IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.70 of 2020

Arising Out of PS. Case No.-49 Year-2018 Thana- DHANGAI District- Bhojpur

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Santosh Kumar Singh @ Santosh Yadav S/o Chhotelal Singh R/o village- Basauri, P.S.- Sikarahata, Distt.- Bhojpur

... ... Appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :

For the Appellant	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate
		Mr. Brajesh Prasad Gupta, Advocate
		Mr. Sri Krishna Ranjan, Advocate
For the Respondent	:	Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 29-11-2022

We have heard Mr. Baxi S.R.P. Singh, learned Senior Counsel for the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C. for brevity) assailing the judgment of conviction dated 21.11.2019 and order of sentence dated 28.11.2019 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, POCSO, Bhojpur, Ara in POCSO Case No. 34 of 2018, whereby the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
376 of the Indian Penal Code	For life	5,000/-	Six months R.I.
4 of the Protection of Children from Sexual Offences Act	R.I. for 7 years	5,000/-	Three months R.I.

3. The victim is the informant, whose name has been concealed in the present judgment and order to protect her prestige and dignity.

4. A written report submitted to the Officer-in-Chief of Dhangia police station in the District of Bhojpur under the signature of the informant is the basis for registration of First Information Report (F.I.R. for brevity) disclosing commission of the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act ('POCSO Act' for short) and Section 376 of the Indian Penal Code (I.P.C. for brevity).

5. According to the F.I.R., the occurrence is of 24.05.2018 at 10:00 am for which the information was given on the same day at 07:10 pm, immediately whereafter the F.I.R was registered. It is the prosecution’s case that the victim, aged nearly 14 years, was in her house when her parents had gone outside for some private work. At about 10 am, when she was all alone, sleeping in her house, the appellant entered into her room, gagged her with her *dupatta,* committed rape on her, and

he fled away. At 12:00 noon when her brother (P.W. 4) came, she narrated to him the entire occurrence and subsequently to her parents when they returned at 4:00 pm in the evening. The statement of the victim (P.W.-1) was recorded under Section 164 of the Code of Criminal Procedure on 25.05.2018. She supported the prosecution's case as was disclosed by her in her written report. She stated that the appellant had come to his maternal uncle, a co-villager of the victim, where he was residing for the last few days. She did not know him from before nor she had any association with him. The victim was subjected to medical examination. The Doctor who conducted the medical examination recorded his findings as under:-

" i) ***Medical Examination***:-

Secondary Sexual character well developed.

ii) ***P/E Examination***:-

Blood stain around vagina.

iii) ***P/V Examination***:-

Hymen Rupture. Gloves stained with blood.

iv) ***Microscopical of Vaginal Swab*** *– Negative.*

v) ***USG (Ultra Sonography) of Lower abdomen*** *:-*

Normal utras, no sign of pregnancy.

vi) ***X-ray report:-***

Pelvis-Iliac apophysis not fused.

Elbow – All epiphysis fused.

Wrist - Saw epiphysis in the prosses of fusal.

According to above finding and Radiologist her probable age is between 14-17 years. Report is written and signed by me. Marked as Ext. 6."

6. Apparently in the assessment of the Doctor, the age of the victim was found to be between 14-17 years. The police, upon completion of investigation, submitted charge-sheet on 30.06.2018 for the offences punishable under Section 376 and Section 4 of the POCSO Act against the appellant. Subsequently, congnizance was taken by the Special Court on 24.08.2018. The Special Court, thereafter, framed charge for commission of the offences punishable under Section 376 of the I.P.C and Section 4 of the POCSO Act on 26.11.2018. As the appellant denied the charges, he was put to trial. At the trial altogether 6 witnesses were examined including Investigating Officer (P.W. 5) and Doctor (P.W.6) who had examined the victim. The victims' father, her mother and her brother were examined as PWs 2, 3 and 4 respectively. The written report was marked Exhibit-1, seizure list as Exhibit-2, statement of the victim recorded under Section 164 of the Cr.P.C. as Exhibit-3. The signature of the witness on the written report was marked as Exhibit-4. The medical report and the charge-sheet were marked as Exhibit-6 and 7 respectively.

