

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.718 of 2015**

Arising Out of PS. Case No.-14 Year-2014 Thana- KHIRHAR District- Madhubani

Amar Gosai Son of Gulten Gosai Resident of Pehra, P.s Khirhar, District
Madhubani.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms.Shama Sinha, Advocate

For the Respondent/s : Mr.Ajay Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)**

Date : 11-09-2023

1. This appeal is directed against the judgment of conviction dated 20.07.2015 and order of sentence dated 23.07.2015 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Madhubani in G.R. No. 458/14, T.R. No. 4/14 arising out of Khirahar P.S. Case No. 14/ 14, whereby the sole appellant has been held guilty for the offences punishable under Sections 376(2)(i) and 323 of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the



'POCSO Act') and has been sentenced to undergo rigorous imprisonment for 14 years, to pay a fine of Rs. 10,000/- under Section 376(2)(i) of the I.P.C; rigorous imprisonment for six months under Section 323 of the I.P.C; and rigorous imprisonment for 14 years and fine of Rs. 10,000/- under Section 6 of the POCSO Act, 2012. In default of payment of fine, the appellant has been directed to suffer further nine months simple imprisonment. The sentences though have been ordered to run concurrently.

2. The names of the victim and PWs-3, 4, 6 and 9 (who are informant's sister, mother, grand-father and father, respectively) have been concealed in the judgment to protect their prestige and dignity.

3. According to fardbeyan (Ext. 6) of informant (PW-1), the occurrence took place on 19.02.2014 at about 4:00 PM for which fardbeyan was recorded by S.I. Ramchandra Mandal, S.H.O. of Khirhar police station on 20.02.2014 at 11:30 hours at Sadar Hospital, Madhubani whereafter the FIR was registered.

4. The prosecution case, in brief, is that on the fateful day i.e. 19.02.2014 at about 4:00 PM when the victim was cleaning pots at the tubewell, the appellant came near the victim and took her away to a cattle shed where she was thrown on cot. The appellant thereafter started pressing her neck. She was gagged



by a piece of cloth. The appellant thereafter committed rape upon her. He also threatened her of dire consequences. It is further claimed by the informant/victim that when blood began to ooze out from her body, the appellant while leaving the place again threatened that if she would disclose about the incident to her parents or anyone, she would be thrown after being cut into pieces and theft would be committed in her house. The victim was alone at the relevant time in her house. When her elder sister came after washing clothes from the pond, the informant gestured her. Her sister then freed her. Thereafter, the informant narrated about the occurrence to her sister. After sometime, the parents of informant also came to the house who were told about the occurrence. Thereafter the father of the victim complained to the villagers. It is further claimed by the informant that many persons gathered at her house. They called the police. The victim was then brought to the hospital where treatment was started. It is also claimed by the victim that prior to this occurrence, the appellant had shown indecent behaviour which was not communicated by the victim due to shameness.

5. On the basis of fardbeyan of the informant, Khirhar P.S. Case No. 14/ 14 dated 20.02.2014 was registered under Sections 376, 323, 506 of the IPC. Routine investigation followed.



The statement of the witnesses came to be recorded and on completion of the investigation, the appellant was charge-sheeted under Sections 376(2)(i)(M), 323, 506 of the IPC and Section 6 of the POCSO Act, 2012, whereafter cognizance was taken against the appellant under the aforesaid sections. The learned Trial court was pleased to frame charges against the appellant under Sections 376, 323, 506 of the I.P.C. and Section 6 of the POCSO Act, 2012. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

6. In order to bring home the guilt of the appellant, prosecution examined altogether twelve witnesses. PW-1 (victim/informant), PW-2 Karo Devi, PW-3 informant's sister, PW-4 informant's mother, PW-5 Sagar Devi, PW-6 informant's grandfather, PW-7 Jibeshwar Gosai, PW-8 Shiv Narain Gosai, PW-9 informant's father, PW-10 Manoj Kumar Srivastava (J.M., 1st Class), PW-11 Dr. Rama Jha and PW-12 Ram Chandra Mandal (I.O.).

Prosecution has relied upon following documentary evidence on record:-

Ext. 1- Signature of informant/victim on fardbeyan.

