with this sequence and is wholly explicable in the circumstances.

64. Consequently, the minor discrepancy regarding the date referred to by PW3 (Bimla Rai), as also the fact that PW4 (Kumar Chhettri) received information from PW1 (de-facto complainant), cannot be regarded as circumstances sufficient to discredit the prosecution witnesses or to create a reasonable doubt regarding the core of the prosecution case. The evidence must be appreciated in its entirety and not by isolating stray answers elicited in cross-examination. On such holistic appreciation, the testimony of the victim receives material corroboration from the evidence of PW1 and is further supported by the surrounding circumstances proved through PW3 and PW4. The contentions advanced on behalf of the appellant on these aspects, therefore, do not persuade us to discard the otherwise consistent and credible evidence of the prosecution.

65. The contention advanced on behalf of the appellant with regard to the involvement of the NGO, namely CINI, and the fact that the victim was thereafter staying at CINI, Hakimpura, also does not appear to have any substance. The mere circumstance that the matter

was brought to the notice of an NGO, or that the victim subsequently stayed in the care and protection of such an organisation, cannot, by itself, create any adverse inference against the prosecution or render the testimony of the victim unreliable. On the contrary, the involvement of a child-care organisation in a case involving a minor victim of sexual assault is consistent with the statutory scheme under the Protection of Children from Sexual Offences Act, 2012 and the Rules framed there under.

66. In this regard, reference may appropriately be made to Rule 4(5) of the Protection of Children from Sexual Offences Rules, 2020. The said provision recognises the role of the Child Welfare Committee (CWC), which, with the assistance of a social worker, is required to assess the circumstances of the child and determine whether the child requires to be removed from the custody of the family and be placed in a safe and protective environment. The object underlying such a provision is evidently the protection and welfare of the child and not the creation of evidence against the accused. Where the perpetrator is a member of the child's own family, the need for such protective intervention may become even more pronounced.

67. In the present case, the victim was staying at CINI, Hakimpara. The fact that she was placed in such an environment cannot reasonably be construed as a circumstance adverse to the prosecution. Rather, the placement of the victim with an organisation engaged in child protection appears to be a measure intended to secure her safety, care and emotional well-being. Once an allegation of sexual

assault upon a minor by a close family member comes to light, the child may no longer feel safe within the family environment. In such circumstances, providing the child with an alternative safe environment is consistent with the very object and purpose of the statutory framework.

68. It is important to appreciate that an NGO such as CINI is not a substitute for the investigating agency, the prosecuting agency or the Court. Its role is primarily directed towards the care, protection, rehabilitation and emotional support of the child. The involvement of such an organisation cannot be equated with tutoring, manipulation or fabrication of evidence. Any such allegation must be supported by materials demonstrating that the organisation actually interfered with the child's statement or induced her to make a false allegation. In the present case, no such material has been brought on record.

69. The defence has not identified any particular circumstance showing that the involvement of CINI caused any prejudice to the appellant. The appellant has nowhere taken a specific plea that, by reason of the victim's stay at CINI, the defence was deprived of any particular right, that any evidence was fabricated, that any witness was prevented from being examined, that the appellant was denied an opportunity of effective cross-examination, or that the investigation was otherwise rendered unfair. Mere reference to the involvement of an NGO, without demonstrating any consequential prejudice, cannot constitute a valid ground for doubting the prosecution case.

70. Indeed, the argument appears to proceed on the assumption that because the victim was subsequently placed in the care of an NGO, her version must necessarily have been influenced. Such an assumption is neither warranted by the statutory scheme nor supported by the evidence on record. The mere possibility of influence cannot take the place of proof. If the defence seeks to attribute tutoring or manipulation to the NGO, it must establish some factual foundation for such an allegation. No such foundation appears to have been laid in the present case.

71. Rule 4(5) of the POCSO Rules, 2020 is particularly relevant in this context. The provision contemplates an assessment by the CWC, with the assistance of a social worker, as to whether the child requires to be taken out of the custody of the family. Such a provision itself recognises that there may be cases in which remaining within the family environment may not be conducive to the safety and welfare of the child. Therefore, the fact that the victim was staying at CINI cannot be regarded as an unusual or suspicious circumstance merely because the appellant belongs to the same family.

