IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.800 of 2023

Arising Out of PS. Case No.-48 Year-2019 Thana- JALE District- Darbhanga

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Sadir Quaraishi @ Md Sadir S/O Late Ali Hasan Quaraishi R/O Village-Jalley, Darzi Muhalla, Ps. Jalley, Dist. Darbhanga

... ... Appellant

Versus

1. The State of Bihar
2. [redacted], R/O Vill.- Jaley, Darzi Muhalla, P.S.- Jaley, Dist.- Darbhanga.

... ... Respondents

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Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Md. Imteyaz Ahmed, Advocate Mr. Ritwij Raman, Advocate
For the State	:	Mr. Bipin Kumar, Addl.PP
For the Resp No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 19-06-2026

Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant and Mr. Bipin Kumar, learned Additional Public Prosecutor for the State.

2. No one has appeared on behalf of the informant despite service of notice.

3. The present appeal has been preferred for setting aside the judgment of conviction dated 01.07.2023 (hereinafter referred to as the ‘impugned judgment’) and order of sentence dated 05.07.2023 (hereinafter referred to as the ‘impugned order’)

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passed by learned Exclusive Special Judge (POCSO Act), Darbhanga (hereinafter referred to as the 'learned trial court') in POCSO G.R. Case No. 19 of 2019 arising out of Jalley P.S. Case No. 48 of 2019. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376 AB of the Indian Penal Code (in short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, he has been sentenced to undergo rigorous imprisonment for twenty years with a fine of Rs. 30,000/- under Section 376 AB of the IPC and under Section 6 of the POCSO Act, and in default of payment of fine, he shall further undergo simple imprisonment for six months.

Prosecution Case

4. The prosecution case is based on the *fardbeyan* of the informant (maternal uncle of the victim). In his *fardbeyan*, the informant has alleged that two years ago, his sister was murdered by her in-laws and his brother-in-law was sent to jail. They had four children whom the informant brought to his house and some of the children were with his relatives. One amongst the four children 'X' (victim) resides with the informant and studies there. The informant takes care of the house. The informant has stated that there was a marriage in his *sasural* so he had gone there. It is

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further alleged that on 06.04.2019, there was a marriage in the neighbourhood of the informant in which his niece was playing with other children. Sadir Qureshi resident of the same village took informant's niece to his place by luring her and committed rape on her. The victim continued to cry and scream but the accused raped her and left only after committing rape. Her niece came home crying and bleeding. Informant's mother, who is herself a heart patient, became unconscious and could not tell anyone about the incident. When the informant came home, he gathered information about the incident, after which he went to police station to lodge complain. Informant had brought clothes of the victim along with the application.

5. On the basis of the aforesaid *fardbeyan* of the informant, FIR being Jalley P.S. Case No. 48 of 2019 dated 10.04.2019 was registered under Section 376 IPC and Section 4, 6 of the POCSO Act against this appellant. After investigation, police submitted chargesheet bearing Chargesheet No. 47 of 2019 dated 31.05.2019 against this appellant for the offences punishable under Sections 376 IPC and Section 4/6 of the POCSO Act.

6. Learned trial court vide order 19.06.2019 took cognizance of the offences punishable under Section 376 IPC and Section 4/6 of the POCSO Act against appellant. Charges were read over and explained to the appellant in Hindi which he denied and

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claimed to be tried. Accordingly, charges were framed vide order dated 15.11.2019 for the offences punishable under Section 376 AB of the IPC and Section 6 of the POCSO Act.

7. In course of trial, the prosecution examined as many as eight witnesses and got exhibited certain documents. The list of prosecution witnesses and the documents are given hereunder in tabular form:-

List of Prosecution witnesses

Prosecution Witness No.	Name of the Witness	Description of the Witness
PW-1	Md. Afjal	Victim's Relative
PW-2	Sahani Khatoon	Victim's Relative
PW-3	Ms. X	Victim
PW-4	Najini Khatoon	Non-official witness
PW-5	Dr. Kumari Nisha	Medical Officer
PW-6	Mumtaz Ahmad	Formal Witness
PW-7	Md. Munauar	Hostile witness
PW-8	Ram Kishore Rai	Investigating Officer

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
'1'	Entire Medical Report	PW-5
'2'	Signature of Mumtaj Ahmad on written statement	PW-6
'3'	Signature of Munauar on Seizure List	PW-7
'4'	Endorsement in writing and signature of SHO on the written application of the informant	PW-8
'5'	Formal FIR	PW-8
'6'	Seizure List	PW-8

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'7'	Blood Report of the appellant	PW-8
'8'	Entire statement under Section 164 CrPC of the victim	
'9'	Original FSL Report	
Mark 'X'	Copy of FSL Report	

8. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short 'CrPC'). The appellant in his 313 CrPC statement denied the allegation and pleaded innocence.