Ext. 2- Signature of informant/victim on statement of 164 Cr.P.C.

Ext. 3- Victim's signature on seizure list.



Ext. 3/1- Signature of Jai Kumar Gosai on seizure list.

Ext. 1/1-Signature of Jai Kumar Gosai on fardbeyan.

Ext.4 -Statement under Section 164 Cr.P.C.

Ext. 5-Medical Report

Ext. 6- Fardbeyan

Ext. 7-Formal FIR.

Ext. 8- Seizure list.

Ext. 9- Charge sheet.

Ext. 10- F.S.L. report.

Prosecution has also proved the material exhibit I as packet of cloth (A), Ext. II as packet of cloth (B) and Ext. III as packet of cloth (C).

Defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial.

7. After hearing the parties, the learned Trial court convicted the appellant and sentenced him as indicated in the opening paragraph of the judgment.

8. We have heard Ms. Shama Sinha, the learned counsel for the appellant at sufficient length of time. Following submissions have been made on behalf of learned counsel for the appellant:-

The learned counsel for the appellant submitted that the incident took place on 19.02.2014 at around 4.00 P.M. and the appellant was arrested from his house on the same day with the



help of villagers who had detained the appellant in his house but in spite of the arrest of the appellant and initiation of investigation by the police on 19.02.2014, FIR was lodged the next day on 20.02.2014 at 11.30.A.M. and this delay has not been explained by the prosecution which creates doubt regarding the story of prosecution. The learned counsel further submitted that medical report prepared by the Board of Doctors is ante-dated and does not give clear opinion about rape but gives observation that injury may be due to rape. She further submits that no spermatozoa and semen was found on the body, private parts and clothes of the victim which makes the story of prosecution doubtful. The version of prosecution witnesses are quite inconsistent with the story of prosecution and none of the prosecution witness is reliable regarding the occurrence as alleged in the FIR as it is quite evident from the version of prosecution witnesses that the appellant is related as grand-father of the informant and defence version has suggested that the appellant had given loan of Rs. 20,000/- to father of the victim (PW-9) and when said money was demanded, the appellant was framed as an accused in the present case though suggestion has been denied by the prosecution witnesses. There are glaring inconsistencies in the depositions of the witnesses which makes the case of the prosecution doubtful. The learned



counsel further submitted that no semen or any foreign hair was detected as per the FSL report of cloth of the victim. Keeping in view all the aspects, the counsel for the appellant submitted that prosecution has failed to prove its case beyond all reasonable doubts and hence, benefit of doubt goes in favour of the appellant. In this way, the judgment of conviction and order of sentence passed by the concerned court is without any basis and same is liable to be set aside.

9. On the contrary, Mr. Ajay Mishra, the learned Additional Public Prosecutor submitted that from the testimony of the victim, it would be evident that victim/informant is consistent throughout regarding the place, manner and the date of occurrence and the identity of the appellant. He has further submitted that the victim has not been cross-examined, confronting her with previous statements for evident reason that there is no contradiction. As such, the victim is a sterling witness. He further submitted that PW-1 is victim as well as the informant and sufferer of the said occurrence herself and her evidence is totally reliable. Other prosecution witnesses are PW-3 (sister of the victim), PW-4 (mother of the victim) and PW-9 (father of the victim). Though they are not eye witness of the occurrence and when they came at the P.O., the victim narrated the story as to how she has been raped



by the appellant and their version is quite consistent with the story of prosecution. PW-11 is the doctor who has stated that according to the Medical Board opinion, injury on the private part of victim may be due to rape, in this way, statement of PW-11 is quite consistent with the story of prosecution. He further submitted that even the version of fardbeyan is quite natural that victim was alone at her house at the relevant time and the appellant had entered into her house taking advantage of her solitude and committed the occurrence. The victim narrated the story on the arrival of her sister. Again she narrated it to her parents when asked about the discharge of blood from her private parts. The story as narrated by the victim is quite natural and convincing. How the villagers have reacted after hearing the said occurrence and the appellant has been caught in his house and police was being informed and the appellant was apprehended by the police on the date of occurrence which is quite natural keeping in view the facts and circumstances of the present case and the fardbeyan of the victim was recorded in hospital while she was being treated. In this way, there is nothing unusual regarding all the facts as stated by the victim herself. Hence, there is no reason to disbelieve the version of victim. If totality of the circumstances appearing on the record of the case discloses that victim does not have strong motive to falsely



