
Spl. POCSO Case NO.31/2021
IN THE COURT OF SPECIAL JUDGE POCSO, ARARIA, BIHAR

[Spl. POCSO Case No.31/2021]

IN THE MATTER OF:-

State Prosecution
versus

1. Dilip Kumar Yadav, S/o- Dinesh Yadav, Aged about 30 Years;

Residents of Village Khaira Gadhiya, Ward NO. 12, PS Narpatganj,

Dist:- Araria, Bihar ----- Accused Person

P.S. – Narpatganj

F.I.R. No. – 349/21 Registered on 23.07.2021 U/s 376/ 34 of IPC and Section 3/4 of POCSO Act.

[Charge Sheet filed bearing no. 493/2021 dated 18.09.2021 U/s 376 (A) (B) of IPC and Section 4 of POCSO Act.]

[Cognizance taken on 20.09.2021 U/s –376 AB of the Indian Penal Code, 1860 and Section 4 of POCSO Act.]

[Charge framed U/s 376 (AB) of IPC and U/s 4 POCSO Act Dated 24.09.2021]

Ld. Counsel For The Prosecution: Sri Shyam Lal Yadav

Ld. Counsel For the Defence: Sri Vineet Prakash (Panel Lawyer)

DATE OF JUDGEMENT: 04.10.2021

PRESENT : Shashi Kant Rai

Spl. Judge POCSO Act-2012

Araria, Bihar

J U D G M E N T

(Pronounced through the Physical Court during COVID-19)

1. **Status of the case since Inception:** The cognizance was taken on 20.09.2021 U/s 376 –AB of the Indian Penal Code, 1860 and Section 4 of POCSO Act. The charges were framed U/s 376 AB of I.P.C and Section 4 of POCSO Act on 24.09.2021 and the same were read over and explained to accused namely Dilip Kumar Yadav to which he pleaded not guilty and claims to be tried and he is facing trial for same offence. In order to ensure expedite the trial, the prosecution produced as many as 10 number of witness on 04.10.21 and they were accordingly examined and discharged. On the oral submission of the Ld. SPP, the prosecution evidence was accordingly closed on 04.10.2021. The statement of the accused u/s 313 was recorded on 04.10.2021 and thereafter the defence evidence was closed on 04.10.21. It was put on 04.10.21 for passing judgment in

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the same date in second half and as a result this judgment. **It is not out of place to mention here that the case in hand has been disposed of within one day from its opening and all the ten witnesses examined on same date and result was declared i.e. 04.10.2021 accordingly.**

2. **The Factual Matrix of the case are as follows:** The genesis of the present case is sexual assault (Rape) on a 08 years female child (herein after called as “the victim”). It is alleged by the informant namely Mother of the victim child that on 22.07.21 at about 6.00 O’clock in the evening, the victim went to wash the pots on the tap nearby the house. When she was going to her home after washing the pots then the accused namely Dilip Yadav took advantage to her loneliness. The accused Caught the hand of the victim and brought her inside the house and forcefully raped her. The mother of the victim upon listening shouting and thereupon she rushed and came in the courtyard. She shouted in the courtyard as to what happened and where are you but no response came. Thereafter, she entered into the house and came to saw that her daughter is lying on the cot in a unconscious state of mind and her clothes were covered with blood. The mother of the victim started shouting upon which the villagers came. The victim with the help of the villagers was brought for treatment from the village doctor. The situation of the victim started worsening due to continuous flow of blood. The mother of the victim hired a vehicle from one Manish Yadav and rushed to Forbesganj Hospital. The doctor of the Forbesganj Hospital referred the victim to Purnia for her better treatment. She came to Purnia Emergency Hospital Forbesganj where she became conscious. When she became conscious then she started weeping and narrated the fact that one Dilip Kumar Yadav caught my hand and brought inside the house and committed wrong act with me. The accused Dilip Yadav also reached in the Purnia Hospital. When on becoming conscious, the victim narrated the incident and narrated the name of Dilip Yadav who committed rape with her then on listening the same, the accused fled away from the hospital. The cousin brother of Dilip Yadav to whom I do not identify, came to the hospital at about 2.30 O’clock and asked me to close the case in lieu of 1 lac fifty thousand and the matter should not reach to the police. My husband denied to take the money. We asked the Doctor Azharuddin to call the police. The doctor called the Forbesganj Police and narrated the incident to the police.
3. On appearance of the accused person before this Court, after furnishing the copies of the documents u/s 207 of Cr.P.C. and having heard both parties, charges against the accused Dilip Yadav u/s 376 AB of the IPC read with section 4 of POCSO Act and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.

4.

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4. The case of the defence is the general denial of whole of the prosecution case and the accused have taken the plea of innocence at the time of recording his **statement u/s 313 Cr.P.C.** .The defence did not adduce any evidence.
5. Now the point for determination is whether the prosecution has been able to prove charges leveled against the accused beyond all the reasonable doubts? The points for determination are as under:
- a) Whether accused Dilip Yadav committed rape upon Miss 'X' (Victim) who is almost 8 years of age ?
- b) Whether accused committed aggravated penetrative sexual Assault/ Penetrative Sexual assault upon Miss 'X' (Victim) who is below 12 years of age ??