9. The Defence has also produced two witnesses on behalf of the appellant and also produced some documentary evidences which are being mentioned hereunder in tabular form:-

List of Defence witnesses

Defence Witness No.	Name of the Witness	Description of the Witness
DW-1	Rabbana Parween	Other witness
DW-2	Md. Sami Ansari	Other witness

List of Exhibits on behalf of Defence

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
'D-1'	Certified copy of plaint of M.R. No. 140/2016 pending in the court of Principal Judge, Darbhanga.	
'D-2'	Certified copy of cognizance order passed in C.R. No. 1145/2016 pending in the court of SDJM Darbhanga	
'D-3'	Certified copy of complaint petition of C.R. No. 1145/2016 pending in the court of SDJM	

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	Darbhanga	
‘D-4’	C.C. of FIR of Jalley PS Case No. 181/ 2019	
‘D-5’	C.C. of Chargesheet of Jalley PS. Case No. 181/2019	

Findings of the Learned Trial Court

10. Learned trial court after analysing the evidences available on the record found that the victim has substantially supported the allegations and charges against the appellant in her testimony before the court. She corroborated her previous statement made under Section 164 CrPC. Learned trial court found that the relative of the victim has also supported the case of prosecution and statement of the victim who came to know about the occurrence from the victim just after the occurrence. Learned trial court observed that there is nothing in their testimony to create doubt regarding the occurrence.

11. Learned trial court further found that the medical report shows that the hymen was not intact and there was redness in the genital examination of the victim. It is though recorded that no definite opinion can be given about sexual intercourse, learned trial court opined that medical corroboration is not required as the victim has been examined after five days of the occurrence and it is established law that if the sole testimony of the victim is reliable and repose confidence then it must be relied upon.

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12. Learned trial court further found that the defence case is not believable that due to marital dispute or political enmity, false case has been registered. No victim or her relative can stake their reputation and reputation of their minor daughter by falsely alleging the appellant for such heinous offence which will leave a scar to the life of the victim and make her present as well as future miserable. Hence, learned trial court found that the statements of the victim and her relatives are trustworthy.

13. Learned trial court after considering all the facts and circumstances of the case concluded that the prosecution has successfully proved the guilt of the appellant beyond all reasonable doubts. Accordingly, learned trial court convicted the appellant for the offences punishable under Section 376 AB of the IPC and Section 6 of the POCSO Act.

Submissions on behalf of the appellant

14. Learned counsel for the appellant has assailed the impugned judgment and order on various grounds. It is submitted that in this case, there is an inordinate delay in lodging of the First Information Report. The occurrence is said to have taken place on 06.04.2019 at 10:00 AM when the victim (niece of the informant) was playing with the children. It is submitted that the appellant is Ward Member of Ward No. 14, Jaale North Panchayat, he was

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aged about 55 years and it is alleged that he had allured and taken away the victim to his house, where he subjected her to wrong act. Learned counsel submits that in course of investigation and trial, the prosecution has not produced a single witness from amongst the children who were playing with the victim.

15. It is submitted that the maternal uncle of the victim (PW-1) has stated in paragraph '3' of his deposition that the accused got elected as Ward Member, he was elected from the panel of the Mukhiya, wife of Md. Taj.

16. Learned counsel submits that the maternal grandmother (*nani*) of the victim has been examined as PW-2, who has stated that the occurrence took place between 10:30-11:00 AM. When she was in her house, then the victim came weeping and behind her, Sadir Quraishi came and gave Rs. 10 to the victim for taking ice-cream. She was told about the occurrence by the victim. This witness went to a medical shop and brought some medicines, whereafter the victim urinated. She claimed that she had told about the occurrence to the villagers, who asked her to wait for Barat (her son) who was in his *sasural*. Her son came after four days, whereafter they went to the police station and lodged the case.

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Contrary to her statement in the examination-in-chief, PW-2 has stated that she had told her villagers, namely Mumtaz, Rizwan Quraishi and Md. Manuwar, but she had not told her son Afzal, aged 21 years at that time to go and lodge the case. She made a mobile call to her son Nafees, she did not remember that when Nafees had gone to sasural and when he had returned. Nafees was married in Basaitha village, which is under Jaale Police Station, situated at a distance of four km and it takes a 10 minutes' walk in reaching to the Jaale Police Station from her house. On the date of occurrence, she had not gone to Jaale Police Station with the victim. It is pointed out that in paragraph '5' of her deposition, PW-2 has stated that Taj is the Mukhiya of her village and she had gone to the police station together with the Mukhiya, Sarpanch and Ward Member. She has further stated that she had gone to the police station in the night of the occurrence and then on the next day with the Mukhiya, Sarpanch and Ward Member for lodging the case and the case was registered.

17. Learned counsel submits that from the deposition of PW-2, it is evident that her conduct is not natural, she did not ask her son Afzal to go to the police station, which is at a distance of a 10 minutes' walk to lodge the case. She went with the Mukhiya Taj, Sarpanch and Ward Member to the police station in the night

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and she claims that the case was lodged. Nafees, who is the informant of this case, was not present with her as he was in his sasural. Therefore, the prosecution seems to have suppressed the first version of the prosecution story disclosed by PW-2 in the police station. The present case has arisen on the basis of a written information submitted by Nafees (one of the sons of PW-3) after four days of the occurrence. In this connection, the evidence of the writer of the written information, namely Mumtaz Ahmad (PW-6) has stated in course of trial that he was a social worker and one of the candidates for the post of Mukhiya. He has stated that Md. Nafees is residing in a foreign country, he had brought a paper to him and on that paper whatever were written, this witness had copied the same on a plain paper. He never met thereafter with Md. Nafees. For the first time, he was examined in the court and prior to that, his statement was never recorded. This witness (PW-6) has stated that Sadir Quraishi (the appellant) is a good person, he is his villager, therefore, he knows him. Learned counsel submits that it is evident from the statement of the deed writer (Katib/PW-6) that he had copied the writings brought by Md. Nafees. Thus, the prosecution seems to have lodged this case in a pre-planned manner setting up a date four days prior to the lodgment of the case.