72. Furthermore, the appellant has not demonstrated any nexus between the involvement of CINI and the substantive evidence adduced before the Trial Court. The victim's evidence has to be assessed on its own merits. If her testimony is otherwise found to be clear, consistent and trustworthy, the mere fact that she received care and support from an NGO cannot diminish its evidentiary value. The defence had full opportunity to cross-examine the victim and other

prosecution witnesses and to bring out any alleged contradiction, tutoring or influence. The absence of any material establishing influence, by the NGO, is significant.

73. Moreover, the appellant has nowhere specifically pleaded that the involvement of CINI resulted in any prejudice to his defence. There is no assertion that the appellant was denied any procedural safeguard; that the victim's statement was procured in an unlawful manner; that the appellant was prevented from confronting the evidence against him; or that any particular piece of evidence was introduced as a consequence of improper intervention by the NGO. In the absence of demonstrated prejudice, the appellant cannot rely upon the mere involvement of the NGO as a ground for interference with the findings of the Trial Court.

74. The evidence of PW6 (Munna Chettri) assumes significance on a limited but material aspect of the prosecution case, namely, the subsequent circumstances concerning the victim, after she was taken to the hospital. PW6 has stated in his evidence that he received information from the NGO regarding the fact that PW2 had given birth to a child. This part of the testimony of PW6 provides corroboration to the evidence of the victim regarding her subsequent stay at Hakimpara under the care of CINI and the medical treatment which followed.

75. The evidence of PW2 in this regard, is clear and specific. She stated that after she was taken to the hospital, she was kept at Hakimpara under CINI and remained there for approximately three months. She further stated that during this period she was taken to

the hospital on several occasions for medical attention and that ultimately she gave birth to a baby boy at Siliguri District Hospital. Thus, the evidence of PW2 contains a definite sequence of subsequent events. Her removal to the hospital; her placement at Hakimpara under CINI; her continued stay there for about three months; repeated visits to the hospital and ultimately, the birth of a male child at Siliguri District Hospital.

76. The fact that the information regarding the birth of the child came to PW6 from the NGO does not detract the evidentiary value of his testimony. A witness may naturally acquire knowledge of a subsequent event from a person or institution involved in the care of the victim. What is material is whether the information received by him is consistent with the circumstances independently narrated by the victim. In the present case, PW2 herself stated that she was under the care of CINI at Hakimpara and that she was subsequently taken to hospital, where she gave birth to a male child. PW6's evidence that he received information from the NGO about the birth of the child is therefore in harmony with her version.

77. It has been argued by the learned Advocate for the appellant that the prosecution attempted to show that neither the victim nor the de-facto complainant understood Hindi or English and, therefore, an interpreter was required at the stage of recording the statement under Section 164 Cr.P.C. It is further contended that during their deposition before the Court they did not require any interpreter and that several

facts appearing in the statement under Section 164 Cr.P.C. were not stated by the V.G. in her evidence before the Trial Court.

78. The evidence of PW7 and PW10 has to be appreciated in the proper context in which they were associated with the recording of the statements of the witnesses. It appears from the materials on record that the relevant witnesses were conversant with Nepali but did not understand Hindi. In such circumstances, the assistance of an interpreter was necessary to ensure that the witnesses understood the questions put to them and that their answers were correctly communicated and recorded. The presence of an interpreter, therefore, cannot by itself be treated as a circumstance casting doubt upon the authenticity of the statements.

79. The necessity for interpretation is also borne out from the statement recorded under Section 164 Cr.P.C., where it has been specifically indicated that the questions were put to the witnesses in Hindi. When a witness is unable to understand the language in which questions are put, interpretation becomes an essential procedural safeguard rather than an irregularity. The purpose of such interpretation is to ensure that the witness understands the questions and is able to give an informed and voluntary response.