FINDINGS

6. Heard arguments and perused the case record.
7. It has been argued by learned Special PP that prosecution beyond all reasonable doubt established the case of the prosecution and victim is below 12 years of age has been proved. Learned Special PP contended that medical evidence as well as ocular evidence pointed guilty of the accused and discuss the incident of rape of the victim girl and run away of the accused from the The Royal Purnea Emergency Hospital Forbesganj further strengthen the prosecution case and benefit the prosecution case and prosecution fairly able to establish the charge of prosecution against the accused beyond all reasonable doubt and accused entitled for exemplary punishment to stop the similar nature of the crime from the society.
8. Learned counsel appearing for the accused submitted that as per Fardbayan the incident took place on 22/07/19 and FIR was lodged on 23/07/21. There is no whispering in delay in lodging the FIR. Therefore, delay not being explained the prosecution case is fatal. He further submitted that FIR is not clear on the point of exact place of occurrence whether it took place inside the house. Learned counsel further submitted there is a contradiction in the time of incident disclosed by the prosecution. Learned counsel again pointed out that there is contradiction in the statement of victim made before learned Magistrate u/s-164 CrPC and before the court. He submitted that in order to spoil the political carrier of the accused, he has falsely been implicated. Learned counsel submitted the medical report does not point recent sexual intercourse or assault and further medical report does not point penetration and same is missing to attract the ingredient of section 375 IPC and ingredient of section 3 of the POCSO Act to attract the penal provision of section 376AB and section 6 of the POCSO Act and age of the victim is not proved below 12 years. Other PWs contradicted the statement of informant and her daughter and

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therefore, prosecution case is not established and when PW-1- victim; PW-2, mother of the victim, PW – 3 Father of the victim and other witness are hearsay are the relative of the victim and are interested witness and there being presence of enmity between the families their piece of evidence is not a safe piece of evidence to rely upon and prosecution failed to established the charge beyond all reasonable doubt.

DISCUSSION, DECISION AND REASON THEREOF:

9. Ext-7 is the Fardbayan. PW-2 is the informant. She in Ext-7 Fardbayan made statement that on 22/07/21 at about 6 pm the victim went to wash the pots on the tap nearby the house. When she was going to her home after washing the pots then the accused namely Dilip Yadav took advantage to her loneliness. The accused Caught the hand of the victim and brought her inside the house and forcefully raped her. The mother of the victim upon listening shouting and thereupon she rushed and came in the courtyard. She shouted in the courtyard as to what happened and where are you but no response came. Thereafter, she entered into the house and came to see that her daughter is lying on the cot in a unconscious state of mind and her clothes were covered with blood. The mother of the victim started shouting upon which the villagers came. Thereafter, she came to the hospital where her daughter narrated about the commission of rape by the accused namely Dilip Yadav.
10. At the time of adducing evidence PW-2 stated that her victim daughter is residing with her. She narrated in her Examination in chief that the occurrence took place 2- 2 ½ months ago at about 6.00 PM and at that time she was arranging bamboo. She heard shouting. She proceeded towards the noise by calling the name of the victim. Amrita Amrita. The age of my daughter is about 08 years old. When she went to her daughter then she came to see that her daughter is unconsciously lying on the land covered with blood. She called her husband who came with village doctor but the situation did not improve. Thereafter, she rushed to the Forbesganj Hospital. The doctor at Forbesganj Hospital referred the victim to Purnia Hospital. The victim was admitted in The Royal Emergency Hospital Purnia (Dr. BN Chaupal). She became conscious on the second day of the occurrence. She further testified that the accused came to the hospital. The victim on seeing the accused narrated that the he committed rape with her on which the accused fled away. The doctor asked her that her daughter has been raped. The police was accordingly informed. The Female Daroga Ji came who recorded my statement and took my thumb impression. The Daroga Ji came at my house and inspected the place of occurrence and collected the clothes covered with blood. The statement of my daughter was recorded in Araria Court. My daughter was saved because of treatment. Twelve stitches on private parts of her daughter were given by the doctor. She further identified the accused namely Dilip. Her victim daughter disclosed the incident to her that accused committed rape with her and pointed towards the accused in the hospital and thereafter the accused fled away from the hospital. She in her Fardbayan as well as in her statement on oath stated that her

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victim daughter narrated the incident of rape with her in the hospital after becoming conscious and the victim pointed towards the accused in the hospital itself. Pw-2 specifically stated place of occurrence which is the house of victim and accused took her daughter inside the house. Thus, the submission of the learned defence counsel that informant stated different place of occurrence is devoid of merit and statement of the informant made in her Fardbayan, before police and court show only one place of occurrence which is accused house where according to informant incident of rape took place. Nothing has been extracted from the mouth of PW 2 in the cross examination and her testimonies remained unshaken. No material contradictions or improvement has been extracted from the mouth of PW 2 in order to shake her credibility and trustworthiness.