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18. It is submitted that all through this period, the victim was in the company of the informant and his mother, therefore, the chances of her being tutored cannot be ruled out.

19. Learned counsel submits that in this case, the prosecution claims to have produced the leggings of the victim in presence of the two witnesses in the police station, namely Mumtaz Ahmad and Md. Manuwar. Mumtaz Ahmad (PW-6) has not made any statement that the production-cum-seizure list (Exhibit 'P-6/PW-8') has been signed by him or was made in his presence but the learned trial court has marked the production-cum-seizure list as Exhibit 'P-6' at the instance of the I.O. (PW-8). The another seizure list witness Md. Manuwar (PW-7) has, though identified his signature (Exhibit '3') but he has clearly stated that he did not know that for which thing the production-cum-seizure list was prepared. PW-7 was declared hostile by the prosecution. He has stated that Sadir Quraishi is a reputed person and is Ward Member of the Panchayat. He had not heard anything wrong about him. He has further stated that nothing was seized in his presence.

20. It is further submitted that in the report submitted by the Forensic Science Laboratory (marked 'X') bloodstains have been found and the ABO grouping of the blood is said to be 'AB', Rh Type - 'positive' (Exhibit 'P-7/PW-8') but the blood of the

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victim or the accused have not been matched with the group of blood found on the legging.

21. Learned counsel has drawn the attention of this Court towards the evidence of the victim (PW-3) aged about five years. It is submitted that while the prosecution case is that the victim girl was playing with children, in her statement in paragraph ‘6’, PW-3 has stated that she was playing alone and nobody was there when Sadir Quraishi took her away. It is submitted that this statement of the victim (PW-3) is a material departure from the prosecution case, as the prosecution had no witness to say that the occurrence took place in the manner alleged by the prosecution. It is submitted that the victim (PW-3), who is five years old only, has stated with precision that when she was taken away, it was day hour at 2:30 PM and that Sadir Quraishi had kept her in the house for three minutes. Learned counsel submits that it is not expected from a five years old minor to say the exact time at which she was taken away and the time during which she was kept in the house. All these statements with accuracy only show that PW-3 was tutored. It is submitted that this witness has stated that when she was coming to her maternal grandmother’s place, people had seen her but she had not disclosed the occurrence to anyone of them. She disclosed the occurrence to

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her maternal grandmother. It is submitted that PW-3 has not stated that Sadir Quraishi was coming behind her and that he had given Rs. 10 to her to purchase ice-cream. Thus, the statement of maternal grandmother (PW-2) and that of the victim (PW-3) are at material variance.

22. Learned counsel submits that in paragraph '7' of her deposition, the victim has stated about the prior enmity between the accused and the maternal uncle of the victim. She has stated that her maternal grandmother runs a tea shop on which this witness was cleaning the cup plate. Sadir Quraishi was purchasing tea and biscuits from the said shop. This witness has further stated that a quarrel had taken place between Sadir Quraishi and her maternal uncle on account of some transactions. The defence suggested that because Sadir Quraishi is an elected Ward Member and had won from the panel of the present Mukhiya, wife of Taj Hasan, therefore, the ex-Mukhiya, Mumtaz, got Sadir Quraishi falsely implicated in this case due to the dispute between Sadir Quraishi and the maternal grandmother of the victim.

23. Learned counsel submits that victim was medically examined by Dr. Kumari Nisha (PW-5) on 11.04.2019 i.e. after five days of the occurrence. During her examination, the doctor opined on genital examination that hymen was not intact and

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genital area was reddish in color but no definite opinion can be given about sexual intercourse. PW-5 proved the medical report (Exhibit ‘P-1/PW-5’). In her cross-examination, she has stated that victim was not accompanied with lady constable at the time of her medical examination by the doctor. In paragraph ‘12’ of her deposition, the doctor has stated that at the time of genital examination of the victim, any sign of injury was not found but she found the genital reddish in colour. The defence put her a question in paragraph ‘13’ as to the time of injury in which the redness colour of injury appear on the body part? PW-5 has stated that the redness of the colour of injury remain appear within 6 to 8 hours of commission of injury. She has stated that in her report, she had mentioned that there was no definite conclusion/opinion regarding commission of intercourse against the victim.

24. In the background of the medical report, delay in lodging of the FIR and the statement of the victim (PW-3) with regard to the quarrel between her maternal uncle and Sadir Quraishi, learned counsel for the appellant submits that it would not be safe to sustain the conviction of the appellant on the sole testimony of the victim, who is a child witness and has been apparently tutored.

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25. Learned counsel for the appellant has drawn the attention of this Court towards the evidences adduced through the defence witnesses, namely Rabbana Parween (DW-1) and Md. Sami Ansari (DW-2). DW-1 is the daughter of the accused, Sadir Quraishi. She has stated that Md. Taj had got her engaged as Asha worker and he by claiming himself unmarried persuaded her father, Sadir Quraishi, to marry her. She was married to Md. Taj on 20.12.2011. She came to know later that Md. Taj was married to one Shama Parween and they had a daughter aged about eight years. She alleged that her husband Md. Taj was demanding dowry and when she was unable to fulfill the demand then she was thrown out of the matrimonial house on 22.08.2016. DW-1 had lodged a dowry case against Md. Taj and his family on 24.08.2016, whereafter Md. Taj was threatening her that her father and the whole family would be destroyed. DW-1 alleged that Md. Taj influenced Md. Nafees (the informant) and got the appellant implicated in this case. The defence has brought on record certified copy of the plaint (Exhibit ‘D-1’), certified copy of order taking cognizance (Exhibit ‘D-2’), certified copy of complaint petition (Exhibit ‘D-3’), certified copy of FIR (Exhibit ‘DW-4’) and certified copy of charge sheet (Exhibit ‘D-5’), to demonstrate that the daughter of this appellant had lodged FIR and maintenance