80. In this context, Section 281 Cr.P.C. is of significance. The provision contemplates that where a witness does not understand the language in which the record is made, the record is required to be interpreted to the witness in a language which he or she understands. The underlying object of the provision is to ensure that the witness is

not merely answering questions mechanically but understands the substance of what is being asked and that the recorded statement correctly represents what the witness has stated. Therefore, the presence of an interpreter in circumstances where the witness does not understand Hindi is consistent with the procedural requirement and advances the fairness of the process.

81. The same approach is reinforced by the protective scheme of the Protection of Children from Sexual Offences Rules, 2020. Rule 5 recognises the necessity of providing a child with an interpreter or translator wherever required, particularly having regard to the language in which the child is comfortable and capable of communicating. The purpose is to ensure that the child is able to understand the proceedings and communicate without linguistic barriers. Such a safeguard assumes greater significance in cases under the POCSO Act, where the witness may already be in a state of fear, vulnerability or psychological distress.

82. Thus, the role performed by PW7 and PW10 as interpreters cannot be regarded as an infirmity in the prosecution case. On the contrary, their involvement appears to have been necessitated by the linguistic circumstances of the witnesses. Where the witnesses were speaking in Nepali and did not understand Hindi, the use of an interpreter was a necessary measure to facilitate effective communication and to ensure that the statements recorded under Section 164 Cr.P.C. represented the answers actually given by the witnesses.

83. The fact that the questions were put in Hindi, as reflected in the statement recorded under Section 164 Cr.P.C., does not mean that the witnesses were expected to understand Hindi without assistance. The very purpose of having an interpreter is to bridge such a linguistic gap. What is material is whether the witness understood the questions through interpretation and whether the answers were correctly conveyed and recorded. There is nothing in the materials referred to which demonstrates that the interpreter distorted the questions or answers, supplied information to the witness, or otherwise interfered with the process of recording the statement.

84. In fact, the use of an interpreter in the present circumstances safeguards the reliability of the statement. Had the witness been questioned in a language which she did not understand without the assistance of an interpreter, the defence could legitimately contend that the statement was not based upon an informed understanding of the questions. The presence of PW7 and PW10, therefore, served the opposite purpose: it ensured that the witnesses could understand what was being asked and communicate their answers in a language with which they were conversant.

85. In the absence of any material demonstrating that PW7 or PW10 introduced, altered or influenced the substance of the witnesses' statements, their role as interpreters cannot be treated as a circumstance creating doubt about the prosecution case. Rather, their presence ensured that the witnesses were able to understand the questions and communicate their answers effectively. The procedure

adopted, therefore, appears to have been directed towards preserving the accuracy, voluntariness and reliability of the statements rather than undermining them.

86. It has been contended on behalf of the appellant that, according to the victim, the first incident occurred during the period of Makai plantation and that there is, therefore, an apparent discrepancy regarding the time of the occurrence vis-à-vis the subsequent pregnancy. Such contention, however, does not merit acceptance when the evidence of PW2 is considered in its entirety and in its proper perspective.

87. PW2 has stated in her evidence that the appellant subjected her to sexual assault on three to four occasions. The reference to the period of Makai plantation was made in relation to the first incident. There is nothing in her evidence to suggest that she ever stated that she became pregnant immediately following that first incident. On the contrary, her evidence regarding repeated occurrences clearly indicates that there were several occasions on which the appellant allegedly subjected her to sexual intercourse. Therefore, the fact that pregnancy did not occur from the first incident does not create any inconsistency in her subsequent statement regarding the repeated acts.

88. The argument advanced on behalf of the appellant appears to proceed on the assumption that the victim must have conceived from the very first occurrence. Such an assumption is plainly unwarranted. Conception does not necessarily follow every act of sexual intercourse.

Whereas, in the present case, the victim has stated that the appellant committed the act on three to four occasions, the possibility of conception following any one of the subsequent occurrences cannot be ruled out merely because the first occurrence took place during the Makai plantation period.

