IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.443 of 2023

Arising Out of PS. Case No.-170 Year-2020 Thana- DELHA District- Gaya

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Mohan Mishra @ Baba @ Pyara Mohan Mishra Son of Late Akhileshwar Mishra Resident of village - Gautam Budh Colony, Road No.- 1, P.S.- Delha, District - Gaya.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajesh Ranjan, Advocate Mr. Md. Farooq, Advocate Mr. Shubham Kumar, Advocate Mr. Atul Shankar, Advocate
For the State	:	Mr. Binod Bihari Singh, APP
For the Informant	:	Mr. Sanjay Kumar Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 01-11-2025

Heard learned counsel for the appellant, the informant and learned Additional Public Prosecutor for the State as also perused the trial court record.

2. The present appeal arises out of the judgment of conviction dated 04.02.2023 and the order of sentence dated 20.02.2023 passed by the learned Special Judge POCSO Court cum Additional District and Session Judge VI, Gaya passed in POCSO Case No. 87 of 2020 (CIS No. 87 of 2020) arising out of Delha P.S. Case No. 170 of 2020.

3. By the impugned judgment, the appellant has been

convicted for the offences punishable under Section 376 of the Indian Penal Code and under Section 4 (2) of the Protection of Children from Sexual Offences (in short 'POCSO') Act, 2012. The appellant was sentenced to undergo rigorous imprisonment for 22 years for the offence punishable under Section 4 (2) of the POCSO Act along with fine of Rs. 50,000/- and, in default of payment of fine, he was directed to undergo rigorous imprisonment for further six months. No sentence was awarded separately for the offence u/s 376 of the Indian Penal Code in view of Section 42 of the POCSO Act.

Prosecution Case

4. As per the prosecution case, the informant/victim states that on 31.07.2020 at around 9:00 A.M., Mohan Mishra @ Baba @ Pyara Mohan Mishra, aged about 55 years, came to her house and asked her to accompany him for worship at Shitla Mata Temple near Vishnupad. It is alleged that on earlier occasions also, with the consent of her mother, he had taken her to Mangla Gauri Temple under the pretext of improving her acumen through *puja path*. On the said day, from near Railway Gumti No. 1 under Kotwali Police Station, the accused repeatedly called her from his mobile No. **********, upon which she went there and both proceeded by a rickshaw to

Shitla Mata Temple, which was found closed. Thereafter, on the pretext of purchasing clothes, he took her to Krishna Hotel but instead took her to a room on the upper floor where he forcibly committed rape upon her. Though she raised shouts, Gopal Prasad, the owner of Krishna Hotel present on the ground floor did not intervene. It is alleged that the appellant kept her confined there for about half an hour before leaving. The victim then returned home and narrated the incident to her parents and others following which her father took her to Krishna Hotel, where an altercation took place between her father and the hotel owner. She also stated that as her clothes were wet due to rain, she took a bath and washed the clothes thereafter.

5. On the basis of the aforesaid written application, Delha P.S. Case No. 170 of 2020 dated 31.07.2020 was registered for the offences punishable under Sections 376/34 of the IPC and under Section 4, 8 and 12 of the POCSO Act.

6. After completion of investigation of the case, the Investigating Officer (the I.O) submitted charge-sheet being Charge-Sheet No. 221 of 2020 dated 04.09.2020 under Sections 376/34 of the IPC and under Sections 4 of the POCSO Act.

7. The cognizance of the offences under Sections 376/34 of the IPC and under Sections 4/16 of the POCSO Act

was taken against the appellant and charges were explained to the appellant in Hindi to which he pleaded not guilty. Accordingly, learned Trial Court framed the charges against him under Sections 376/34 of the IPC and under Sections 4 and 6 of the POCSO Act.