implicate the appellant, the court should ordinarily have no hesitation in accepting her evidence as no victim would come forward to make a self humiliating statement in a casual manner. In this case on hand victim is a sterling witness as she is consistent through out and has withstood the test of cross-examination and therefore, there is no need for corroboration of her testimony. Even the medical report does not negate the claim of the victim. Learned APP further submitted that PW-12 (I.O) has also supported the story of prosecution and he has specifically pointed out the place of occurrence. The I.O. has supported the version of FIR that appellant was apprehended by the villagers as he committed rape upon the victim and condition of the victim was not well and she was taken to hospital by her parents. In this way, the version of PW-12 is quite consistent with the story of prosecution. Learned A.P.P. further submitted that PW-1, PW-6, PW-9, PW-10 and PW-11 have stated that age of the victim is 10-11 years and even in radiological findings of the doctor, age of the victim has been assessed as 10-11 year. In this way, as per statutory requirement, prosecution has already proved that victim was below 18 year at the time of occurrence and there is no dispute regarding the determination of age of the victim by the defence and even no suggestion was made on the said point. Learned APP further



submitted that judgment of conviction and order of sentence passed by the concerned court is quite tenable and sustainable in the light of given facts as well as evidences available on record and hence, no interference is needed.

10. We have perused the impugned judgment and trial court records. We have given our thoughtful consideration to the rival contention made on behalf of the parties as noted above.

11. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court in the light of the offence punishable under Sections 376(2)(i), 323 of the IPC and Section 6 of the POCSO Act.

12. It is necessary to analyze the evidence of PW-1 who is victim as well as informant of the present case. She has narrated the facts by recording the fardbeyan at Sadar Hospital by giving graphic description of entire facts. This witness has specifically and categorically stated that how the appellant committed rape upon her when no one was present at the relevant time. This witness has stated that the manner of occurrence while rape was committed by the appellant. She stated that her mouth and hand were tied and gate was closed and pant was opened and one slap was given upon her cheek, neck was pressed and blood was discharged. She has further stated that how her sister gave water



for drinking and her sister untied the cloth from her hand and she narrated the story to her father and she identified the appellant. Her statement was recorded in the hospital and she put signature on it and same stands marked as Ext.-1. Her statement was also recorded in the court. During cross-examination, she has stated that she was raped in a house and the said place was also used for cattle. During cross-examination nothing is found which creates doubt regarding the story of prosecution. The statement of PW-1 is quite consistent regarding time of occurrence, place of occurrence, manner of occurrence and identity of perpetrator of crime and her version is quite reliable with regard to story of prosecution. Nothing is elucidated in cross-examination of this witness which makes dent in the story of prosecution.

13. Besides PW-1, there are three witnesses like PW-3, PW-4 and PW-9 who are sister, mother and father of the victim respectively. From perusal of fardbeyan itself, it is evident that PW-3, PW-4 and PW-9 reached near the place of occurrence and victim narrated the story of prosecution to them. So, it is necessary to analyze the evidence of these three witnesses just after analyzing the evidence of PW-1. PW-3, PW-4 and PW-9 though they are not eye witness of the occurrence but the story of prosecution has been narrated to them by the victim and all the



three witnesses have supported the story of prosecution and version of all the three witnesses are quite consistent with the story of prosecution. Other witnesses like PW-2, PW-5, PW-6, PW-7 and PW-8 are factual witnesses but they are not eye witnesses of the occurrence. They are hearsay witness but they have supported the story of prosecution.

14. PW-10 is the Judicial Magistrate, 1st class who recorded the statement of victim under Section 164 Cr.P.C. and assessed the age of the victim between 10-11 years. In the cross-examination of this witness, nothing is found to disbelieve his testimony.