7. The victim (P.W. 1) in her deposition at the trial, reiterated the same facts which she had disclosed in the F.I.R.. She clearly described the way she was sexually assaulted by the

appellant who is said to have pressed her breast and bitten her cheeks and kissed her. She also deposed that the appellant caused penetration of his penis into her vagina and, thus, raped her. On return of her parents, who had gone out at the time of occurrence, she had explained to them about the occurrence. She, further deposed that the police had come to her house and had seized her clothes in relation to which a seizure list was prepared which bore her signature. In her cross-examination, she further deposed that the door of her house was broken from before. The house of the appellant’s maternal uncle was 30 steps away from her house. The victim learnt about the identity of the appellant after the occurrence had taken place, from her parents. She further, deposed that she had gone to the police station in the evening at 05:00 pm. She denied the suggestion during the cross-examination of any animosity between her family and the family of the appellant.

8. The victim's father (P.W.-2), in his testimony, deposed that he had learnt about the occurrence from the victim, whereafter a written report was submitted by the victim on which, he (P.W.2) had also put his signature. The S.H.O of the police station had come to his house and seized the clothes of his daughter and had prepared a seizure list. In his cross-

examination, he further deposed that he had gone to the police at about 06:00 pm with one Ajay Tiwari and the victim had returned at 07:00 pm. He reiterated that the Police Officer had taken the victim's clothes while inspecting the place of occurrence. He specifically denied the suggestion that the clothes were handed over at the police station.

9. The victim's mother (P.W. 3), in her evidence, supported the prosecution's case. She disclosed that she was an Asha Worker and at the time of occurrence she had gone to Jagdishpur to attend a meeting which had concluded at 3:00 pm. In paragraph 7 of her cross-examination, she deposed that they had gone to the police station at 6:00 pm. The information about the occurrence was not given to the village *chaukidar*. She denied any suggestion of any love affair between the victim and the appellant.

10. The appellant's brother (P.W. 4) also supported the prosecution's case and the fact that the entire occurrence was narrated to him by the victim. He expressed ignorance about the clothes of the victim having been shown to the police. He also deposed that the frock which the victim was wearing was seized by the police from the house of the victim.

11. The Investigating Officer (P.W.-5) disclosed that the

statement of the victim was recorded by him at the police station itself. Father of the victim (P.W.-2) and mother of the victim (P.W.3) were also examined at the police station by him. He had prepared the production-cum-seizure list of the clothes which were brought by the victim which was sealed by him at the police station. The said clothes were not produced nor exhibited at the trial. He further deposed that on 21.06.2018, he had obtained an order from the Court to send the seized articles to Forensic Science Laboratory for forensic examination.

12. The Doctor (P.W.-6) in her deposition, while proving the earlier medical report dated 25.05.2018, deposed that she did not find any spermatozoa in the vaginal swab of the victim nor did she notice any injury on any part of the victim's body. Swab test report was not with her and apparently thus, the same was not proved at the trial. In paragraph 6 of her deposition, she evidenced that she could not claim as to whether any occurrence of rape had taken place. She further deposed that the blood stains found around the vagina of the victim could be because of menstrual discharge also.

13. After completion of the evidence of the prosecution's witnesses, explanation of the appellant was sought by the court below by referring to the circumstances emerging against him,

at the trial, in accordance with the requirement of Section 313 of the Cr.P.C.. The statement recorded under Section 313 of the Cr.P.C. reads as under:-

> "प्रश्न – आपके विरुद्ध आरोप है वो साक्ष्य है कि दिनांक 24.05.18 को जब पीड़िता घर में अकेली सोइ थी तो उसके कमरे में घुसकर ओढ़नी के मुँह बांधकर जबरदस्ती बलात्कार किया?
> उत्तर – जी नहीं
> प्रश्न – सफाई में क्या कहना है?
> उत्तर – मैं निर्दोष हुँ और अपना सफाई साक्ष्य दूंगा।"

14. No defense witness was examined at the trial. Upon analyzing evidence adduced at the trial, which have been briefly noted hereinabove, the trial court came to a definite conclusion that the victim was a minor as on the date of occurrence. Accordingly, after having analyzed, evaluated and screened the evidences of the witnesses held the victim to be a minor and, accordingly, based on such analysis and scrutiny held the appellant guilty of the offences punishable under Section 376 of the I.P.C. and Section 4 of the POCSO Act.

