

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.98 of 2015**

Arising Out of PS. Case No.-56 Year-2013 Thana- MAHILA P.S. District- Bhojpur

Name of the Appellant- 'F' (Name changed).

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vikram Deo Singh, Advocate Mr. Jitendra Prasad Singh, Advocate Mr. Shankar Kumar, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 25-07-2022

It is alleged by the prosecution that the appellant/father had committed aggravated penetrative sexual assault on his eldest daughter repeatedly since prior to 2007 till lodging of the FIR by her against her father on 30.07.2013 with Mahila Police Station-Bhojpur. Therefore, we deem it appropriate to describe the appellant by word 'F' instead of disclosing his full identity in view of the statutory provisions of Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as in view of object of Section 228A of the Indian Penal Code. Similarly, we shall be referring his daughters who are victim of the crime in question as D-1 and



D-2 as name and identity of victim of rape and penetrative sexual assault cannot be disclosed. The Registry shall upload this judgment and order on the website by ensuring that the cause title is reflected in the similar manner.

2. The appellant/convicted accused by this appeal is challenging the judgment and order dated 18.11.2014 and 20.11.2014 respectively passed by the learned 1st Additional Sessions Judge-cum-Special Judge (POCSO), Bhojpur at Ara, in POSCO Case No.4 of 2013 and thereby convicting him of the offence punishable under Section 376(i) of the Indian Penal Code as well as under Sections 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). He is sentenced to suffer imprisonment for life for the offence punishable under Section 6 of the POCSO Act. For the offence punishable under Section 10 of the said Act, he is sentenced to suffer rigorous imprisonment for five years. The learned trial Court had directed that the substantive sentences shall run concurrently. For the sake of convenience, the appellant shall be referred to in his original capacity as an accused.

3. Facts in brief leading to the prosecution of the accused, projected from the police report, can be summarized thus:



(A). The accused used to reside at M. P. Bagh locality in Ara Town along with his wife, four children and a younger brother. His wife died by hanging on 14.11.2007. According to the prosecution case, the accused is having two daughters and two sons. At the relevant time both his daughters were below 18 years of age. He used to indulge in sexual assault on his daughters and, therefore, there used to be quarrel between the accused and his deceased wife.

(B). After death of his wife, the accused continued his sexual assault on his eldest daughter to whom we are addressing as D-1. She ultimately mustered courage to lodge the FIR against her father on 30.07.2013 with Bhojpur Mahila Police Station, which has resulted in registration of Crime No.56 of 2013 against the accused for the offences punishable under Section 376(2)(g)(i)(n) of the Indian Penal Code as well as Sections 5 and 6 of the POCSO Act.

(C). It is averred by the first informant-daughter that after death of her mother, the accused started frightening her as well as her younger sister who is being described by us as D-2. The First Informant further alleged that the accused started doing 'dirty deeds' with both of them and because of fear of the accused they were not daring to disclose those incidents by



raising their protest. According to the First Informant/D-1, the accused used to administer her the medicines inducing sleep for doing 'dirty deeds' with her. Fed up with repeated sexual assault on her by the accused, she had sent her uncle Suresh (PW 2) to the place of her maternal grand parents for disclosing her suffering to her Mausi who is examined as PW 3 by the prosecution. We shall refer her as 'G'. Then her maternal aunt heard her narrations. With this the First Informant prayed for taking suitable action against her father by further informing that because of 'dirty deeds' of her father she became pregnant in the year 2009 and her father caused her abortion through a lady doctor.

(D). After registration of the crime in question, PW 6 Punam Kumari, Station House Officer of Mahila Police Station, Bhojpur, took up investigation and recorded statement of witnesses. She inspected the spot of occurrence and had sent the victims for medical examination. Medical examination of both female children viz. D-1 and D-2 came to be conducted by PW 5 Dr. Pushpa, the Medical Officer at the Sadar Hospital, Ara, on 31.07.2013.

(E). On completion of Investigation, the accused came to be charge sheeted. The learned trial Court framed and



explained the charges for the offences under Section 376 of the Indian Penal Code as well as under Sections 6 and 10 of the POCSO Act against the accused. He pleaded not guilty and claimed trial.