11. PW 1 is the victim. She has testified in her Examination in Chief that the accused Dilip Yadav committed rape with her after opening clothes and undergarments. There was evening time. She was keeping the pots after washing. At that very time, the accused Dilip came and opened my clothes. The accused came on the body of the victim. The accused entered the penis into the vagina of the victim. The blood started to flow from the vagina. When the victim shouted then the accused pressed her mouth. She became faint. I recognized him when I became conscious. She further testified that I met with Daroga Ji first time at The Royal Purnea Emergency Hospital. The Daoga Ji took my statement. Daroga Ji brought me Araria from Ambulance and my statement was recorded by the Hakim. I put my thumb impression as well. My father and mother were also present there. My life was saved because of treatment. My clothes were soaked with blood. She further identified the accused namely Dilip Yadav. She denied lodging of FIR due to village politics.
12. Nothing has been extracted from the mouth of this witness. She has remained steadfast and consistent and nothing has been elicited in order to demolish her trustworthiness and credibility.
13. The prosecution examined PW 3 who is the father of the victim. He testified that the informant is her wife. My wife filed this case. The age of my daughter is 8 years. She studies in the village school. My wife's statement was recorded in Royal Purnia Hospital where my daughter is subjected to treatment. My wife put her thumb impression on the written report and I put my signature on the written report which was marked as Exhibit- 1. The occurrence took place on 22.07.202 at about 6-7 PM in the evening. The accused namely Dilip Kumar committed rape with my daughter. I saw bleeding from private part of my daughter. My daughter subjected to treatment from the village daughter but her situation did not improve. Thereafter, they rushed to Referral Hospital from there she was referred to Purnia Hospital. My daughter was admitted in The Purnea Royal Emergency Hospital Forbesganj. Dr. D. N. Chaupal/Prasad, Azharuddin and Priti Kumari treated my daughter and narrated to me that rape has been committed. When my daughter became conscious then she

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- narrated that this is Dilip Yadav who committed rape with me. He further testified that I shown the place of occurrence to Daroga Ji and gave my statement. The seizure list was prepared. The Daroga Ji collected the clothes covered with blood such as red colour under pant, piece of sari covered with blood. I along with Tribhuvan and Manish put signature on the seizure list and the same were marked as Exhibit- 2 & 2/1. The school certificate was handed over to the Daroga Ji and the same was marked as Exhbit-3.
14. On the scrutiny of his entire testimony, it is evident that nothing has been extracted from the mouth of this witness in order ot demolish his trustworthiness and credibility. He has narrated the boundary of the place of occurrence at Para 2 of his cross examination. He further denied that the accused has falsely been implicated due to the village politics.
15. The prosecution examined PW 6 who happens to be the brother of the victim. This witness is 9 years old. He has deposed in his Examination in chief that the victim is my sister. When I switched on the light of the room then the accused namely Dilip Yadav switched off the light of the room. I was at my home. The accused slapped me when I switched on the light. When I switched on the light then I saw that my sister was lying on the cot and there was bleeding from the private parts of her sister and the clothes were covered with the blood. When the mother came then I shown her. She immediately called my father. My father came with doctor and thereafter went to hospital. My mother was collecting bamboo at that very time. The accused committed rape with my sister by removing her pant. He committed rape after slapping me and after switching off the light. Dilip Asked that I am calling from phone to someone else and so you do not switch on the light and thereafter committed rape with my sister. In the cross examination at Para 2 he further testified that I fled away from the place occurrence when the accused slapped me and returned home after 15- 20 minutes from the house of my uncle. The accused Dilip fled away prior to my reaching there. I reached and switched on the light. Dilip committed rape. The blood was flowing from the private parts of my sister. My mother immediately reached on the place of occurrence.
16. On the close scrutiny of entire testimony, it is apparent that nothing has been elicited from the mouth of this witness in order to shake his credibility and trustworthiness. He saw the accused Dilip in the room which is the place of occurrence. Even he deposed that the accused slapped this witness and it is natural that he fled from the place of occurrence due to fear.
17. It is pertinent to mention at this juncture that the testimony of the witnesses PWs-1, 2, 3 and 6 are consistent to their testimony under Section 161 CrPC and no contradiction could be elicited. The testimony of PW-1 also consistent to her statement under Section 164 CrPC.