8. The defence has examined six witnesses on behalf of the prosecution and exhibited some documentary evidences in course of trial. The description of witnesses and the exhibits are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses:

P.W.1	Dr. Shakuntala Naag
P.W.2	Mahesh Prajapati
P.W.3	Savitri Kumari
P.W.4	‘X’ (victim)
P.W.5	Sunita Devi
P.W.6	S.I. Sudhir Kumar

List of Exhibits on behalf of the Prosecution:

Ext.-P1	Medical Report
Ext.-P2	Written Application
Ext.-P3	Signature of Mahesh Prajapati on seizure list
Ext.-P4	Signature of Savitri Kumari on written application
Ext.-P5	Statement u/s 164 Cr.P.C of Victim
Ext.-P6	Signature of Savitri Devi in written application was identified by PW-5 Sunita Devi on written application

Ext.-P-6/1	Signature of Mahesh Prajapati in written application identified by Sunita Devi
Ext.-P-6/2	Signature of Savitri Devi on seizure list
Ext.-P7	F.I.R
Ext.-P8	Seizure list
Ext.-P9	Written application on F.I.R.

List of Defence Witnesses:

D.W.1	Bharat Prasad
D.W.2	Bhim Prasad
D.W.3	Amar Kumar

List of Enquiry Witness:

E.W.1	Sunita Kumari Verma

9. Thereafter, the statement of the appellant was recorded under Section 313 of the Cr.P.C. The appellant denied all the allegations and took a plea that he is innocent.

Findings of the Learned Trial Court:

10. The learned trial court, upon consideration of the evidence on record and the submissions advanced by the parties has found that the testimony of the victim had been consistent, credible and inspired confidence. Her statement under Section 164 Cr.P.C., duly corroborated by her initial version clearly established that the incident had occurred on 31.07.2020. It has been held that the minor inconsistencies pointed out by the defence may be due to the passage of time and the mental

trauma suffered by the victim.

11. Further, the medical evidence showed the victim's age between 16–17 years, bringing her within the ambit of a 'child' under the POCSO Act. Therefore, the question of consent was considered immaterial. It was observed that the absence of external injuries and the non-seizure of material objects cannot demolish the prosecution case as it had been well settled that lack of physical resistance did not imply absence of sexual assault, especially when intimidation and fear is involved.

12. The victim's testimony had remained unshaken during cross-examination and had been free from material contradictions. Hence, the learned trial court had held that the prosecution had successfully proved the charges beyond reasonable doubt and the appellant had been found guilty and convicted under the relevant provisions of the IPC and the POCSO Act.

Submission on behalf of the appellant:

13. It is submitted by learned counsel appearing on behalf of the appellant that the prosecution's case is false, fabricated and the appellant has been falsely implicated. The alleged date of occurrence is 31.07.2020, and the victim claims to be 15 years of age at the relevant time. However, no

educational certificate has been produced to prove her age except the school admission register of Class-III at a belated stage. In this regard, learned counsel for the appellant has relied upon the judgment of Hon'ble Supreme Court in the case of **P. Yuvaprakash vs. State Rep. By Inspector of Police** reported in **2023 SCC OnLine SC 846.**

13.1 Further, relying upon the judgment of **State of Bihar v. Chhatu Pasi** reported in **2022 (3) PLJR 414**, learned counsel submits that the school admission register cannot be looked into as it was the part of the papers supplied to the accused under Section 207 Cr.P.C.

14. The doctor has assessed her age to be 16–17 years, making her a major, thereby excluding the applicability of the POCSO Act. The medical examination revealed no sign of sexual assault, and the Doctor (P.W.-1) has further contradicted the prosecution by stating that the occurrence took place on 30th July, though the examination was done on 31st July.

15. It is further submitted that all six prosecution witnesses are either interested or hearsay witnesses and their testimonies are self-contradictory and unreliable. The Investigating Officer mentioned three different places of occurrence but failed to examine any independent witness from

any of those locations. There is no witness to prove that the victim left her house with the appellant. No eye-witness from Shitla Mata Temple or Krishna Hotel has been examined. and despite Station Road being a busy public place with CCTV installed, no footage was collected. Crucial material evidence, such as the victim's clothes, hotel bed, visitor register, and call detail records were not seized or produced. Although the accused was arrested on the same day, no medical examination of the accused was conducted which is a non-compliance with mandatory provision of Section 53 Cr.P.C. Reliance in this regard has been placed on the judgment passed by a learned Co-ordinate Bench of this Court in **Cr. APP (DB) No. 752 of 2012** titled **Chandan Kumar Sah & Ors. v. The State of Bihar** and it is submitted that it was the duty on the part of the Investigating Officer to get the accused medically examined.