(F). In order to bring home the guilt to the accused, the prosecution has examined in all six witnesses. The First Informant (D-1), the eldest minor female child of the accused is examined as PW 1, whereas her younger sister D-2 is examined as PW 2. Their aunt Ms. 'G' is examined as PW 3. Namita Singh, the Judicial Magistrate, who recorded the statement of the victim female children is examined as PW 4. Dr. Pushpa, Medical Officer of the Sadar Hospital Ara, is examined as PW 5. Investigating Officer, Punam Kumari, the Station House Officer, is examined as PW 6.

(G). The defence of the accused as gathered from the line of cross-examination of the prosecution witnesses as well as from his statement under Section 313 Cr.P.C. was that of total denial. According to him PW 3 Ms. G- is his sister-in-law was insisting him to marry her. As he refused to marry her, she has falsely implicated him in the crime in question. The accused has examined his maidservant Chanchal Devi as DW 1 and his brother Suresh as DW 2 in his defence.



(H). After hearing the parties, the learned trial Court by the impugned judgment and order was pleased to convict the appellant/accused and to sentence him as indicated in the opening para of the judgment.

4. We heard the learned Advocate appearing for the appellant at sufficient length of time. He argued that the prosecution has failed to prove that at the time of alleged offence, the victim of the crime in question was minor. Reliance is placed on **Jarnail Singh Vs. State of Haryana** reported in **2013 CRI. L. J. 3976**. He argued that the prosecution has failed to comply provisions of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and has not produced date of birth certificate of the victims issued by the school despite the fact that, according to the prosecution case, the victims were taking education in Bhagini Nivedita Vidyalaya. It is further argued that there is no other evidence to come to the conclusion that the victims were children at the relevant time and, therefore, the prosecution has failed to establish that the provisions of the POCSO Act are applicable to the case in hand. Therefore, conviction of the accused under the penal provisions of the said Act needs to be quashed and set aside. Reliance is also placed on judgment in **Sunil Vs. State of Haryana**



reported in **AIR 2010 SCC 392** to demonstrate that the age of the victims is not proved by the prosecution.

5. The learned Advocate appearing for the appellant vehemently argued that in a small two room house of the appellant, the appellant was residing along with his four children as well his brother. The Police Station was just in front of the said house and, therefore, it is highly improbable that the accused would commit such type of offence in presence of other family members of his house. He further argued that even according to the prosecution case, the complaint with similar allegations was made to the Mahila Aayog by the prosecuting party but no evidence in support of that complaint was pressed in service before that authority. By drawing our attention to the version of the defence witnesses, it is argued that even uncle of the alleged victims have not spoken about the sexual harassment, if any, of the victims. Moreover, it is argued that the prosecution has failed to examine the brothers of the victim and, therefore, case of the prosecution is not trustworthy. Even no evidence regarding alleged abortion of the victim is placed on record by the prosecution. The medical evidence is also not supporting the case of the prosecution.

6. The learned Additional Public Prosecutor



supported the impugned judgment.

7. We have carefully considered the submissions so advanced and we have also perused the entire evidence adduced by the parties. In the case in hand, the prosecution has alleged that the accused being a father of the minor female children was exercising the position of control and dominance over his two daughters and he had repeatedly committed penetrative sexual assault on his two minor female children. Apart from the charge for the offence punishable under Section 376 of the Indian Penal Code, the learned trial Court had also framed the charge for the offence punishable under Sections 6 and 10 of the POCSO Act against the accused and had explained the said charge to the accused. The charge so framed was for commission of rape on PW 1/D-1 and for commission of penetrative sexual assault on PW 1/D-1 and PW 2/D-2. In paragraph 20 of his judgment, the learned trial Court came to the conclusion that the accused had committed rape on PW 1/D-1 who is his elder daughter. At the concluding portion of paragraph-20, the learned trial Court observed that “the evidence of both prosecutrix do not suffer from any infirmity and they have given cogent and reliable evidence in support of the charges framed against the accused.” Then directly in paragraph-21, the learned trial Court has held



thus “from the discussion aforesaid the accused (XXX- identity suppressed by us) is found and held guilty under Section 376(i) of the Indian Penal Code and under Sections 6 and 10 of the POCSO Act and convicted for the same”. Though no specific finding is given by the learned trial Court, it seems that it has held that the prosecution has proved the fact that the accused committed rape on his elder daughter and consequently the learned trial Court has held that the charge for the offence of aggravated penetrative sexual assault is also proved by the prosecution. This is what we could gather from paragraphs 20 to 21 of the judgment of the learned trial Court found under the heading ‘CONCLUSION’.