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case against Md. Taj. It is submitted that as per the statement of PW-3, she had gone to Jaale Police Station to lodge the case on the date of occurrence itself with the Mukhiya, Sarpanch and Ward Member. The Mukhiya is the first wife of Md. Taj. Thus, it is evident that Md. Taj was acting behind the curtain and his first wife, Shama Parween, who was the Mukhiya, was supporting PW-3. The enmity is also corroborated from the statement of PW-3 (paragraph '7') and that of the hostile witness (PW-7). Thus, it would not be safe to sustain the conviction of the appellant.

Submissions on behalf of the State

26. The submissions of learned counsel for the appellant has been contested by learned Additional Public Prosecutor for the State. It is submitted that in a case under the POCSO Act, Section 29 raises a presumption. The evidences adduced in this case have laid down the foundation for attracting the applicability of Section 29. In the present case, the victim is a minor aged about 5–7 years. The victim and other prosecution witnesses have duly supported the prosecution case, hence, the learned trial court has rightly convicted the appellant and awarded a sentence of 20 years' rigorous imprisonment with a fine of Rs. 30,000/. It is submitted that in the present case, the appellant has been awarded sentence under Section 6 of the POCSO Act for a period of 20 years. The

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learned trial court has invoked Section 42 of the POCSO Act and in the light of the said provision, the higher period of sentence has been awarded. It is, however, not disputed that vide Amendment Act 25 of 2019, with effect from 16.08.2019, Section 6 of the POCSO Act was substituted and in the substituted provision, it has been provided that the period of imprisonment shall not be less than a term of 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine or with death. Prior to the substitution of Section 6 of the POCSO Act, the minimum imprisonment was that it shall not be less than a term of ten years but which may extend to imprisonment for life.

Consideration

27. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State, as also on perusal of the trial court's records, this Court finds that the plea of the appellant that there is an inordinate delay in lodging of the First Information Report requires consideration. As per the prosecution case, the occurrence has taken place on 06.04.2019 at 10:00 AM when the victim (niece of the informant) was playing with the children. The victim (PW-3) has, however, deposed that she was playing alone. She has stated that the occurrence took

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place at 2:30 PM and she was in the house of the accused for only three minutes.

28. PW-2, who is the mother of the informant, has claimed that the victim came weeping to her and behind the victim, the accused also came and gave her Rs. 10/- to take ice-cream, but in her deposition, PW-3 had not stated so. It has also come in evidence that the victim had disclosed the occurrence to PW-2 immediately after reaching her house and PW-2 claimed that she had seen blood stains on the *salwar* and both the thighs of the victim and that the victim was unable to urinate, therefore, PW-2 went to a medicine shop and brought some medicine, whereafter the victim could urinate. PW-2 has, however, stated in her cross-examination that she was not aware how many doctors are there in the village. She has stated that Jaale Referral Hospital is a government hospital which is at the same distance at which the police station is situated. She has also stated that the police station is at a distance of ten minutes and the house of the accused is situated at a distance of ten steps from her house. There are two houses in between the house of PW-2 and that of the accused, Sadir Quraishi. Both the houses are of the brothers of the accused, but she is not on talking terms with them.

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29. From the evidences available on the record, it is also clear that on the day when the occurrence took place, one of the sons of PW-2, namely, Afzal, aged 21 years was present but PW-2 did not ask her son Afzal to go to police station and lodge the case. Md. Nafees (informant) was in his *sasural*, which is only at a distance of 2-4 kilometer and according to PW-2, he was informed of the occurrence by telephone on the date of occurrence itself. In paragraph '4' of her deposition, PW-2 has stated that the police station is at a distance of 10 minutes' walk from her house but on the date of occurrence, she had not taken the victim girl to Jaale police station. It is evident from the statement of the witnesses, such as PW-2, who had the immediate occasion to see the victim girl (PW-3), that her conduct is not natural. She did not ask her son Afzal to go to the police station and her son Md. Nafees was at a distance of only 4 kilometer from the police station, but he did not inform the police for four days. PW-2 was having a mobile in her hand and she claims to have called her son Md. Nafees on the date of occurrence itself. She was also in touch with Mukhiya, Sarpanch and Ward Member, despite all these, the victim was not taken to the police station.

30. This Court further finds from the evidence of PW-6, Mumtaz Ahmad that Md. Nafees (the informant), who has not

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been examined in course of trial, had gone to PW-6 with a pre-written paper and this witness claims that he had copied the same on a plain paper, whereafter he never met Md. Nafees. PW-6 was a candidate for the post of Mukhiya and claimed himself a social worker. He signed the written information as a Katib (deed writer) and in his cross-examination, PW-6 has stated that Sadir Quraishi (the appellant) is a good person. This Court finds that the informant, who has not been examined in course of trial, and his mother (PW-2) both were in consultation with the Mukhiya candidate (PW-6) and the Mukhiya, Sarpanch and Ward Member who have not been examined. Obviously, the informant and his mother were in consultation with these people who were influential at local level, still, the written information, based on which the present case has been lodged, was submitted after four days. To this Court, therefore, it appears that there is no *prima-facie* plausible reason to explain the delay in lodging of the FIR.