16. It has also been submitted that during lockdown, hotels and shops, including Krishna Hotel, were closed, rendering the prosecution story improbable. Referring to the judgment of Hon'ble Supreme Court in the case of **Rai Sandeep @ Deepu vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21,** learned counsel submits that the victim girl is not a sterling witness. The informant and other witnesses have given

contradictory versions about the place and manner of occurrence and the alleged chain of events remains incomplete and uncorroborated. In the present case too, the place of occurrence is not proved, witnesses are unreliable and the prosecution has failed to prove its case beyond reasonable doubt. Hence, the appellant deserves to be given the benefit of doubt and acquitted of all the charges.

17. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Rajak Mohammad vs. State of H.P.** reported in **(2018) 9 SCC 248** to submit the age determination on the basis of a radiological examination may not be an accurate determination and sufficient margin either has to be allowed.

Submissions on behalf of the informant:

18. Learned counsel on behalf of the informant submits that the appellant has committed a grave and heinous offence and his plea of false implication is wholly unfounded and devoid of merit. The victim has consistently narrated the incident of 31.07.2020 from the very beginning and her testimony remains firm, natural and trustworthy. Being a victim of sexual assault, her statement carries great evidentiary value and requires no further corroboration as per settled law. The

claim regarding the victim being a major is misleading. Although no school certificate was produced, the doctor (P.W. 1) has opined her age to be 16–17 years, bringing her within the definition of a minor. Therefore, the protection of the POCSO Act is rightly applicable. It is further submitted that the appellant, under the guise of religious guidance, deceitfully took the victim to Krishna Hotel and committed forcible sexual act and the victim immediately thereafter informed her parents, and there was no delay in lodging the F.I.R.

19. He further submits that even due to investigative lapses, such as non-seizure of clothes, lack of CCTV footage or medical examination of the accused, do not nullify the prosecution case when the incident is clearly proved by the victim's direct evidence supported by her statement under Section 164 Cr.P.C and medical examination. The absence of physical injuries does not falsify the occurrence of rape, as intimidation and fear often prevent resistance.

20. He lastly submitted that the appellant does not deserve any sympathy in view of the heinous crime committed by him on a minor girl. Accordingly, no interference is required with the impugned judgment of conviction and order of sentence.

Submissions on behalf of the State:

21. Learned Additional Public Prosecutor appearing on behalf of the State has vehemently opposed the appeal and has endorsed the submissions advanced by the learned counsel appearing on behalf of the informant.

Consideration

22. In view of the submissions noted hereinabove, we have examined the evidences available on the record of the learned trial court. In this case, the first information report has been registered on 31.07.2020 at 03:00 P.M. on the basis of the written information submitted by the victim girl (X) on the same date with respect to the occurrence which took place on 31.07.2020 at 09:00 A.M. In her written information, the victim alleged that the appellant Mohan Mishra @ Baba @ Pyara Mohan Mishra, aged about 55 years, came to the house of the victim and asked her to come to perform puja in Shitla Mata temple which is situated within the area of Vishnupad police station. She alleged that in past also the accused had taken her to Mangla Gauri temple in the name of performing puja. In the same written information, the victim has stated that on the said date the accused was calling from his Mobile No. ********* on her Mobile No. ******** repeatedly and on his asking to come

to perform puja, she went there. She has also stated that the accused was calling her from the side of the Railway Gumti No. 1 of Delha police station and that side would fall within the area of Kotwali police station. With such details with respect to the jurisdiction of the police station from where the accused was calling her, the victim alleged that on asking of the accused she went there and from there they went to Shitla Mata temple by a rickshaw. Here, this Court has observed that in the written information, the victim is saying two different things with regard to the place from where the accused took her to Shitla Mata temple. At the first instance, she says that the accused came to her house and asked her to come to Shitla Mata temple, but later on she says that the accused was calling her from near Railway Gumti No.1, which is within the jurisdiction of Kotwali police station and she went there. From there the accused and the victim both went to Shitla Mata temple. This is material discrepancy in the written statement of the victim with regard to the place from where she went to Shitla Mata temple with the accused.