8. In the appeal challenging conviction, this Court will have to re-appreciate and reassess the evidence adduced by the prosecution in order to examine whether the finding recorded by the learned trial Court is according to the evidence adduced by the parties and whether it is legally sustainable. The case in hand is a case of the aggravated penetrative sexual assault/rape on a minor female child/PW 1 by her own father and the said female child had undergone this ordeal right from the year 2007 till the lodgment of the First Information Report on 30.07.2013 when she claimed that she was 16 years of age.



As such, according to the prosecution case, the victim female child has started experiencing this horrid incident of repeated penetrative assault by her own father at least from the age of ten years. It hardly needs to be mentioned that rape is a ghastly act which leaves the victim shattered for the life as it causes not only physical but emotional and psychological trauma to the victim. Sexual activities with young girls of immature age have a traumatic effect on them, which persists throughout their life and often destruct whole personality of the victim. The victim of a sexual assault is not an accomplice, but she is a victim of lust of another person. Her evidence stands at a higher pedestal than that of an injured witness. Evidence of victim of rape case is required to receive same weight as is attached to evidence of an injured witness. If totality of circumstances emerging on record discloses that the victim of such crime does not have any motive to falsely implicate the accused, then, it is not required to seek corroboration to her evidence and the Court generally needs to accept her evidence. While dealing with cases of sexual assault on females of tender ages, the Court is expected to shoulder great responsibility and is required to deal with such cases sensibly. Broader probabilities of the prosecution case are required to be examined in such crimes and the Court is not



expected to get swayed by minor contradictions or insignificant discrepancies in evidence of prosecution which does not go to the core of the prosecution case. It is well settled that if the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the accused, the Court should not be hesitant in accepting her evidence. It is said that the rape often destroys the whole personality of the victim.

9. In the case of **State of Punjab Vs. Gurmeet Singh** reported in **1996 CRI. L.J. 172**, the Apex Court took a view that the Courts dealing with the rape cases shoulder a greater responsibility and they must deal with such cases with utmost sincerity. Relevant paragraph of the said judgment is reproduced as under :

“...It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of



the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation.”

10. Keeping in mind this law, let us examine evidence adduced by the prosecution in the case in hand in order to ascertain whether age of the victim female child is proved by



the prosecution and whether it is established by the evidence on record that the accused had committed aggravated penetrative sexual assault on the victim female child.

11. The D-1 who is the First Informant as well as PW 1 in the instant case, while in the dock on 21.04.2014 has stated her age as 17 years. As per her version before the Court, on one morning in the year 2007, she found her mother hanging. She stated that even during the life time of her mother, her father, i.e., the accused, used to do dirty thing with her as well as her sister. He used to touch inappropriately her breasts as well as vagina. As per version of the PW 1, after death of her mother, the accused used to sleep with her. Because of this act of the accused, she became pregnant in the year 2011 and the accused got her aborted. She stated that the accused used to administer the sleep inducing drugs to her for doing dirty acts with her. This victim of the crime in question deposed that in past her Mausi (PW 3) made complaint against the accused but as the accused being her father had threatened her with pistol, she lied before the authorities. She further stated that she made complaint of acts of the accused to the Principal of the Nivedita School where she was taking education but her Principal told her to ask her uncle and Mausi (aunt) to make the complaint and



assured that thereafter she will support. The PW 1 further deposed that the accused used to show blue films to her and used to ask her to repeat those acts.

12. The victim was subjected to a very detailed cross-examination by the defence. In cross-examination, she disclosed that because of death of her mother, a crime was registered at the Town Police Station at the instance of her Mausi, i.e., PW 3 Ms. G. This witness was asked as to whether she was knowing who are her neighbourers and she disclosed that there are shops adjacent of her house and at the eastern side of her house Shiv Kumari resides and at the western side Raju uncle resides. She had categorically stated in her cross-examination that prior to lodging the FIR by her, she used to reside with her father, i.e., the accused but after lodging the FIR she started residing with her maternal grand mother. It is elicited from her cross-examination that she came about her pregnancy from Dr. Nirmala in the year 2011 and then she was referred by Dr. Nirmala to some other lady doctor. She stated that her father burnt all medical reports in respect of her pregnancy. This victim admitted that she filed the FIR with the help of her Mausi i.e., PW 3/ Ms. G. as well as her Principal Kundan Devi and friend Priti. It is further elicited from her



cross-examination that it was on the say of her Principal, while taking education in 9th standard she has disclosed her suffering to her uncle Suresh (who is examined as DW 2 by the defence). The PW 1 has further admitted that her Mausi/PW 3 Ms. G is a primary teacher and an unmarried lady. She is taking care of her education at present.