31. Learned counsel for the appellant has submitted that the first version of the prosecution case seems to have been suppressed. This Court finds force in this submission. In paragraph ‘5’ of her deposition, PW-2 has stated that she had told Mukhiya, Sarpanch and Ward Member that they would go to the police station and lodge a case. PW-2 has categorically stated that she had

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gone to the police station with Mukhiya, Sarpanch and Ward Member in the night of the day of the occurrence and then on the next day to lodge the case and the case was lodged.

32. The I.O. (PW-8) has deposed that he had recorded the statement of Md. Nafees on 10.04.2019 and he had gone to the house of the informant during investigation of the case, where the informant had presented an old yellow colour full trouser on which there was a blood-like stain, which he had seized in presence of the two witnesses. He has proved the seizure list (Exhibit 'P-6/PW-8') but in course of his cross-examination, PW-8 has stated that he had assumed that the cloth given by the informant is the cloth of the victim. He had not mentioned the length, width, etc. of the article produced before him so that it may be clear whether it was the cloth of a child or that of an adult.

33. On analyzing the evidence with regard to the first version of the prosecution case, it appears to this Court that the initial version of PW-2, said to have been made in the police station in presence of Mukhiya, Sarpanch and Ward Member, has been suppressed by the prosecution. There was no reason for the informant to contact Mumtaz Ahmad (PW-6) who was a candidate for the Mukhiya post in past, to go with a written information and then again, there was no reason as to why PW-6 would rewrite and

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copy the same on a plain paper, which will be the basis of lodging of the present case. Mumtaz Ahmad (PW-6) has signed on the written information as deed writer (*katib*) which is an unusual conduct of PW-6.

34. In the written information (Exhibit 'P-4/PW-8'), it is written that the cloth of the victim is being produced together with the application, but the I.O. has stated that a cloth was handed over to him in course of investigation only. In paragraph '18' of his deposition, he has categorically stated that the cloth was not made available to him with the written information/FIR. It is, thus, evident that at the time of lodging of FIR, the informant and PW-6 both made a wrong and false statement that the cloth of the victim is being produced with the application. This conduct of the prosecution is to be considered together with the fact that there had been an inordinate delay of four days in lodging of the FIR, still, the cloth of the victim was not handed over to police with the written information. The fact that I.O. (PW-8) had not given the complete description of the trouser and the same does not find mention in the production-cum-seizure list, would further create doubt over the manner in which the production-cum-seizure list was prepared much after lodging of the First Information Report.

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35. Afzal (PW-1) is one of the sons of PW-2. He has deposed that he was in his house when the victim girl came weeping and told about the wrong act committed by the appellant with her. He claimed that his mother was also present in the house. In his cross-examination, he has stated that the victim told the entire occurrence to his mother and it was his mother who had given him the information about the occurrence. He has stated that Sadir Quraishi is 60 years old, his wife is alive, he has one son and one married daughter. He has one *natni*. He has stated that he had asked his mother to lodge a case but his mother had not lodged the case, the entire society had lodged the case and in that society, Mumtaz Ahmad, Iqbal Alam, Md. Ibrar, Md. Imran Quraishi, Rizwan Quraishi, Gulab Quraishi and other people had lodged the case. The members of the society prepared a paper on which all the people had put their signature but the present case was not going on on the basis of the paper prepared by the society. This witness has further stated that the informant, Mohammad Nafees, is his elder brother. He has given his *fardbeyan* before police, whereafter the case was lodged. He has stated that Sadir Quraishi is a Ward Member since 2016. From the evidence of PW-1, it is further clear that his very presence at the time when the victim was telling about the occurrence to PW-2 is doubtful. He was told about the

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occurrence by his mother. It is further evident that he had asked his mother to lodge the case, but his mother had not lodged the case. He has disclosed about the preparation of a document which was signed by some people but that paper has been withheld by the prosecution, as according to this witness, the case was not lodged on that basis. The belief of this Court that the prosecution has withheld the very first version of the case and that there is no plausible explanation for the delay in lodging the case, gets strengthened on perusal of the statement of PW-1.

36. In this case, the I.O. (PW-8) has stated that the victim was with him from 10.04.2019 to 11.04.2019 and thereafter, without obtaining any order from the court, he had handed over the victim to her *nani* (PW-2) and *mama* Md. Nafees (informant-not examined). Thereafter, he had produced the victim in the court on 11.04.2019. On perusal of the trial court's records, it appears that on 11.04.2019, the FIR No. 48 of 2019 dated 10.04.2019 was filed in the court. The I.O. produced the victim girl with a request for recording her statement under Section 164 CrPC. The learned Special Judge, POCSO Act, Darbhanga deputed Shri Manish Kumar, Judicial Magistrate First Class, Darbhanga to record statement of the victim girl under Section 164 CrPC. The I.O. filed another petition for medical examination of the victim girl which

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was allowed and the Superintendent, DMCH, Darbhanga was directed to get the victim girl medically examined and submit a medical report at the earliest.