89. The sequence narrated by PW2 is, therefore, capable of a natural and coherent explanation. The first incident occurred during the Makai plantation period, followed by further incidents on other occasions. The eventual pregnancy could have resulted from any of the subsequent incidents. Consequently, there is no logical inconsistency between the time attributed to the first occurrence and the fact that the victim subsequently became pregnant.

90. The alternative suggestion that the victim might have been pregnant earlier by some other person is even more difficult to accept. Such a submission is founded purely upon speculation and is not supported by any substantive evidence on record. The defence has not identified any particular person who allegedly had sexual relations with the victim, nor has it brought on record any circumstance demonstrating that the victim had such an opportunity or relationship with any other person. A mere possibility, unsupported by evidence, cannot be elevated to the status of a reasonable doubt.

91. It is also important to bear in mind that the victim was a minor. Her evidence regarding repeated sexual assault has to be assessed with due regard to her age and vulnerability. She has specifically attributed the acts to the appellant and has stated that the incidents

occurred on three to four occasions. If her testimony is otherwise found to be trustworthy, the subsequent fact of pregnancy is entirely compatible with her account. The mere fact that the first occurrence did not result in pregnancy does not furnish any reasonable basis for concluding that the pregnancy must have been caused by another person.

92. Moreover, the appellant cannot take advantage of an imagined contradiction which does not actually arise from the evidence. The victim did not state that conception took place during the first incident. She merely identified the approximate period when the first incident occurred. Her subsequent statement that the appellant committed the act on three to four occasions supplements that account rather than contradicting it. The evidence, read as a whole, discloses a continuing series of alleged occurrences rather than one isolated event.

93. The defence argument also overlooks the distinction between the time of the first occurrence and the time of conception. These are not necessarily identical. Where there are multiple number of rape occurring over a period of time, the fact of pregnancy cannot be linked exclusively to the first act unless there is evidence establishing such a connection. In the absence of such evidence, it is entirely permissible to consider that conception may have occurred following one of the later alleged occurrences.

94. Therefore, the submission made by the appellant that the victim must have become pregnant earlier through some other person merely because she referred to the first occurrence as having taken place

during the Makai plantation period is without a proper evidentiary foundation. The Court cannot proceed upon conjecture when there is direct testimony from the victim regarding repeated sexual assault by the appellant. The trend of the cross examination also does not reflect that any question or suggestion had been put to the victim in this regard. All these issues are being raised for the first time in appeal.

95. The Hon'ble Apex Court in the case of **Bhanei Prasad @ Raju Vs. State of Himachal Pradesh** reported in **2025 SCC Online Sc 1636** held at paragraph 13 inter alia that –

"When a father who is expected to be a shield, a guardian, a moral compass, becomes the source of the most severe violation of a child's bodily integrity and dignity, the betrayal is not only personal but institutional. The law does not, and cannot, condone such acts under the guise of rehabilitation or reform. Incestuous sexual violence committed by a parent is a distinct category of offence that tears through the foundational fabric of familial trust and must invite the severest condemnation in both language and sentence. The home, which should be a sanctuary, cannot be permitted to become a site of unspeakable trauma, and the courts must send a clear signal that such offences will be met with an equally unsparing judicial response. To entertain a plea for leniency in

a case of this nature would not merely be misplaced, it would constitute a betrayal of the Court's own constitutional duty to protect the vulnerable. When a child is forced to suffer at the hands of her own father, the law must speak in a voice that is resolute and uncompromising. There can be no mitigation in sentencing for crimes that subvert the very notion of family as a space of security."

96. In the case of **Bhanei Prasad** (supra) Hon'ble Apex Court at paragraph 5 held interalia that-

"The jurisprudence under the POCSO Act has evolved as a bulwark against the predatory crimes targeting the innocence of childhood. Section 29 of the POCSO Act creates a statutory presumption of guilt, once foundational facts are established. In the present case, this presumption stood un rebutted. The victim's testimony was unwavering, medically corroborated, and free from embellishment. Her disclosure, though delayed, was truthful and borne out of perennial trauma and threats she has undergone."