13. This is all what the victim female child has stated about the incidents happening in her life when she was a teenager. From her evidence we are unable to find out any motive or reason with this witness to falsely implicate her own father in the year 2013. She had lost her mother in the year 2007. Thereafter, as seen from her evidence she continued to reside with her father i.e., the accused right up to the year 2013. Though it is defence of the accused that after death of her mother, this witness PW 1 started residing with her maternal grand parents, the material elicited from her cross-examination makes it clear that she was in fact residing with her father till she lodged a report on 30.07.2013. According to the defence version, the accused immediately remarried after death of mother of the PW 1. However, no such suggestion are even put to the PW 1 to show that her step mother was also residing in their house with her father, i.e., the accused. The version of PW



1 regarding her age is perfectly in tune with the FIR lodged by her on 30.07.2013 when she has reported her age as 16 years. While in dock, on oath the PW 1 has stated her age as 17 years. His evidence went unchallenged and during the course of her cross-examination, not a single question was put up to this witness for challenging her age which was stated as 17 years. As such, we see no reason as to why this unchallenged evidence regarding age of the victim i.e., PW 1 should not be accepted. It is thus seen that as per version of PW 1/D-1 her father used to satisfy his lust virtually by making his daughter i.e., PW 1 as his sex slave from the year 2007 when this witness was just ten years old. From the entire evidence of this witness we are unable to find anything which may suggest that this witness was having inimical disposition with her own father and had some reason to speak a lie about him. However, instead of placing explicit reliance on the version of this witness at this stage let us examine whether her evidence is gaining corroboration from other material adduced by the prosecution on record.

14. The PW 2 is the younger daughter of the accused to whom we are referring to as D-2. While in the witness box, this D-2 has stated her age as 15 years on



30.04.2014. She has stated that after death of her mother in the year 2007, her father was doing wrong things with her elder sister and he used to press breasts of her elder sister. She testified that her father was showing obscene video clips to her sister as well as to her also. This PW 2 has also spoken about pregnancy of her elder sister caused by the accused as well as the consequential abortion. The PW 2 further stated that at the instance of her elder sister-PW 1, her uncle informed the behaviour of her father to their Mausi i.e., PW 3 and then her Mausi came to her school and had a talk with her. She further stated that thereafter the report was lodged and their statements were also recorded by the Magistrate. This another daughter of the accused was cross-examined at length by the defence. It was attempted to show that this witness was not residing with the accused by putting such questions to her. However, this witness had denied that at the time of death of her mother, she was at the house of maternal grand parents. She has positively stated that the accused took them with him and had absconded after death of her mother. They thereafter stayed with the younger sister of her father i.e., the accused. She categorically stated that since she had attained the age of understanding she was residing at the house of her father i.e., the accused situated



at Joda Mandir. She stated that her father used to sell curd from the shop and her uncle used to assist him. In cross-examination, this witness stated that her sister lodged complaint against the act of their father with the Principal of the School but no action was taken. It is further elicited from her cross-examination that she as well as her sister were medically examined after lodging the report. She stated after the FIR she started residing with her Mausi.

15. This is the version of the younger daughter of the accused before the Court. From this evidence also we are unable to gather anything to suggest that this younger daughter was having any motive to depose a lie about her own father. No such circumstances are appearing in her evidence. In fact, even after death of her mother, this young child continued to stay with her father for about six years by remaining a mute spectator to the pervert behaviour of her own father. The defence has not disputed age of this PW 2 also by putting any question to her in cross-examination despite the fact that on oath she disclosed her age as 15 years as on 30.04.2011. Thus, version of the PW 2 is also corroborating the version of her elder sister the PW 1 who happens the victim of the crime in question.



16. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is on the issue of determination of age of a juvenile in conflict with law or a child. Sub-rule (3) is relevant for assessment of age of a child. Rule 12(3) reads thus:

“12. Procedure to be followed in determination of age.-

(1).....

(2)

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court of 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.”

17. In the matter of **Jarnail Singh** (supra), the following are the observations of the Supreme Court:

“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 for a child who is a victim of crime. For, in our view, there is hardly any difference in so far 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-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above.”