15. PW-11 is Dr. Rama Jha. This witness stated that on 19.02.2014 he was posted at Sadar Hospital, Madhubani as Medical Officer and on that day medical board was constituted under the Chairmanship of Dr. K.N. Prasad, Deputy Superintendent of Madhubani and PW-11 is one of the members of the said medical board. The medical board examined the victim with the consent of her father on the same day i.e. 19.02.2014 at about 9.15 P.M. and found the following:-

(i) Hymen ruptured all around margin lacerated colour red.

(ii). Small tear about 1/4" on right side of urethra with bleeding ++.



(iii) 2nd degree penited tear length 1" depth 1/2" bleeding ++ colour red. Vagina orifice admitted two fingers.

All injuries within 12 hours. Wound repair done at O.T. on same day. Victim discharged on 26.02.2014.

2. According to radiological findings age of victim girl is about 10 to 11 year.

3. According to board opinion injury on the private part of victim may be due to rape.

This witness has stated that after board dictation, Dhanjay Kumar typed the report over which board signed and put dates by the Chairman and same is marked as Ext. 5.

From perusal of Ext. 5, it is clear that Ext. 5 is in consonance with the story of prosecution regarding the occurrence. Even the medical report does not negate the claim of the victim.

16. PW-12 Ram Chandra Mandal is I.O. of the case. This witness has stated that on 19.02.2014 he was posted as S.H.O. Khirhar thana and he got information through mobile from pahra village that minor has been raped and on the said information, he reached at the place of occurrence. He found that several people were gathered at the house of the appellant and on query it was found that appellant committed rape upon the victim and so he was apprehended by the villagers. He found that condition of the victim was not well and she was being taken to hospital by the



parents. This witness stated that appellant was also arrested by this witness after taking all necessary steps. He also stated that he went to Madhubani hospital and recorded the statement of victim on the second day as on first day her condition was not well and statement was taken in the presence of her parents. This witness further stated that fardbeyan and its endorsement bear his writing and signature which stands marked as Ext. 6. Formal FIR is in the writing of Baleshwar Tiwary which has been written at the behest of this witness and this witness put signature on formal FIR. This witness identifies the writing and signature which stands marked as Ext. 7. This witness seized blood stained clothes of victim like pant, salwar and dupatta and made seizure list of clothes of victim upon which informant's father and Yogeshwar Gosai put their signature. This witness further stated that he recorded the statement of witnesses as well as restatement of the victim/informant. This witness has pointed out the place of occurrence. During cross examination, this witness has reiterated the version of story of prosecution. This witness has stated that his investigation is rightful as per rule. During cross examination this witness has supported the story of prosecution and nothing is found in cross examination which discredits the testimony of this witness. Though some infirmities have been found regarding the



investigation that appellant has not been medically examined by the doctor.

17. If there is any faulty investigation, then it can be treated as laches of I.O. which does not affect case of prosecution adversely where direct, ocular and reliable evidence available on record. On above point, Hon'ble Supreme Court has held in the case of **Allarakha K. Mansuri vs. State of Gujarat** reported in **2002 Supreme Court Cases (Cri) 519** that defective investigation by itself cannot be made a ground for acquitting the accused.

18. From perusal of fardbayan, it is evident that how the fardbayan has been recorded by PW-12 (I.O.) on 20.02.2014 at 11.30 hours at Sadar Hospital, Madhubani. It has been narrated by the victim herself who happened to be informant of this case also. The victim/informant (PW-1) gave graphic details regarding time of occurrence, manner of occurrence and place of occurrence. How the appellant made entry into the house in the solitary presence of the victim and how the deposition of PW-12(I.O.) specifically and categorically supported the story of prosecution that the appellant has already been apprehended by the villagers and how the villagers reacted after getting the information of said occurrence and they surrounded the house of the appellant and made call to the police. On the basis of fardbayan, it is quite



evident that PW-3 who is sister of the victim came on the spot and before reaching to her house she saw the appellant running away and how she helped the victim by opening her hand and mouth. The evidence of PW-3 though she is not eye witness of the occurrence but her version is quite consistent with regard to the story of prosecution and the contention of learned counsel for the appellant regarding delay in lodging the FIR is not tenable and sustainable in the light of the facts and circumstances of the present case alongwith the evidence available on record and same is manifested from the fardbeyan itself. The PW-12 (I.O.) in his deposition has specifically and categorically stated that the condition of victim was not well so her version was recorded in presence of her parents next day after the occurrence and PW-9 (father of the victim/informant) has also stated that the fardbeyan was recorded by *Daroga* next day after the occurrence in hospital and on the point of discharge of blood from the body of the victim the evidence of all the factual witnesses like PW-1, PW-2, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8 and PW-9 are quite consistent. It is quite natural that how the victim narrated the story of prosecution to her father, mother and sister and how her father reacted after being heard the alleged occurrence from the mouth of the victim. The father of the victim shared the said information to