23. We have further noticed that in her written information the victim claimed that when they reached Shitla Mata temple by a rickshaw, the temple was found closed

whereafter the accused took her to Krishna Hotel situated at the station road on the pretext of purchasing clothes. He took her to a room on the upper floor where he committed rape on her. She alleged that the owner of the hotel did not help her despite the fact that she was shouting. She has stated in her written information that after keeping her for half an hour the accused left her and she reached her house whereafter she told the story to her mother, father and other persons. Her father took her to Krishna Hotel where the owner of Krishna Hotel had a quarrel with her father. She has further stated that she had got wet in the rain and her clothes were washed off. It is, therefore, evident that the victim, P.W. 4, has stated in her written information that she was subjected to rape in the hotel and thereafter she was left to go to her house, but in course of trial, P.W. 4 has come out with a different statement. She has stated that the accused had come to her house in the morning at 09:00 A.M. and told her mother that the victim girl has to be taken to Shitla Mata temple for performing puja. She had gone to perform puja with the accused, but there was a lock down and the temple was closed. This Court finds that the date of occurrence is 31.07.2020 during the period when the entire country was under lock down and there were common knowledge among the people that all

establishments, including the temple would be closed. In such circumstance, the statement of the victim, P.W. 4, that she had gone with the accused on the pretext of performing puja in Shitla Mata temple would not be inspiring confidence to this Court. Further, she has stated in her examination-in-chief that the accused had forcibly slammed her down on the bed, the string of Salwar was broken and she was subjected to forcible rape after tying her mouth with a towel. She has alleged penetrative sexual act whereafter she came to her house. In her cross-examination, the victim, P.W. 4, has stated that while returning by a battery rickshaw, there was no other passenger in the rickshaw, but she did not know whether the rickshaw was reserved or not. She has also stated that she had not seen any board on the hotel. She has stated that she had not asked the accused as to why clothes would be sold in a hotel. At this stage, we find that her statement in course of trial is not consistent with her statement recorded under Section-164 Cr.P.C. In her statement under Section-164 Cr.P.C., the victim has stated that when she had started fleeing away from the hotel then the accused had chased her and tried to catch hold of her, but somehow she fled away from the hotel. She has further stated in her statement under Section-164 Cr.P.C. that the accused had

given a telephonic call to her father and told him that his daughter had fled away from the temple. Her father met her near 'Naika Pul' where she told the entire occurrence to her father and then she went to the police station with her father. Thus, she has given two different versions in her statement under Section-164 Cr.P.C. and in course of trial with regard to her meeting the father and disclosure of the occurrence to him.

24. We have also noticed that in her Section-164 Cr.P.C. statement, the victim girl has stated that she is the eldest amongst the six sisters, but in course of trial she has stated that her eldest sister is aged about 18 years who studies in Class-7 and the victim claimed that she is the second one, aged about 17 years. We have also noticed that in paragraph-17 of her deposition, the victim has stated that when she left her house to go to the temple, there was no one in the family at home. Her sister had gone to study, father had gone to work and mother had gone to bring grass for the she-goats whereas her mother, who has been examined as P.W. 5 in this case, has stated that she was present in her home. P.W. 5 has stated that the accused told her that her daughter is weak in study, therefore, he would get the puja performed in Shitla Mata temple to make her good in her studies. She has stated that when she asked the accused that the

temple is under lock then how puja will be performed, the accused told her that he will get the lock opened for purpose of puja. P.W. 2 claimed that the accused had taken away her daughter to Shitla Mata temple. Here, we have noticed that while the victim says that she was alone in her house when she left on the repeated calls from the accused from near the Railway Gumti No.1, her mother, P.W. 5, gives a completely different version.