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18. Smt. Ritu Kumari, Ld. Additional Chief Judicial Magistrate recorded the statement of the victim. Ext. 11 is the victim's statement which clearly depicts that on 22-07-21, she went to wash the pots. At that time, the accused who was identified by her as Dilip Yadav, took her inside the home and removed her panty and inserted his penis into her vagina. The accused started to press her neck. She became unconscious. When she became conscious then she found bleeding from her vagina. She experienced pain, mother came and rushed to the hospital for her treatment. The Ld. Magistrate recorded the age of the victim 'X' as approx 7- 8 years.
19. No questions were asked regarding any animosity between her and the accused. Without confronting the witness regarding any animosity this plea cannot be taken at the stage of argument. No reason is fathomable why the accused will be entangled with a false case of such serious nature. If there was any motive, no motive could be projected during the cross-examination of the witnesses. Although she is a young girl, she was intelligent enough to perceive that the act of the accused was a shameful act. Mother's evidence also depicts that she went to the place of occurrence on shouting by the victim and saw bleeding from the private parts of the victim. Since it has also been brought in the evidence of PW 6 that the accused slapped him and he fled away from the place of incident due to fear and did not narrate to anyone about the incident due to fear. Same may happen with the victim as well. She could not resist with the shameful act of the accused due to fear and due to pressing of the neck. She tolerated the unbearable pain caused by the accused.
20. The prosecution examined P.W. 7 namely Dr. Resham Reza who has deposed in para 1 that on 27-07-2021 I was posted as medical officer at S.D.H Forbesganj. I examined the victim at 6.00 PM and found the following 1. Auxillary and Pubic hair not developed. Breast not developed. Injury- No injury mark on any part of the body excluding private parts. Midline perinnean tear was there which was repaired at some private clinic whose report is attached with this report. Stitches intact and hymen ruptured. Microscopic examination- No spermatozoa either alive or dead seen in any of the micro field. Slive reported by Dr Ashutosh Kumar Singh, MO SDH Forbesganj. X Ray Elbow Finding- It shows appearance of only carnon and lateral epicondyl epyphysis. Dental Examination:- the dental age is about 8-10 Years as reported by Dr. Amit Kumar Dental Surgeon S.DH Forbesganj. X ray pelvis:- It shows unfused of epiphysis of iliac crest and greater trochanter and lesser trochanter. In my opinion about sexual assault- as per above finding this may be an attempt to sexual assault. In our opinion about age- as per above finding she is between 09 to 11 Years of age. This report is written and signed by me to which I identifies and also identify the signature of Dr. Amit Kumar Kumar which is marked as Exhibit 5 and 5/1.
21. In the cross examination, the Doctor further testified that I had not taken signature or RTI of the victim over the report. I used to examine several persons and mole may be

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found in different persons over the cheek. Due to long duration of the examination, it is difficult to identify the victim by face. Today, there is X- Ray report, further the injury may be caused through any sharp substance like keel, bamboo, Karachi etc.

22. The prosecution examined PW 8 namely Dr. Azharuddin who has testified in his Examination in Chief that I along with Dr. D N Prasad were working jointly in the Royal Purnia Hospita; Forbesganj. ANM Preeti Kumari was also working in that hospital. The victim aged about 8 years was under treatment at out hospital. She was admitted at out hospital almost 15 days and was admitted on approx 23 July . right date is not known to me at this time. Today , the report produced before me was prepared with our consent but examined by Dr. DN Prasad but time to time he was consulted us. The injury report was prepared by Dr. DN Prasad was supplied to investigating officer at Doctor's chamber in the hospital. I also put the signature over the production report cum seizure list produce and witness Preeti Kumari ANM has also put her signature over that which are identified by me today itself on production by Ld. SPP before the court and the same is marked as Exhibit- 5/ 2 as a whole. The injury report which was produced today having writing and signature of Dr. D N Prasad is identified by me and the same is marked as Exhibit- 5/3 as whole.. Since I used to work with Dr. D N Prasad and he took the consultation with us during examination. Hence I am recognizing his writing and signature of Dr. D N Prasad produced today. I was conducted vaginal trauma treatment of the victim which was teared 1 x 1 ½ inch and there are 11 stitches. Today the report of Dr. DN Prasad produced was clinically and commonly examined with consultation. So I can elaborately describe the merit of th report. Presently he is not available and lives in Patna and suffering from multi ailments. Hence he is unable to come in the court. I commonly and jointly opined that injury was result of penetrative sexual assault and the same was grievous in nature.

23. In the cross examination, he further testified that medical board constituted for examining the victim had two doctor and one ANM along with other supporting staff. The treatment of the victim was done in her presence. The medical report was prepared by Senior Doctor namely D N Prasad. This type of injury may be also caused by sharp cutting substances. Further says that without penetration such type of injury can not be caused. It is not true that false report has been prepared by Dr. D N Prasad and with connivance of informant as well as police and I am giving false statement to implicate the accused and he did not cause such incident.

24. The prosecution examined PW 9 namely Priti Kumari who happens to be ANM Nurse. She deposed in her Examination in chief that on 22.07.21, the victim was brought to the hospital. She was brought in unconscious state of mind and the blood was flowing from the vagina of the victim. We took the patient as serios patient and admitted her under the observation of Dr. D N Chaupal/Prasad and Dr. Azhar and started to treat the victim. We took the victim in operation theatre where I saw that