37. What is evident from the order dated 11.04.2019 is that the leggings/trouser of the victim girl, which has been shown seized on 10.04.2019 at 17:50 Hrs., was not placed before the court on 11.04.2019. The material exhibit, i.e., trouser of the victim girl, was also not produced before the court. In this regard, the order dated 22.04.2019 recorded by the learned Special Judge, POCSO Act, Darbhanga would show that the I.O. of the case filed requisition along with forwarding letter in triplicate and material exhibits i.e., an old full trouser of yellow colour of victim girl and prayed for sending the material exhibit to FSL, Muzaffarpur, for its chemical analysis. The material exhibit was handed over to the I.O. with the direction to produce FSL report after its chemical analysis. It is, thus, evident that the production-cum-seizure list is antedated and ante-timed. A perusal of the same would show that it does not bear any signature by way of endorsement of the learned Special Judge showing the date of filing in the court. The order dated 22.04.2019 does not show that the trouser was produced before the court in any sealed envelope/bag. The I.O. (PW-8) has stated that the informant had given him the cloth in an open

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polythene and he had not put any seal on the same when the cloth was handed over to him. PW-8 has further stated that he had deposited the cloth in the *malkhana*. It is, thus, evident that the cloth mentioned in the production-cum-seizure list was kept in an open polythene and it was not produced in court for about 12 days from the date of lodging of the FIR. The fact that it was not kept in any sealed bag having signature of the seizure list witnesses would prove fatal to the prosecution.

38. The aforesaid evidences are to be examined keeping in view the stand of the defence that it is a case of false implication. The appellant was a Ward Member. It has come in evidence that his daughter (DW-1) was married to Md. Taj as his second wife. The first wife of Md. Taj is the Mukhiya of the village of the informant. DW-1 and Md. Taj were not maintaining good marital relationship and they were fighting litigation which is evident from the defence exhibits. It is evident that Mukhiya, who is the first wife of Md. Taj, had gone to the police station with PW-2 and it has further come in evidence that there had been some quarrel between the son of PW-2 and Sadir Quraishi over some transactions. PW-2 has admitted that her sons were running a tea shop. Her statement that in between her house and that of this appellant there are two houses of the brothers of the appellant but

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she is not on talking terms with them, would further show that the family of the informant was not maintaining a harmonious relationship with the appellant's family. PW-3, who is the victim of the case, has herself admitted about the quarrel between her maternal uncle and the appellant over some transactions.

39. The medical examination report (Exhibit 'P-1/PW-5'), which has been proved by Dr. Kumari Nisha, does not mention any sign of sexual act. She has stated on genital examination that hymen was not intact and genital area was reddish in colour but no definite opinion can be given about sexual intercourse. She has further explained that at the time of genital examination of victim, any sign of injury was not found and according to her statement, the redness of color of injury remain appear within 6 to 8 hours of commission of injury.

40. On an analysis of the evidence of the doctor (PW-5) it would appear that if the occurrence, as alleged, would have taken place on 06.04.2019, the redness would have been present within 6 to 8 hours. The fact that the doctor found the genital reddish in colour after five days of the occurrence as alleged, but she did not find any sign of injury would further lead this Court to take a view that the medical report does not suggest commission of any sexual act upon the victim.

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41. This Court is conscious of the judicial pronouncements that a conviction may lie in an appropriate case on the basis of sole testimony of a child witness but to what extent a safe reliance may be placed on the testimony of a child witness has always been a matter of discussion. It would depend upon the other materials present on the record inspiring confidence in the court to believe the testimony of the child witness alone for convicting the accused.

42. In the present case, this Court has noticed the inordinate delay in lodging of the FIR, the influence of Mukhiya, Sarpanch and Ward Member over the family of the informant, self-contradicting and vacillating statement of PW-2, no witness at all on the point of taking away of the victim girl by the accused on the date and time of occurrence and then we have also seen the medical examination report together with the deposition of the doctor. Taking all these materials cumulatively, we are of the opinion that the deposition of the child witness in this case (PW-3) is required to be analysed with all circumspection and care. In the case of **Pradeep vs. State of Haryana** reported in **AIR 2023 SC 3245**, the Hon'ble Supreme Court has held that the conviction only on the testimony of a child witness who does not inspire

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confidence is not safe. The relevant paragraph of the judgment reads as under:

> "**8.** It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution."

43. It is the prosecution case that the victim (PW-3) was playing with the children. The informant has stated so in the written information which is the basis of the FIR, but the informant has chosen not to appear in course of trial. The victim (PW-3) has not stated so in paragraph '6' of her deposition. She has stated that she was playing alone and there was no one else when she was taken away by the appellant. She gives the exact time of occurrence as 2:30 PM, whereas the prosecution case is that the occurrence took place between 10:30-11:00 AM. PW-3 has stated that she was kept for three minutes in the house by the accused and from there she had gone to her *nani's* (PW-2) place. She has stated that the place where she was kept by the accused is at distance from the house of her *nani* and when she was coming,

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people had seen her but she had not stated about the occurrence to anyone.

44. This Court finds that there is no witness at all on the point that PW-3 was coming to her *nani's* house from the place where she was taken by the accused. Her *nani* (PW-2) has stated that when she was in her house then PW-3 came weeping but PW-3 does not say so. PW-2 has stated that Sadir Quraishi (the appellant) also came behind the victim girl and gave her Rs. 10/- to take ice-cream but PW-3 does not say so. The I.O. (PW-8) had inspected the place of occurrence. He has stated that the place of occurrence is situated at a distance of 50-60 steps (50-60 *kadam*) from the house of the informant. It is, therefore, evident that the statement of PW-3 that the house of her *nani* is at distance from the house of the accused is not a correct statement. Nobody has seen her being taken away, nobody has seen her coming from the house of the appellant and even as PW-2 says that she came weeping and was having blood stains on her trouser and thighs, there is no witness to say that he had seen the victim girl coming weeping from the house of the appellant. In fact, this Court finds that in paragraph '7' of her deposition, the victim has clearly stated that this appellant was purchasing tea and biscuits from the shop which was being run by her *nani* and she was engaged in cleaning

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of cup plates there. She admits quarrel between the appellant and her maternal uncle over some transactions. In such circumstance, chances of false implication of the appellant, who was a Ward Member and had his own political rivals like PW-6 who had also contested the election for the post of *Mukhiya*, cannot be ruled out. We are, therefore, of the considered opinion that in this case it would not be safe to rely upon the uncorroborated sole testimony of PW-3.