25. In this case, the definite prosecution case is that of commission of penetrative sexual act by the appellant, however, we have noticed from the evidence of the Medical Officer of Prabhavati Hospital, Gaya (P.W.-1) that before the doctor the victim has stated that Pandit Mohan Baba took her to hotel near Bata Mor in the morning at about 11:00 A.M. for the purpose of performing puja and there he did unlawful act with her. She further stated that at about 11:30 P.M. she rang to her father, who came and took her back home. Thus, her stand is that her father came to the hotel and brought her back.

26. Here, in the evidence of P.W.-1 there is a completely different place of occurrence and the version of the prosecutrix is at a sea difference. According to this disclosure of the victim before the P.W.-1, the unlawful act was committed in

a hotel near Bata Mor, she did not disclose the name of the hotel and she had given a statement that she rang her father who came and took her back home whereas in her earlier statements she has given two versions about meeting her father at 'naika pul' and at her home. This kind of deviations in the statements of the victim under Section 164 Cr.P.C, in her own statement in course of trial and then in her statement before the Medical Officer (P.W.-1) would create huge doubt over the veracity of the statement of the victim (P.W.-4) and for this reason, the testimony of the prosecutrix/victim would be required to be examined with all circumspection and care. She would not fall in the category of the sterling witness as has been held by the Hon'ble Supreme Court in **Rai Sandeep** (supra). Who will be a 'sterling witness' has been observed by the Hon'ble Supreme Court in paragraph no. 22 which we reproduce hereinunder for a ready reference.

> 22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the

consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for

holding the offender guilty of the charge alleged.

27. We have noticed from the evidence of the Medical Officer (P.W.1) that the doctor had found hymen badly lacerated but lacerations were old and healed, perineum depressed and, in the opinion of the doctor, the victim was most probably habituated to sexual intercourse. The victim did not feel any difficulty in walking, micturition and defecation. No other abnormal finding was noted.

28. Based on the medical and radiological findings, the estimated age of the victim had been found between 16 to 17 years. The doctor has opined in her deposition that she did not find any recent vaginal injury during her examination and there was no present sign and symptom of sexual intercourse. It is, thus, evident that the medical examination report (Exhibit-1) proved by the Medical Officer (P.W.-1) does not corroborate the prosecution case of penetrative sexual act. Here, we would also take note of the fact that the appellant was arrested by the police on the same day but no medical examination of the appellant was conducted. It is for this reason, learned counsel for the appellant has relied upon the judgment of learned Co-ordinate Bench of this Court in **Chandan Kumar Sah** (supra) to submit that it was the duty on the part of the Investigating Officer to get

the accused medically examined and the requirements of Section 53A and 54 of the Cr.P.C were to be mandatorily followed, but in this case no step was taken by the Investigating Officer to get conducted the medical examination of the accused, therefore, it would also prove fatal to the prosecution case.

29. As regards the age of the victim/prosecutrix, we have noticed that the prosecutrix had already left her school and at the time of occurrence, she was not studying in any school as a regular student but at a belated stage when the statement of the accused was already recorded under Section 313 of the Cr.P.C on 17.08.2022, the court called for an enquiry witness, namely Sunita Kumari Verma, on 23.01.2023, who came with a school admission register of the year 2015-16 of Primary School, Gajadhar Bigha in which the victim had taken admission in class-III on 11.08.2015. This admission register was marked 'X' for identification and the school transfer certificate was marked 'X2'. This enquiry witness has stated that the victim had studied in this school from class-III to class-V. In cross-examination, she has stated that the register did not bear any seal or signature of the District Education Officer of the Education Department and it is not mentioned as to who was the Principal of the school

and in whose possession the register was kept at the relevant time. This has been relied upon by the learned trial court to take it as a proof of age of the victim. We are, however, afraid that the school admission register which was marked 'X' for identification cannot be relied upon for two reasons; firstly that this was brought on record after the statement of the accused under Section 313 of the Cr.P.C and then the school admission register is of Class-III which is not the school first attended by the victim. In this regard, learned counsel for the appellant has relied upon the judgment of Hon'ble Supreme Court in the case of **P. Yuvaprakash** (supra). We quote paragraph nos. '14' to '17' of the judgment for a ready reference:

> **14.** Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "*an ossification test*" or "*any other latest medical age determination test*" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1,

i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki* v. *State of Uttar Pradesh*,[3] this court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in *pari materia*) with Section 94 of the JJ Act, and held as follows:

> "*20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the*

JJ Board was by seeking evidence by obtaining: (i) the matriculation or equivalent certificates, if available and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year."