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- the vagina of the victim was badly injured. In order to control the bleeding, we pasted 11 stitches in internal and external parts. The victim came in conscious state of mind on 23.07.21 and she narrated about the incident in presence of her father, mother, staff of the hospital including me saying that the accused Dilip Kumar did shameful act with me. The accused namely Dilip Kumar fled away upon hearing the same. Thereafter, we called to the police. The police came and recorded the statement of the mother of the victim. The case was registered against the accused namely Dilip Kumar. The report was prepared by Dr. D N Prasad. Dr. Azhar prepared the seizure list which bears my signature and the same was marked as Exhibit-6. She further identified the writing and signature of Dr. D N Prasad.
25. Ext. 5 is the Medico-legal Report wherein Ext. 5/1 is the the signatures of PW-7. One another medico Legal Report of private hospital is on the record and the same is Ext-5/2. Ext. 5/3 is the signature of Dr. D N Prasad on the medico legal report. The victim was around ten years of age, and injuries were detected on private part of the victim. The doctor has also opined that the hymen of the victim was found ruptured. A total number of 11 stitches were given on the private parts of the victim in order to stop bleeding from the private parts of the victim. The PW 8 has clearly opined in his cross examination that that no such injury can be caused without penetration. As such, the penetration in vagina of the victim is proved by medico legal report.
26. The prosecution examined PW 10 namely Rita Kumari who happens to be the IO of this case, has deposed in her Examination in Chief that she identify the writing and signature of the SI namely Mira Kumari on the Fardbayan and on her identification the Fardbayan was marked as Exhibit-7. She has further deposed that the Forwarding on the Fardbayan is in the writing and bears the signature of the SHO namely Nand Kishor Nandan and on her identification the same was marked as Exhibit- 7/1. He has further deposed that the endorsement on the Fardbayan is in the writing and bears signature of SHO Narpatganj namely MA Haidiri and the same has been marked as Exhibit- 7/2. He has further deposed that the formal FIR is in the writing of the then SHO MA Haidiri to which she identified and the same has been marked as Exhibit- 7/3. She has further deposed, she took the charge of the investigation on 29.07.21 in the light of the direction of the SP Araria. She has further deposed that she reached The Royal Purnea Emergency Hospital Forbesganj on receipt of the information and she recorded the statement of the victim. Thereafter, she recorded the statement of other witnesses which I have mention at Para 9,10, 11 & 12. I have prepared the sketch map of the place of occurrence at Para 20 of the case diary. Thereafter, the restatement of the informant was recorded. She has further deposed the seizure list of the article was prepared with respect to the article which was handed over to her by the father of the victim. The same is being presented today in the sealed cover. The same was opened in the opened court and on opening the red colour panty of the victim was found. She has further deposed that the presentation cum seizure list is in

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- my writing and bears my signature and the same was marked as Exhibit-8. She has further deposed that she proceeded to the Royal Emergency Purnea Hospital for getting the injury report where the presentation cum seizure list prepared by Dr Azhar, Dr. D N Chauhan and ANM Priti Kumari was handed over to me and both of them put their signature in my presence. To which I identify. She has further deposed the after seizing the material Exhibit, the same was sent to Forensic science laboratory Bhagalpur for the purpose of examination. The same was received by me. The said laboratory report was marked as Exhibit-9. She has further deposed that the report of referring the victim for better treatment is with me to which she identified and the same was marked as Exhibit-10. She took the victim to the court for recording the statement of the victim U/s 164 of the Cr.P.C. The accused was arrested who confessed his guilt and in his defence statement he narrated about the incident in extenso. After completing all the formalities of investigation, she filed charge sheet on 18.09.21 as CS No. 493/21. She further produced the Material Exhibit such as Red Panty covered with blood (Material Exhibit- 1), a piece of Sari covered with blood (Material Exhibit- 1/1). After marking the Exhibit, the same was returned to be kept safely in the Malkhana. She has further deposed that she obtained the copy of the statement recorded U/s 164 of the Cr.P.C and she further identified the writing and signature of of the Ld. ACJM V Smt. Ritu Kumari and the same was marked as Exhibit-11.
27. On the closed scrutiny of her entire testimonies, it is evident that the IO has well proved the place of occurrence and no defect in the investigation was pointed by the accused. The defect as pointed out is not material one. The defence did not dispute the place of occurrence and the place where the incident of the rape was committed.
28. Admittedly, in the case in hand, the entire case is based on circumstantial evidence as well as direct evidence. The testimony of the PW 1 who happens to be the victim of the case suggest that her testimonies are consistent in view of Section 161 and 164 of the Cr.P.C. Similarly, the statement of the mother and father of the victim is also consistent and no inconsistencies has been brought by the defence in the cross examination. The PW 6 is brother of the victim who seen the accused with her sister and he is also one of the injured witness as the accused slapped him before committing the shameful act with his sister and he fled away from the place of occurrence out of fear. Now, the court is to see – whether the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established and all the facts so established should also be consistent with only one hypothesis i.e. guilt of the accused, which would mean that the onus lies on the prosecution to prove that the chain of event is complete and not to leave any doubt in the mind of the Court.
29. First circumstance is that the victim went to wash the pots outside her home and her mother was engaged in collecting bamboos outside her home. Second