15. Mr. Baxi S.R.P. Sinha, learned Senior Counsel appearing for the appellant has submitted that the prosecution completely failed to discharge its onus of proving beyond all reasonable doubts that the victim was minor within the meaning of the provisions of POCSO Act as on the date of occurrence. He has relied on the Supreme Court's decision in case of

Jarnail Singh v. State of Haryana reported in ***(2013) 7 SCC 263*** to submit that the prosecution failed to adopt due recognized procedure to establish minority of the victim. He has submitted that there would be no question of application of the provisions under the POCSO Act unless it is established beyond all reasonable doubts that the victim was a minor as on the date of occurrence. He has accordingly submitted that Trial Court's finding of conviction of the offence punishable under Section 4 of the POCSO Act is vulnerable and not at all sustainable. He has further submitted that the prosecution failed to establish its case at the trial, in view of the major lacunae, which the Court must take into account. He has also drawn our attention to contradictions in the statement of the witnesses particularly the depositions of the victim and her family members and that of the Investigating Officer. He has submitted that it is clearly visible on reading of the written report that the same was not prepared by the informant though it bears her signature. The victim's father (P.W.-2) in his deposition at the trial made an incorrect statement that the said written report was prepared by the victim/informant in her own handwriting. He has accordingly submitted that the existence of F.I.R. itself has become doubtful and on this sole ground, the prosecution's case

falls flat. He has also submitted that all relevant questions emerging from the evidence were not put to the appellant while seeking his explanation under Section 313 of the Cr.P.C.. He has placed reliance on a Division Bench decision of this Court in case of ***Jagat Prasad v. State of Bihar,*** reported in ***2022 SCC OnLine Pat 123*** to submit that the Trial Court ought not to have taken into account such materials from the evidence adduced at the trial for the purpose of recording his conviction which were not brought to the notice of the appellant by way of putting questions requisite under Section 313 of the Cr.P.C.. He Further submits that it is evident from the statement of the appellant under Section 313 of the Cr.P.C. that no question was put to the appellant. Based on the evidence of the prosecution's witnesses, it emerged that the victim was a minor. In such view of the matter, it was impermissible for the Trial Court to have recorded a finding that the victim was a minor as on the date of occurrence and accordingly the provisions of the POCSO Act were not attracted.

16. He has also argued that the failure on the part of the police to prove at the trial the F.S.L. report, contradictions in the evidence of the witnesses as regards the place and manner or seizure of the victim's clothes and patent contradiction in the

evidence of the witnesses are other reasons why the finding of conviction is untenable. He has further submitted that the victim does not appear to be so trustworthy as to base finding of conviction of the appellant on her sole evidence, without any corroboration by medical evidence or any other evidence.

17. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor representing the State has, on the other hand, submitted that the victim has been found by the Doctor to be between 14 to 17 years of age based on the examination done by the dentist and the radiologist. He further submits that her father and mother, P.W.-2 and P.W.-3 have also supported at the trial, the prosecution's case that she was a minor as on the date of occurrence. He has accordingly submitted with the contention that the prosecution could not establish the minority of the victim at the trial which is untenable. He has further submitted that the victim has been consistent in her statement made in the written report, the one recorded under Section 161 of the Cr.P.C. and that recorded under Section 164 of the Cr.P.C.. Further she fully supported the sexual misconduct committed by the appellant at the trial. He accordingly, submits that the impugned judgment does not require any interference by this Court which is just and proper based on due appreciation of the evidence

adduced at the trial.

18. We have perused the impugned judgment and order of the Trial Court and the lower court records, we have given our thoughtful consideration to the rival submissions made on behalf of the parties as noted above.