In the matter of **Sunil** (supra), the Supreme Court has observed that despite referring the prosecutrix for verification to the dental surgeon and the radiologist, the prosecution failed to get her examined and had even failed to produce any admission form of the school of the prosecutrix. Therefore, benefit of doubt was given in that case to the accused therein.

18. Indisputably, in determining age of a child, the matriculation certificate and if the same is not available then birth certificate issued by the school or municipal authority is relevant. In the case in hand, undoubtedly, the prosecution has failed to take necessary steps to collect the birth certificate of the PW 1 from the Nivedita Vidhyalay where she was taking education. However, the prosecution has adduced medical evidence regarding age of the PW 1 as well as the PW 2 who



happens to be the daughters of the accused and the victims of the crime in question. Let us advert to that evidence adduced by the prosecution. Both these witnesses were referred by the Police to Sadar Hospital, Ara, for their medical examination. The PW 1 and the PW 2 were as such examined by PW 5 Dr. Pushpa at the said Sadar Hospital on 31.07.2013. This Medical Officer had got the ossification test of PW 1/D-1 conducted on 31.07.2013 and noted that the PW 1 was having 14 teeth and her third molar was unerupted. PW 5 Dr. Pushpa examined the X-rays of pelvish, elbow joint and wrist joint of the PW 1 and had come to the conclusion that the PW 1 at the relevant time was aged about 17-19 years. Thus, upon ossification test, the PW 1 was found to be in between 17 years to 19 years by PW 5 on 31.07.2013. Similarly, the PW 2 was also examined on 31.07.2013 by PW 5 Dr. Pushpa and as per her version out of 28, 14 teeth were appearing and the third molar was unerupted. By examination of X-ray of elbow joint, wrist joint and pelvish even the the PW 2 was also found to be 15 to 17 years of age by PW 5 Dr. Pushpa of the Sadar Hospital, Ara. She has duly proved the report of her medical examination of both these witnesses, which are at Exhibit-4 and Exhibit-4/A. This evidence of PW 5 Dr. Pushpa is virtually went unchallenged



and defence had not objected to it. Thus, this evidence of the bony age of the victim i.e., PW 1 makes it clear that at the time of the incident happening in her life right from the year 2007 up to 2013, she was certainly below 18 years of age. Rule 3 of the Juvenile Justice (Care and Protection of Child) Rules, 2007 makes it clear that if exact assessment of the age cannot be done by medical examination then the benefit is required to be given to a child by considering her age on lower side within margin of one year. In view of this statutory provisions even at the time of lodging of the FIR, the victim of the crime in question was a child and the offence of penetrative sexual assault was committed against her during the period of at least six years prior to lodging of the FIR. Therefore, it needs to be put on the record that the medical evidence adduced by the prosecution in this case is duly corroborating the unchallenged testimony of PW 1 regarding her age and she is proved to be a child as defined by Section 2(d) of the POCSO Act.

19. Now, let us examine whether the version of the PW 1 a minor female child regarding penetrative sexual assault on her by her own father is gaining corroboration from the other evidence adduced on record. Here also evidence of PW 5 Dr. Pushpa is relevant. Upon internal examination of PW 1, this



Medical Officer found that hymen of the PW 1 i.e., minor female child was not intact. This finding given by the Medical Officer duly corroborates version of the victim female child i.e., PW 1 that her father used to commit penetrative sexual assault on her which she has described by her own understanding as the 'dirty acts'. We cannot expect from this minor daughter to explain in detail the mode and manner in which she used to be ravished by her own father. In such a situation, the word used by her as "dirty acts" is sufficient to demonstrate that she used to be ravished by accused repeatedly. As evidence of this PW 1 in respect of the acts of the accused is not shaken, we do not feel it necessary that the prosecution should have brought on record the evidence of the medical doctor who had caused abortion of the PW 1 in the year 2011. Suffice it to state that version of PW 1 regarding penetrative sexual assault on her by her father is gaining corroboration from the evidence of her younger sister as well as the medical evidence adduced by the prosecution.