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- circumstances is that the accused found the victim to be alone and as such took the advantage of her loneliness took her inside the home. The bother of the victim (PW 6) came and switched on the light of the room on which the accused forbidden him to switch on the light and he slapped PW 6 and he fled away from the house out of fear. The victim girl saw the accused in the Royal Hospital at Purina where she came in the state of consciousness and on becoming conscious, she identified the accused and the accused fled from the hospital. The medico legal report suggests that she was raped as her hymen was found ruptured and there was bleeding from private parts of the victim. A number of 11 stitches were given on the private parts of the victim during the course of treatment.
30. The evidence of PW-1 was fortified by the evidence of other witnesses such as PW 6. Considering the fact that the evidence of PW-1 and PW 6 was consistent to her testimony under Section 161/164 CrPC, it is held that there is clinching evidence that the accused is complicit and that the accused committed sexual assault on the victim. There is clinching evidence that, the accused took the victim inside the house and he committed penetrative sexual assault upon her by inserting his penis into her vagina.
31. The victim's evidence has to be relied to fasten the guilt on the accused. It is also true that as the POCSO Act is embalmed by presumption under Sections 29 and 30 of the Act, which is reproduced herein below as ready reckoner.
32. Presumption as to certain offence: Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. 30. Presumption of culpable mental state: (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.
33. Presumption fastens the guilt against the accused. The statement of the victim under Section 164 CrPC is consistent to her evidence. The statement of PW-1 pointed that she was taken away by accused from her outside the house and after taking her at his house, he removed the

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victim girl's panty and then insert and rubbed his penis into her vagina and she in her statement recorded u/s-164 CrPC and u/s161 CrPC made similar statement. Police recorded statement on the date of lodging the ejahar, learned Magistrate recorded her statement after she was being produced on stretcher and her evidence was recorded before the court in camera and she in all the stages made similar statement that accused taking her to his house from her inside the house, removed her panty and insert and rubbed his penis in to her vagina.

34.PW- 4 & 5 stated that they too heard incident from the parents of the victim on the date of incident. PW- 4 & 5 also heard the incident on the date of incident.

35. In State of Punjab Vs Gurmeet Singh,(1996)2 SCC 384 Hon'ble Apex Court again observed with regard to the testimony of prosecutrix "In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be

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- over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.
36. The victim of the present case in a lucid manner stated accused after taking her into inside house removed hers panty and insert and rubbed his penis in her vagina that attracts the ingredients of section 3 of the POCSO Act and there is nothing to disbelief her piece of testimony which is reliable, acceptable beyond all reasonable doubt.
37. With regard to the point of child witness, I find testimony of victim passed out all the test and her consistent statement in all the stages with corroboration makes her piece of statement reliable and acceptable piece of evidence. In *Sakhare Vs. State of Maharashtra* (1997) 5 SCC 341, Hon'ble Apex Court observed- "A child witness if found competent to deposed to the faith and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered u/s- 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while recording the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored". 31. In *Mangoo & Anr Vs. State of Madhya Pradesh*, AIR 1995 SC 95, Hon'ble SC hold "this court while dealing with the evidence of a child witness observed that there was always scope to tutor the child, however, it cannot be a ground to come to conclusion that the child witness must have been tutored. The court must determine as to whether the child has been tutored or not. It can be ascertained by examining the evidence and from the contents thereof as to whether there are any traces of tutoring"
38. In *Digambar Vishnav and another vs. State of Chhattisgarh*, 2019 (196) AIC 34(SC). In para 23 of the judgment Hon'ble Supreme Court discussed as: "36. It is a settled principle of law that a child witness can be a competent witness provided statement of such witness is reliable, truthful and is corroborated by other prosecution evidence. The court in such circumstances can safely rely upon the statement of a child witness and it

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- can form the basis for conviction as well. Further, the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated by other evidence before a conviction can be allowed to stand but as a rule of prudence the court always finds it desirable to seek corroboration to such evidence from other reliable evidence placed on record. Further, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. 'But having deep perusal and scrutinising the statement of both the child i.e. victim aged about 8 years and her brother who has deposed as P.W. 6 aged about 9 years it is clearly evident that serially they have corroborated the fact mentioned in written report. Moreover in the case of rape, there is least chance of direct witnesses or eye witness but in this case the brother of the victim is eye witness and in fact he was also tortured during course of committing crime by the accused in form of stopping him which cannot be ruled out mere on the ground that he is child, rather nothing extracted from the mouth of this witness which falsify the incident.
39. Section 3 of the POCSO Act defines penetrative sexual assault which says a person is said to commit penetrative sexual assault if (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
40. To bring home the charge u/s-376 (A) (B) IPC prosecution must prove the ingredients of section 375 IPC and also to prove that the victim is below 12 years. Section 375 IPC says: "A man is said to commit rape if he - (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other