19. Based on the scrutiny of evidence adduced at the trial, we find substance in submission made on behalf of the appellant that the prosecution failed to prove, beyond all reasonable doubt, the fact that the victim was below 18 years of age (a minor) as on the date of occurrence. The Supreme Court has held in case of ***Jarnail Singh*** (supra) that though Rule 12 of the Juvenile Justice (Care And Protection Of Children) Rules, 2007 have been framed under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Act of 2000') is applicable to determine the age of child in conflict with law, the aforesaid provision should be the basis for determination of age even of a child who is a victim of crime. The Court remarked that there was hardly any difference insofar as the issue of minority was concerned, between a child in conflict with law, and a child who is a victim of crime. Paragraph 22 and 23 of the said decision in case of ***Jarnail Singh*** (supra)can be usefully referred to for clarity:-

*"**22.** On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the 2007 Rules"). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:*

> *"**12.Procedure to be followed in determination of age**.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*
>
> *(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.*
>
> *(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—*
>
> > *(a)(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;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any

other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

23. *Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case*

such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion. ”

20. The date of occurrence in the present case is 24.05.2018. It is pertinent to note that Act of 2007 has been repealed by the Juvenile Justice (Care And Protection Of Children) Act, 2015, ('The Act of 2015' for short) Section 94 of the Act of 2015 lays down the procedure for determining juvenility. Relevant part of sub-section (2) of Section 94, which provides substantially similar procedure as was prescribed under 2007 Rules, reads as under:-

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

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

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

orders of the Committee or the Board:

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

21. Apparently, no exercise was carried out by the prosecution to establish that the victim was a minor as on the date of the occurrence by following the procedure prescribed under the Act in the light of reasoning put forth by the Supreme Court in case of ***Jarnail Singh*** (supra). Further, in case of ***Rajak Mohammad v. State of H.P.*** reported in ***(2018) 9 SCC 248*** the Supreme Court has noted 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. The Supreme Court, taking into account the facts and circumstances of that case opined in the said case that the report of the radiological examination left room for ample doubt with regard to the correct age of the prosecutrix. In such case, the benefit of aforesaid doubt, naturally, must go in favour of the accused.

22. We have quoted hereinabove the finding recorded by the Doctor in the Medical Report which has determined the victim's age to be between 14 to 17 years based on the radiological examination. Opinion of dentist is not available in

the medical report. The said finding, in the Court's opinion, cannot be treated to be accurate for the purpose of applying the provisions of the POCSO Act. As a matter of fact, no effort was made by the prosecution to establish the age of the victim in accordance with the statutory provisions.

23. The aforesaid finding leaves us to examine the legality of the appellant's conviction for the offence punishable under Section 376 of the I.P.C.. As has been noted hereinabove, the appellant is said to have entered into the victim's house and taking advantage of her solitude, he committed rape on her. The description of sexual assault caused by the appellant has been explicitly mentioned in her deposition at the trial. The investigation officer (PW-5), in his examination-in-chief, deposed that the clothes, which the victim was wearing, were seized by him and a seizure list was prepared. However, in the cross-examination, in paragraph 7, the I.O. has disclosed that after recording of the statement of the victim at the police station, he had prepared a production-cum-seizure list and the clothes which the victim was wearing were brought to the police station in a polythene bag which she had handed over to the police officer. Thereafter, orders were obtained from the Court for sending the seized clothes to the Forensic Science

Laboratory on 22.6.2018.

24. Unfortunately, the prosecution didn't bother to obtain the result of the test of the Forensic Science Laboratory. Absence of the report of the Forensic Science Laboratory, despite the fact that the victim's clothes were seized and sent to the laboratory for examination, in our opinion, was a major flaw on the part of the prosecution in establishing its case before the Court. Further, the fact that though the appellant was arrested the very next date of the occurrence, he was not subjected to any medical examination as stipulated under Section 53A of the Cr.P.C.. We are conscious of the legal position that the requirement under Section 53A of the Cr.P.C. is not mandatory in nature and non-fulfilment of requirement of Section 53A of the Cr.P.C., *per se,* shall not vitiate the trial when there is accusation of commission of offence punishable under Section 376 of the I.P.C.. However, the said requirement cannot be treated to be a waste paper and cannot be completely ignored for the reason that it is the duty of the prosecution to prove its case beyond all reasonable doubts and medical examination of a person accused of rape may lead to a more accurate conclusion. As regards seizure of the clothes which the victim was wearing, the deposition of the victim's mother (PW-2) is materially

different. In her examination-in-chief (paragraph 4) she deposed that the Officer-Incharge had come to their house and seized the clothes which the victim was wearing at the time of occurrence. He had prepared a seizure list, on which PW-2 had put her signature (Exhibit-5). During the course of cross-examination PW-2 denied, contrary to the evidence of the victim (PW-1), that the said clothes were received by the police officer at the police station. In Paragraph 11 of her cross-examinations she (PW-2) stated that the police had not received the clothes at the police station rather, they had told that they would receive the clothes after spot verification.