villagers and had shown the discharge of blood from the body of the victim to the villagers. It is quite obvious that how the villagers reacted the alleged occurrence by encircling the house of the appellant and made call to the police. PW-12 (I.O) has also stated that he got information on mobile that minor girl has been raped and he found that people were gathered at the house of the appellant and it is found in query that the appellant committed rape upon the victim, villagers apprehended the appellant and condition of the victim was not well and she was being brought to the hospital. PW-12 (I.O.) admitted that the statement of victim was taken on second day as first day of the occurrence her condition was not well. PW-11 (Dr. Rama Jha) has opined that injury on private parts of the victim may be due to rape. In this way, the medical evidence has not negated the story of prosecution.

19. It is well settled by a catena of judicial pronouncements that while appreciating the evidence of the victim of sexual assault, it should be treated on a par with the evidence of an injured witness. The reason is simple that a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society. When,



in face of these factors, the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. In normal course, the Indian Women has tendency to conceal such offence even before her family members much less before public or before the police. Therefore, testimony of the prosecutrix to some extent, stands on higher pedestal than that of an injured witness.

20. Corroboration is not an imperative component of judicial credence in every case of rape. Refusal to act on the testimony of the victim of sexual assault, in absence of corroboration as a rule, is adding insults to the injury. If the Doctor, who examined the victim, does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. If totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her evidence as no self-respecting women would come forward to make a self humiliating statement in casual manner.

"The Court ought to be mindful that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the



process. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulders a greater responsibility and must deal with such cases with utmost sensitivity. The broader probabilities of the case should be examined. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, should not come in the way to otherwise reliable prosecution case." Reference may be made to *State of Punjab v. Gurmit Singh* reported in (1996) 2 SCC 384 and *Motilal v. State of M.P.* reported in (2008) 11 SCC 20.

At the same time in *Raju v. State of Madhya Pradesh* reported in (2008) 15 SCC 133, the Hon'ble Supreme Court cautioned by saying that no doubt, rape causes greater distress and humiliation to the victim, but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. Therefore, the accused must also be protected against the possibility of false implication.

"The Court should carefully see that the prosecutrix is consistent in her 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. The prosecutrix 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 person involved, as well as the sequence of it. If other witnesses are there, there must be consistent match with the version of every other witnesses. If the testimony of the prosecutrix withstands the aforesaid test, she would be treated as a "sterling witness" and no corroboration is needed to base the conviction on the sole testimony of the prosecutrix." Reference may be made to *Rai Sandeep @ Deepu v. State (NCT of Delhi)* reported in **(2012) 8 SCC 21**.

21. However, in the present case, the victim/informant (PW-1) has fully supported the case of the prosecution. She has narrated in detail how the incident has taken place. She has been thoroughly and fully cross-examined and PW-3 who is sister of the victim arrived after the occurrence and saw the appellant running away and she has untied the mouth and hand of the victim. PW-4 (mother of the victim) and PW-9 (father of the victim) who have heard regarding the occurrence through the mouth of the victim as same is evident from fardbeyan itself and they reached at the place of occurrence. Their evidence are quite consistent with the story of



prosecution. The other factual witnesses i.e. PW-2, PW-5, PW-6, PW-7 and PW-8 have supported the story of prosecution even though they are not eye witness of the occurrence and medical report does not negate the claim of the victim. PW-12 (I.O.) has also supported the story of prosecution. Other material available on record have also fully supported the story of prosecution. So far as PW-1 (informant) who is a sufferer of the occurrence and her evidence is quite consistent on the core spectrum of crime and we do not see any good reason not to rely upon the deposition of PW-1(victim/informant). She is trustworthy and reliable. As per settled proposition of law, even there can be a conviction based on the sole testimony of the victim, however, she must be found to be reliable and trustworthy.