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- person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.
41. The radiological estimated age of the victim is below 12 years and above 10 years. I/O stated victim is aged about 10 years old. Victim stated her age as 8 years. PW-3 father of the victim stated her daughter is 8 years old. Pw-2 also stated age of the victim as 8 yrs. The IO stated police took date of birth certificate (Exhibit-3). I/O, PW-10 in her statement confirmed that she collected the birth certificate of the victim and date of birth is 02/10/20, date of incident is 22/07/21 and age is about 11 years on the date of incident.
42. The doctors evidence pointed on examination of the victim she found her hymen ruptured and there was excessive bleeding from her private parts. Defence tried to explain that hymen may be ruptured due to some other reason such as fall from bicycle on ground or injury caused by any other objects but while cross examining the PW 7, 8 & 9, not a single question put to her that she rides on bicycle and falls from bicycle either on the date of incident or on earlier occasion. Here hymen not seen, probably ruptured means ruptured, and excessive bleeding along with unconsciousness found that indicates sexual assault on the victim, the absence of semen may be due to medical examination of the victim after some day of the incident, therefore, absence of semen does not weaken the prosecution case when injury found in the private parts of the victim who is a girl of 11 years. The oral as well as medical examination established that on the date of incident accused taking victim to his house, removed her panty and insert and rub his penis into her vagina, and statement of the victim clearly brings home the ingredients of section 3 of the POCSO Act.
43. In the case in hand, victim categorically stated accused inserts his penis (private part) into her vagina. Hence, male sex organ put into the female sex organ and thus fulfill the ingredients of section 375(a), (b) and (c) and victim is below the age of 12 years which attract the ingredients of section 376(AB) IPC. That victim is a minor and was aged below 12 years has been proved beyond all reasonable doubt which satisfy the clause (m) of section 5 of the POCSO Act satisfies which attracts ingredients of section 6 of the POCSO Act. Apart from that the provision of Cr.P.C. mentioned in Sec. 221(2) Cr.P.C which also gives liberty as per facts and evidence to increase the charge saying that "if in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provision of sub section 1 as happened in this case. He may be convicted of the offence which he is shown to have committed, although he was not charged with it." Therefore in the light of provision mentioned in Cr.P.C. Section 6 of the

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POCSO Act became relevant and admissible and ingredient of the section 6 of POCSO fulfills literally.

44. From my aforesaid discussion I come to my considerate finding that prosecution fairly able to bring home the charge of section 376(AB) IPC and charge of section 6 of the POCSO Act against the accused namely Dilip Kumar Yadav beyond all reasonable doubt.
45. In the result, I hold accused Dilip Kumar Yadav guilty of committing offence punishable u/s-376(AB) IPC and section-6 of the POCSO Act and accordingly, I convict the accused Dilip Kumar Yadav u/s-376(AB) IPC and section-6 of the POCSO Act. It is relevant here to mention that the charges U/s 4 was framed in place of Section 6 of the Act. As such this court exercises jurisdiction U/s 221 of the Cr.P.C. and convict the accused U/s 6 of the POCSO Act even if charges were not framed U/s 6 of the Act.
46. Considering the facts and circumstances of the case and nature of the offence committed by the convicted accused Dilip Kumar Yadav, he is not entitled the benefit of Probation of Offender Act or section 360 I.P.C. Put up for hearing on the point of sentence.

Sd/-

(Shashi Kant Rai)

Special Judge POCSO, Araria

04.10.2021

This Judgment is written, corrected, signed by me and pronounced in the open Court.

Sd/-

(Shashi Kant Rai)

Special Judge POCSO, Araria

04.10.2021

ORDER ON THE POINT OF SENTENCE

Present :- Ld. Special PP for the State.

Ld. Counsel for Defence

Convict Dilip Kumar Yadav through video conferencing

1. The learned counsel for the convicts is present. The learned Addl. Public Prosecutor is also present. I have heard the arguments advanced by learned counsel for the convicts and the learned Addl. Public Prosecutor on the question of sentence. The learned counsel for the convicts have submitted that the convict person is layman. Learned counsel for the accused prays for leniency as accused is young boy and the sole member of the family. He has to look after the family.

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2. I have also heard the convict namely Dilip Kumar Ydav. The convict s submitted as follows: (i) He is the only earning member of his poor family. He is no way involved with any offence and prayed to take a lenient view in imposing sentence against him.
3. On the other hand, the Learned Special Public Prosecutor has submitted that considering the manner in which the convicts have committed the rape with her as she was anyhow saved, maximum punishment prescribed by the law may be imposed upon the convicts.
4. After hearing learned Special PP and learned defence counsel and the accused on the point of sentence and further taking into account the offence which has been committed by accused and its impact on the society and increasing trend of sexual assault, rape case on the woman, child, I am of the opinion that the offence which have been committed by the accused who is aged about 30 years and age of the victim girl who is a 8-9 years old who is about 20 years younger to accused who had not yet developed any sign of secondary sex, the accused does not deserve any leniency.
5. Further taking into account of provision of section 42 of the POCSO Act- when accused is found guilty both under the provisions of POCSO Act and under Indian Penal Code then where the degree of punishment is more will suffice the justice and accordingly, I find that the punishment u/s-376(AB) will equally serve the justice to section 6 of the POCSO Act.
6. Section 42 of the POCSO Act says: "42. Alternative punishment.- Where an act or omission constitute an offence punishable under this Act and also under section 166A, 354-A, 354-B, 354-C, 354-D, 370, 370-A, 375, 376, [376-A, 376-B, 376-C, 376-D, 376-AB, 376-DA, 376-DB] 376-E, or section 509 of the Indian Penal Code then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree."
7. Coming to section 42 of the POCSO Act, I find that act of accused constitute an offence which is punishable u/s-376(AB) IPC and punishment prescribed in section 376(AB) of IPC is greater in degree. Therefore, I am of the considered opinion, if accused is sentenced u/s-376(AB) IPC it will also serve the purpose of section 6 of the POCSO Act as nature of offence is same. Accordingly, for the offence committed by the accused u/s-6 of POCSO Act which is equivalent to the offence u/s-376(AB) IPC, I deem it fit to sentence the accused u/s-376(AB) of the Indian Penal Code and same will do the justice.
8. However, before deciding upon the quantum of the sentence to be imposed, it would not be out of place to discuss the sentencing guidelines as laid down by the pronouncements of the Hon'ble SC. In