25. Though, it is well accepted legal principle in the context of the Indian society that statement of a victim of rape doesn't require any other corroboration and, if she is found to be truthful and her evidence is of stellar quality, conviction can be recorded without any corroboration based on her oral evidence for an offence punishable under Section 376 of the I.P.C.. The said principle, however, doesn't absolve the prosecution of its duty to establish its case beyond all reasonable doubts in the absence of any legal presumption in the present case. The medical report, based on medical examination conducted on the very next day of the alleged commission of

sexual assault doesn’t corroborate the accusation of commission of rape. There are contradictory evidences of the prosecution witnesses on the point of seizure of the clothes which the victim was wearing at the time of occurrence.

26. As has been noted above, failure on the part of the prosecution to bring on record the result of the test conducted by the Forensic Science Laboratory on the clothes sent for such examination casts doubt on the prosecution's case, in the Court’s opinion, though, the Court fails to appreciate the circumstance, why the prosecution didn’t produce the result on examination of the clothes of the victim, conducted by the Forensic Science Laboratory.

27. Conviction of a person of a crime, that too of a serious crime of the nature of rape is a serious matter which has grave consequences, not only in terms of serving sentence of imprisonment. Such conviction has cascading effects on the future of a person convicted of such offence. In the said background, it has been repeatedly held by the Courts that only if the evidence of a victim of rape is found to be trustworthy and of stellar quality without any embellishment, conviction can be recorded without any corroborative evidence. A proper and deeper scientific investigation by the police after having seized

the clothes, which the victim was wearing at the time of occurrence, possibly could have led to a definite, more accurate conclusion either in favour of the prosecution or it would have favoured the appellant who was facing trial.

28. The purpose of investigation, or, for that matter, prosecution of a person accused of an offence is not confined for ensuring conviction of the person facing prosecution either during the course of investigation or at the trial. There being presumption of innocence of an accused of crime, it is the duty of the prosecuting agency to ensure that all relevant materials worth evidence are collected during the course of investigation to establish its case at the trial beyond all reasonable doubt. In the process of investigation, the investigating agency cannot completely overlook the interest of an accused from the perspective of his prosecution. As in the present case, it cannot be stated with certainty as to whether the report of the F.S.L., if received, coupled with the examination of the appellant in accordance with Section 53A of the Cr.P.C. would have led investigation to which direction. A circumstance, emerging on the comparison of the scientific result, if obtained, that investigating agency itself could have decided not to proceed against the appellant cannot be completely ruled out. There

could also be a circumstance that, based on the result of the test conducted by Forensic Science Laboratory, and the examination of accused under Section 53A of the Cr.P.C., the prosecution could have developed and established a foolproof case before the Court to establish the charge of commission of rape of the victim against the appellant. The benefit of the failure on the part of the prosecution to prove its case beyond all reasonable doubts will surely go to the appellant, in the absence of any statutory presumption.

29. Noticing the conflicting statements of the prosecution's witnesses, cumulative effect of absence of any sign of rape found by the Doctor, non-production of the report of the Forensic Science Laboratory, non-examination of the appellant in accordance with the requirement under Section 53A of the Cr. P.C., is that the prosecution, in the Court’s opinion, failed to establish the charge under Section 376 of the I.P.C.

30. In the facts and circumstances as noted above, in our opinion, it is not safe for this Court to uphold the conviction of the appellant based on sole testimony of the victim.

31. For the foregoing reasons, the conviction of the appellant for commission of the offence punishable under

Section 4 of the POCSO Act and Section 376 of the I.P.C. cannot be upheld. Accordingly, the impugned judgment of conviction dated 21.11.2019 and the order of sentence dated 28.11.2019 passed by Learned 1st Additional Sessions Judge-cum-Special Judge, POCSO, Bhojpur, Ara in POCSO Case No. 34 of 2018, are hereby set aside.

32. The appeal is allowed.

33. The appellant is in jail. Let him be released forthwith, if he is not required in any other case.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

K.K.RAO/Annpurna/
Prabhat-

AFR/NAFR	NAFR
CAV DATE	NA
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