20. The PW 3 is Ms. G- an unmarried sister of the mother of the victim female child. She stated that the PW 1 as well as the PW 2 used to make complaint regarding their molestation to her and on one occasion she had informed to the



Help Line For Women but at that time the PW 1 had not supported the said complaint. This version of PW 3 Ms. G is gaining corroboration from the evidence of the victim female child who clarified that at that point of time because of threatening by her father i.e., the accused she could not gather courage to support the said complaint. The PW 3 Ms. G has stated in her evidence that thereafter in July, 2013, DW 2 Suresh came to her house and disclosed her that the daughters of the accused are suffering a lot and they may commit suicide. Then as per her version, the PW 3 contacted the victim female child as well as the Principal of her School and came to know the happenings in the life of her niece. The PW 3 denied the suggestion that she was having inimical terms with the accused but has stated that even after death of her sister she as well as her brother used to visit the accused occasionally.

21. PW 4 Namita Singh, the Judicial Magistrate, had proved the statements of the PW 1 as well as the PW 2 recorded by her under Section 164 Cr.P.C. We have perused these previous statements of the witnesses. Those are consistent with the prosecution case as well as their version before the Court. Evidence of the victim female child the PW 1 is gaining corroboration by her former statement. It is also gaining



corroboration by the FIR lodged by her.

22. The defence has examined maidservant Chanchal Devi as DW 1 who used to work at the house of the accused. This witness ventured to state that the accused married Gita Devi after death of his first wife and the PW 1 and the PW 2 left the house of the accused after death of their mother. However, cross-examination of this witness makes it clear that she is not aware about these facts and she came to know about so called marriage of the accused with another woman on the day on which she entered in the dock. This witness was not knowing how the first wife of the accused died and when she died. Thus, it becomes doubtful as to whether DW 1 Chanchal Devi was actually working as the maidservant in the house of the accused and as such her evidence is not trustworthy. DW 2 Suresh is younger brother of the accused. He has also stated that after death of his first wife the accused married Gita Devi. He further stated that the PW 3 Ms. G wanted to marry the accused and therefore she has falsely implicated the accused. His cross-examination shows that DW 2 Suresh was not present at the house even at the time of FIR and he had returned to the house after one week of lodging of the FIR and arrest of the accused. There is positive evidence of the victim female child as



well as her younger daughter that they were staying with their own father till lodgment of the FIR and, therefore, we cannot accept the evidence of DW 2 Suresh who had not even visited the police station after his return to disclose his stand before the police. In the matter of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat reported in AIR 1983 SC 753, the Supreme Court had said that rarely a girl or woman in India makes a false allegation of sexual assault. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. Such girl would be conscious of the danger of being ostracized by the society or being looked down by the society including her relatives etc. Therefore, we are unable to accept evidence of the brother of the accused that at the instance of their Mausi i.e., the PW 3, the PW 1 and PW 2 have falsely implicated their father in such heinous offence which attracts social stigma on the family honour of even the PW 3 Ms. G.

23. Though it is argued that police station is in the vicinity of the house of the incident and in presence of lot of persons, it is not probable for the accused to commit such serious crime, in the wake of reliable and trustworthy evidence



of the victim of the crime in question which is duly corroborated by other evidence on record, we find no merit in such submission. Similarly, not supporting the complaint before the authority such as Mahila Aayog is being explained by the victim in her cross-examination.

24. It is argued that if it is held that the POCSO Act is not applicable then under the Indian Penal Code, the accused can be let off by lesser punishment. However, this argument is neither here nor there. The prosecution has established by its clear, cogent and trustworthy evidence that the accused had committed repeated penetrative sexual assault on his elder daughter who was a child during the period of the offence. The accused is her father and was holding a position of control or dominance over the said female child. Therefore, the accused was charged for commission of the offence punishable under Section 376(2) of the Indian Penal Code. The punishment for this offence of commission of repeated rape on a female child under the control and dominance extends to imprisonment for life as per per provisions of Section 376(2) of the Indian Penal Code.

25. In the result, we conclude that the prosecution has established that the accused had committed aggravated



penetrative sexual assault on his daughter- the PW 1 repeatedly and thereby committed the offence punishable under Section 6 of the POCSO Act. Similarly, the accused is proved to have committed the offence punishable under Section 376(2)(k)(n) of the Indian Penal Code. It is also proved that the accused has committed sexual assault on the victim female child i.e., PW 1. The sentence imposed on him for these offences is commensurate with the offence held to be proved against him and, therefore, the appeal is devoid of merit and the same is accordingly dismissed.

26. Let the Lower Court Records be sent back to the learned Court below with a copy of this judgment and order.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

Mkr./-

AFR/NAFR	AFR
CAV DATE	18.07.2022
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