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Dhanajoy Chakravarty @Dhanna vs State of West Bengal [(1994) 2 SCC 220], the Hon'ble Supreme Court held: "15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..." Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjay Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges. The Hon'ble Supreme Court in a decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], opined: "7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society."

9. It thus appears that the Hon'ble courts have laid down that the sentencing should be proportionate to the magnitude and the gravity of the crime and should not be unduly lenient as from the facts and evidence it appears that leniency is award to the accused will defeat the justice.
10. Accordingly, convicted accused Dilip Kumar Yadav is sentenced to undergo rigorous imprisonment for life which means imprisonment for the remainder of the natural life of the convicted accused Dilip Yadav with fine of Rs. 50,000/- in default Simple Imprisonment for one (01) month under section 376(AB) IPC and this will equally serve the punishment u/s-6 of the POCSO Act in view of section 42 of the POCSO Act, out of slapped amount i.e. Rs. 50,000/- 75% will be given to victim of this case as per provision laid u/s 357 of the Cr.P.C.
11. Let furnish free copy of Judgment to convicted accused Dilip Kumar Yadav.
12. The convicted accused is told that he has right to appeal against the judgment and order of conviction and sentence passed by this court

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before Hon'ble High court through the jail authority or independently of his own.

13. Convicted accused is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble High court.
14. As the victim of the case is a victim of rape case and she is a victim at the very tender age, so State has a right to take care of her and therefore, the victim is entitled to compensation under Victim Compensation Scheme. Learned Secretary, DLSA, Araria will pay compensation as Rs. 2,00,000/- payable to the victim Miss 'X' (PW-1). Send copy of judgment and order with relevant documents to the Secretary, District Legal Services Authority, Araria for information and necessary action. It is not out of place to mention here that Rs. 5,00,000/- as intrem compensation had been given to victim to continue her medical assistance when she came for the statement to be recorded u/s 164 of the Cr.P.C.
15. Send copy of judgment to learned District Magistrate Araria u/s 365 Cr.P.C. D.M., Araria.
16. Let the copy of this judgement be uploaded upon the official website. Let the copy of the judgement be given to DLSA, Secretary, Araria, S.P. Araria needful.
17. Seized articles be disposed of as per the prevalent rules.

Sd/-

(Shashi Kant Rai)

Special Judge POCSO, Araria

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LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Victim	
PW 2	Informant	
PW 3	Husband of the informant and father of victim	
PW4	Tribhuvan Yadav	
PW 5	Krityanand Yadav	
PW 6	Brother of the victim	
PW 7	Dr. Reshma Reza	Medical Officer
PW 8	Dr. Azaharuddin	Medical Officer

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PW 9	Preeti Kumari	ANM
PW 10	Reeta Kumari	Investigating Officer

B. Defence Witnesses, if any:

Rank	Name	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No	Exhibit Number	Description
1	Exhibit- 1, Ext.- 2 & 2/1 and Ext.-3 proved by PW 3	Signature of PW 3 on written report, Signature of Tribhuvan Yadav as PW 4 and Manish Yadav on the seizure list and school certificate in connection with date of birth of the victim respectively.
2	Exhibit 4 proved by PW 4	Seizure list
3	Exhibit 5 & 5/1 proved by PW 7	Whole injury report and signature of Dr. Amit Kumar on injury report
4	Exhibit 5/2 & 5/3 proved by PW 8	Signature of ANM (PW 9) & signature of Dr. Azaharuddin (PW 8) on injury report in connection with Royal Purnea Emergency Hospital Forbesganj
5	Exhibit 6/PW 9	Whole injury report in connection with Royal Purnea Emergency Hospital Forbesganj
6	Exhibit 7, 7/1, 7/2, 7/3, 8, 9, 10, 11 /PW10	Writing & signature of fardbayan of Narpatganj P.S. Case No. 349/2021, Forwarding report of SHO Forbesganj, Endorsement of fardbayan of SHO Narpatganj, Formal FIR, Writing & signature of I.O. on seizure list, FSL report, Referral recommendation for higher treatment of victim and statement of victim u/s 164 Cr.P.C.

Material Objects and its Exhibit :

Sr. No	Material Object Number	Description
1	MO-I & II	Bloodish undergarment of the victim & piece of sari

Sd/-

(Shashi Kant Rai)

Special Judge POCSO, Araria

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