45. Learned Additional Public Prosecutor for the State has relied upon the presumptions under Section 29 of the POCSO Act. Section 29 of the POCSO Act reads as under:

> "**29. Presumption as to certain offences.**- 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."

46. This provision has come up for consideration in the case of **Joy vs. State of Kerala** reported in **(2019) 1 KLT 935**, **Veerpal vs. State** reported in **2024 SCC OnLine Del 2686**, **Subrata Biswas and Another vs. State** reported in **2019 SCC Online Cal 1815** and this Court had occasion to consider the same in the case of **Bachcha Kumar @ Baccha Kumar @ Bachcha**

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Kumar Singh Vs. The State of Bihar and Anr in Cr. Appeal (DB) No. 406 of 2022. Paragraph '20' of the judgment in the case of **Veerpal @ Titu** reads as under:

> "**20.** Section 29 of POCSO Act provides that Court shall presume that the accused has committed the offence for which he is charged with, until contrary is proved. However, the presumption would operate only when the prosecution proves the foundational facts in the context of allegation against the accused beyond reasonable doubt. After the prosecution establishes the foundational facts, the presumption raised against the accused can be rebutted by discrediting the prosecution witnesses through cross-examination and demonstrating the gaps in prosecution version or improbability of the incident or lead defence evidence in order to rebut the presumption by way of preponderance of probability.
>
> Keeping the same in perspective, the prosecution in the first instance is required to establish the foundational fact that the incident, as alleged, was conveyed by the victim to her dadi (grandmother) on 16.09.2016 (i.e. the day of lodging of FIR). However, the evidence and statements during investigation, as discussed above, reflect different dates of alleged communication of the incident, which throws a doubt on the prosecution version. In view of above, in absence of foundational fact not being proved beyond reasonable doubt, the reliance placed upon presumption under Section 29 & 30 of POCSO Act by learned Trial Court to base conviction, appears to be misplaced. Taking in the alternative, even if the foundational facts are

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considered to be proved, to make the presumption under Section 29 of POCSO Act, the same stands discredited by way of discrepancies brought in cross-examination of the victim, PW3 and witnesses examined in defence.

The presumption of guilt under Section 29 & 30 of POCSO Act taken by the learned Trial Court could not be an edifice to convict the appellant since testimony of victim is unreliable and there are serious flaws and gaps in the prosecution case. As a wrongful acquittal shakes the confidence of people, a wrongful conviction is far worse. A child abuser in the eventuality of false implication even continues to suffer a blot of social stigma which is much more painful than the rigours of a trial and imprisonment. Prosecution case is marred by inadequacies and contradictions which strike to the root of prosecution case and, as such, prosecution has failed to bring home the charge against the accused beyond reasonable doubt.

For the foregoing reasons, appeal is allowed and the judgment and order on sentence passed by the learned Trial Court is set aside. Appellant is acquitted and be released forthwith, if not required in any other case. Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the Jail Superintendent and the learned Trial Court for information and compliance. A copy be also provided to the appellant, free of cost."

47. In the case of **Subrata Biswas** (supra), the Hon'ble Division Bench of Calcutta High Court has discussed the scope of statutory presumptions under Section 29 of the POCSO Act.

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Paragraph ‘22’ and ‘23’ of the judgment in the case of **Subrata Biswas** (supra) are quoted hereunder for a ready reference:-

> “**22.** The statutory presumption applies when a person is prosecuted for committing offence under Sections 5 and 9 of the Act and a reverse burden is imposed on the accused to prove the contrary. The word “is prosecuted” in the aforesaid provision does not mean that the prosecution has no role to play in establishing and/or probablising primary facts constituting the offence. If that were so then the prosecution would be absolved of the responsibility of leading any evidence whatsoever and the Court would be required to call upon the accused to disprove a case without the prosecution laying the firm contours thereof by leading reliable and admissible evidence. Such an interpretation not only leads to absurdity but renders the aforesaid provision constitutionally suspect. A proper interpretation of the said provision is that in a case where the person is prosecuted under Section 5 and 9 of the Act (as in the present case) the prosecution is absolved of the responsibility of proving its case beyond reasonable doubt. On the contrary, it is only required to lead evidence to establish the ingredients of the offence on a preponderance of probability. Upon laying the foundation of its case by leading cogent and reliable evidence (which does not fall foul of patent absurdities or inherent probabilities) the onus shifts upon the accused to prove the contrary. Judging the evidence in the present case from that perspective, I am constrained to hold that the version of the victim (PW-1) and her mother (PW-2) with regard to twin incidents of 24th March, 2016 and 18th April, 2016 if taken as whole, do not

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> inspire confidence and runs contrary to normal human conduct in the backdrop of the broad probabilities of the present case.
>
> **23.** Hence, I am of the opinion that the evidence led by the prosecution to establish the primary facts suffer from inherent contradictions and patent improbabilities particularly the inexplicable conduct of the victim herself. One part of the prosecution case improbabilises the other part to such an extent that no man of reasonable prudence would accept the version as coming from the witnesses. Hence, I am of the opinion that the factual matrix of the case does not call for invocation of the aforesaid statutory presumption so as to convict the appellant on the charges levelled against him."