16. Speaking about provisions of the Juvenile Justice Act, especially the various options in Section 94(2) of the JJ Act, this court held in *Sanjeev Kumar Gupta* v. *The State of Uttar Pradesh*[4] that:

"*Clause (i) of Section 94(2) places the date of birth certificate from the school and the matriculation or equivalent certificate from the concerned examination board in the same category (namely (i) above). In the absence thereof category (ii) provides for obtaining the birth certificate of the corporation, municipal authority or panchayat. It is only in the absence of (i)*

> *and (ii) that age determination by means of medical analysis is provided. Section 94(2)(a)(i) indicates a significant change over the provisions which were contained in Rule 12(3)(a) of the Rules of 2007 made under the Act of 2000. Under Rule 12(3)(a)(i) the matriculation or equivalent certificate was given precedence and it was only in the event of the certificate not being available that the date of birth certificate from the school first attended, could be obtained. In Section 94(2)(i) both the date of birth certificate from the school as well as the matriculation or equivalent certificate are placed in the same category.*

> **17.** In *Abuzar Hossain @ Gulam Hossain* v. *State of West Bengal*[5], this court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

30. The school admission register cannot be looked into as it was not forming part of the charge-sheet and the papers supplied to the accused under Section 207 of the Cr.P.C. In this regard the Hon'ble Division Bench Judgment in the Case of **Chhatu Pasi** (supra) has been relied upon.

31. This takes us to the medical opinion with regard

to the age of the victim. As per the medical examination report she was between 16-17 years. How the age of the victim under the POCSO Act may be assessed has been dealt by the Hon'ble Supreme Court in **Court on its own Motion vs. State of NCT of Delhi vs. State of NCT of Delhi (Crl. Ref. 2/2024 judgment dated 02.04.2024)** reported in **2024 SC OnLine Delhi 4484** and it has been finally concluded as under:

> "**46.** As an upshot of our foregoing discussion, the Reference is answered as under:-
>
> (i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?
>
> Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in 'reference range' be considered as age of the victim.
>
> (ii) Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.
>
> Ans: Yes. The margin of error of two years is further required to be applied."

32. The aforesaid view of the Hon'ble Division Bench of the Delhi High Court gets further strengthened from

the judgment of the Hon'ble Supreme Court in the case of **Rajak Mohammad** (supra). We quote paragraph no. 9 of the said judgment as under:

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

33. Keeping in view the aforesaid judicial pronouncements on the subject when we examined the present case, on adding '+' '-' 2 years, it is found that the age of the victim in the upper extremity would raise to 18 years. In such circumstances, the charge framed by the prosecution against the appellant under the POCSO Act would not sustain.

34. We have already held hereinabove while showing the material discrepancy in the statement of the victim that she would not fall in the category of a 'sterling witness'. Her statement is not getting corroborated from any independent material particulars and evidence. In such circumstance, in our considered opinion, it would not be safe to sustain the conviction of the appellant for the charges levelled against him.

We find that the appellant has made out a case for interference with the impugned judgment and order.

35. We, therefore, set aside the impugned judgment and order of the trial court and acquit appellant of the charges giving him benefit of doubt.

36. The appellant is said to be in custody, hence he is ordered to be released forthwith, if not wanted in any other case.

37. The appeal is allowed.

38. Let a copy of the judgment along with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Aditya/K.C. Jha

AFR/NAFR	
CAV DATE	
Uploading Date	04.11.2025.
Transmission Date	