22. In deposition column of PW-1 age of the victim (PW-1) is mentioned as 10 year. PW-9 (father of the victim) in his deposition stated that victim is aged about 10 year. PW-6 in his deposition stated that victim is aged about 10 year. PW-10 (Judicial Magistrate, 1st Class) assessed the age of the victim between 10-11 year. According to radiological findings of doctor, the age of the victim is about 10-11 year which is best evidence available on record in respect of age of the victim. In this way, prosecution has proved that victim was minor on the date of the



occurrence and no objection has been raised by the defence on the said fact.

23. From perusal of record, it is found that radiological finding of doctor clearly indicates that age of the victim was about 10-11 years and same is supported from the deposition of PW-9 (father of the victim). PW-10 (J.M., 1st Class) who recorded the statement of PW-1 (victim) assessed her age as 10-11 year. PW-6 who is grand father of victim also stated that victim is 10 year old. In this way, evidently the prosecution has proved age of the victim below 18 years. Hence, offence for which conviction has been recorded under POCSO Act is applicable in the facts and circumstances of the case and contention of learned A.P.P. finds force in the light of material available on record.

24. No doubt promptness, in lodging the first information report, is assurance regarding truthfulness of the informant's version. If there is delay in lodging the FIR and there is no reasonable explanation for the same it loses advantage of spontaneity. In *Tulshidas Kanolkar v. The State of Goa* reported in **(2003) 8 SCC 590 : AIR 2004 SC 978**, the case was of sexual assault and in the matter of delayed information, the Hon'ble Supreme Court said as follows :-

"..... In any event, delay per se is not a mitigating circumstance for the accused when accusations



of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is waity enough to reject the plea of false implication or vulnerability of the prosecution case."

25. In the case on hand, the victim was totally unaware of the catastrophe which had befallen her. However, on the very same day, she reported the matter to her parents and the fact speaks itself that the manner in which she suffered the injuries and blood was oozing out from her body and she was taken to hospital by her parents. PW-12 (I.O.) has stated during the examination-in-chief that fardbeyan of the victim/informant was not recorded on the date of occurrence as she was not in a condition to record the fardbeyan on the date of occurrence and it is evident from the fardbeyan itself that she was being hospitalized by her parents. PW-3 (sister of the victim/informant) reached at the place of occurrence and helped the victim to open her hand and mouth. The version of other witnesses though they are not eye witness of the



alleged occurrence but they have supported the version of story of prosecution and the sequence of events that has taken place after the occurrence has already been narrated in the version of PW-12 (I.O.). How the blood-stained cloth has been seized and same has been sent to FSL for forensic examination and the medical evidence does not negate the claim of the victim. The contention of learned counsel for the appellant regarding delay in lodging FIR, lack of proper investigation and inconsistencies found among the version of prosecution witnesses are not tenable and sustainable in the light of the fact as the version of victim/informant on the core spectrum of crime has been found intact along with other material available on record and on evaluating the deposition of PW-1 (victim/informant) on touchstone of law laid down by Hon'ble Supreme Court in the decisions as cited above, we are of the opinion that the sole testimony of PW-1 (victim/informant) is absolutely trustworthy and unblemished and her evidence is of sterling quality.

26. Keeping in view all the facts and circumstances of the case available on record and the evidence discussed in the foregoing paragraphs, to sum up, we can conclude that the prosecution has proved its case beyond reasonable doubt under



Sections 376(2)(i), 323 of the I.P.C. and Section 6 of the POCSO Act.

27. In the light of discussions made above, we find no reason to differ with the findings given by the trial court on the point of Sections 376(2)(i), 323 of the I.P.C. and Section 6 of the POCSO Act. Accordingly, the impugned judgment of conviction and order of sentence passed by the trial court is hereby affirmed.

28. In the result, this appeal stands dismissed.

(Alok Kumar Pandey, J)

(Ashutosh Kumar, J)

shahzad/-amit

AFR/NAFR	NAFR
CAV DATE	25.08.2023
Uploading Date	11.09.2023
Transmission Date	11.09.2023