48. The same views have been expressed by the Hon'ble Calcutta High Court in the case of **Joy** (supra).

49. This Court has discussed these provisions in the case of **Heera Das Vs. State of Bihar & Anr.** reported in **2025 (2) BLJ 517** and again in the case of **Bachcha Kumar @ Baccha Kumar @ Bachcha Kumar Singh Vs. The State of Bihar and Anr in Cr. Appeal (DB) No. 406 of 2022**.

50. While discussing Section 29 of the POCSO Act, this Court cannot lose sight of the judgment of the Hon'ble Supreme Court in the case of **Ramanand vs. State of U.P.** reported in **AIR 2022 (SC) 5273**. Paragraph '99' and '101' of the judgment in case of **Ramanand** (supra) read as under:-

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"99. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof lying upon the accused person is to prove his case by a preponderance of probability. In American Jurisprudence, 2nd Edn., Vol. 30, the expression "preponderance of evidence" has been defined in Article 1164. In America the term means "the weight, credit and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term greater weight of the evidence", or "greater weight of the credible evidence". It is a phrase which, in the last analysis, means probability of the truth. To be satisfied, certain, or convinced is a much higher test than the test of "preponderance of evidence". The phrase "preponderance of probability" appears to have been taken from Charles R. Cooper v. F.W. Slade, (1857-59) 6 HLC 746. The observations made therein make it clear that what "preponderance of probability" means "more probable and rational view of the case", not necessarily as certain as the pleading should be.

101. The inalienable interface of presumption of innocence and the burden of proof in a criminal case on the prosecution has been succinctly expounded in the following passage from the treatise The Law of Evidence, 5th Edn. by Ian Dennis at page 445:

"The presumption of innocence states that a person is presumed to be innocent until proven guilty. In one sense this simply restates in different language the rule that the burden of proof in a criminal case is

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> on the prosecution to prove the defendant's guilt. As explained above, the burden of proof rule has a number of functions, one of which is to provide a rule of decision for the fact-finder in a situation of uncertainty. Another function is to allocate the risk of mis-decision in criminal trials. Because the outcome of wrongful conviction is regarded as a significantly worse harm than wrongful acquittal the rule is constructed so as to minimise the risk of the former. The burden of overcoming a presumption that the defendant is innocent therefore requires the State to prove the defendant's guilt."
>
> [Emphasis supplied]

51. In this case, this Court has already recorded that there is not only an inordinate and unexplained delay of four days in lodging of the FIR, it is a case in which the prosecution has suppressed the first version of the prosecution case.

52. On a complete analysis of the entire materials on the record, we are of the considered opinion that not only the prosecution has failed to establish the foundational facts such as that the victim was taken away by the appellant on the date and time suggested by the prosecution, the defence in this case has been able to create doubt over the prosecution story. We have discussed the defence case which have been sought to be placed before this Court by producing two defence witnesses and the documentary evidences. The defence witnesses are to be given equal weightage. In case of **Adambhai Sulemanbhai Ajmeri vs.**

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State of Gujarat reported in **(2014) 7 SCC 716**, the Hon'ble Supreme Court has held in paragraph '219' and '220' as under:-

> "**219.** It has been held by this Court in a catena of cases that while examining the witnesses on record, equal weightage shall be given to the defence witnesses as that of the prosecution witnesses. In Munshi Prasad v. State of Bihar[35] this Court held as under: (SCC p. 356, para 3)
>
> > "3. … Before drawing the curtain on this score, however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution — a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses.
>
> **220.** Further, it has been held in State of Haryana v. Ram Singh[75] as under: (SCC p. 439, para 19)
>
> > "19. … Incidentally, be it noted that the evidence tendered by defence witnesses cannot always be termed to be a tainted one — the defence witnesses are entitled to equal treatment and equal respect as that of the prosecution. The issue of credibility and the trustworthiness ought also to be

35. (2002) 1 SCC 351 : 2002 SCC (Cri) 175

75 (2002) 2 SCC 426 : 2002 SCC (Cri) 350

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> attributed to the defence witnesses on a par with that of the prosecution. Rejection of the defence case on the basis of the evidence tendered by the defence witness has been effected rather casually by the High Court. Suggestion was there to the prosecution witnesses, in particular PW 10 Dholu Ram that his father Manphool was missing for about 2/3 days prior to the day of the occurrence itself—what more is expected of the defence case: a doubt or a certainty—jurisprudentially a doubt would be enough: when such a suggestion has been made the prosecution has to bring on record the availability of the deceased during those 2/3 days with some independent evidence. Rejection of the defence case only by reason thereof is far too strict and rigid a requirement for the defence to meet — it is the prosecutor's duty to prove beyond all reasonable doubts and not the defence to prove its innocence — this itself is a circumstance, which cannot but be termed to be suspicious in nature."

53. In ultimate analysis, we are of the opinion that the learned trial court has erred in appreciation of the evidences available on the record. The conviction of the appellant cannot be sustained. We, therefore, set aside the impugned judgment and order of the learned trial court. The appellant shall be released forthwith, if not wanted in any other case.

54. This appeal is allowed.

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55. Let a copy of this judgment together with the trial courts' record be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

I agree.

SUSHMA2/Rishi- **(Soni Shrivastava, J)**

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