97. Learned Advocate appearing for the appellant has placed reliance upon the decision of the Hon'ble High Court at Gauhati in **Manirul Islam vs. State of Assam & Another**, reported in **2021**

SCC OnLineGauhati. Referring to paragraph 43 of the said judgment, it has been contended that the initial burden of proving the prosecution case always lies upon the prosecution, and that only after such burden is satisfactorily discharged does the legal burden shift upon the accused. On the strength of the aforesaid principle, it has been argued that the prosecution in the present case has failed to establish the foundational facts necessary for shifting any burden upon the appellant.

98. Upon applying the aforesaid principle to the facts of the present case, I find that the prosecution has fully discharged its initial burden. The testimony of PW2, the victim girl, is clear, consistent and categorical with regard to the repeated acts of penetrative sexual assault committed by the appellant, who is none other than her own father. Her evidence remained substantially unshaken in cross-examination and inspires confidence. The victim's statement is further corroborated by the evidence of PW1, the de-facto complainant and maternal uncle of the victim, and PW3, the aunt of the victim, before whom the victim disclosed the incident after her pregnancy became apparent. The evidence on record also establishes that the victim was found to be pregnant while she was a minor, and she subsequently gave birth to a male child.

99. In the face of such consistent and corroborative evidence, the prosecution cannot be said to have failed in establishing the foundational facts of the case. Rather, the materials brought on record prove beyond reasonable doubt that the appellant subjected his minor

daughter to repeated sexual intercourse, resulting in her pregnancy. Therefore, the principle enunciated in **Manirul Islam (supra)** does not advance the case of the appellant; on the contrary, once the prosecution succeeded in proving the essential ingredients of the offence, the evidentiary burden stood shifted, and the appellant failed to furnish any plausible explanation or rebuttal to discredit the prosecution's version.

100. Accordingly, the reliance placed by the learned Advocate for the appellant upon the aforesaid decision is misconceived and of no assistance to the defence, as the prosecution in the present case has successfully proved its case to the hilt that the appellant committed rape upon his minor daughter.

101. In view of above facts and circumstances and discussion made above, we are of the opinion that there is nothing material in the record for which the findings of the learned Trial Court in the impugned judgment and order of conviction is to be interfered with.

102. Thus, the appeal fails.

103. The instant appeal be and the same is hereby **dismissed**.

104. The impugned judgment and order of conviction passed by the learned Trial Court dated 27.09.2021 and 28.09.2021 in connection with Special POCSO Trial No. 12/September/2019, corresponding to Special POCSO Case No. 13/2017 is hereby affirmed.

105. It is noted with concern that the name and identity of the victim have been disclosed in the course of recording of evidence before the learned Trial Court and, more particularly, the identity of the victim

has also found mention in the impugned judgment and order of conviction. Such disclosure of the identity of a victim of sexual offence, particularly where the victim is a minor, is impermissible in law and is contrary to the statutory mandate as well as the law laid down by the Hon'ble Supreme Court.

106. The learned Trial Court ought to have taken adequate care to ensure that the name, identity and particulars of the victim were not disclosed either in the course of recording evidence or in the judgment/order. The requirement assumes greater significance in cases involving rape or other sexual offences against a child, where protection of the victim's identity is intended to safeguard the dignity, privacy and reputation of the victim and to prevent any further trauma or social stigma.

107. Accordingly, the learned Trial Court is directed to exercise utmost caution and vigilance in future while dealing with cases involving sexual offences against minor victims and scrupulously adhere to the statutory provisions and the principles laid down by the Hon'ble Supreme Court concerning non-disclosure of the identity of such victims.

108. The learned Trial Court shall ensure that the confidentiality and privacy of the victim are maintained at every stage of the proceedings and that no document, order, judgment or other proceeding contain particulars from which the identity of the victim may be revealed, except where disclosure is expressly authorised by law.

109. Let a copy of this Judgment along with TCR be sent down to the Trial Court immediately.

110. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on payment of requisite fees.

I agree

(Prasenjit Biswas, J.)

(Shampa Sarkar, J.)