

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1390 of 2018

Arising Out of PS. Case No.-35 Year-2017 Thana- MAHILA PS District- Darbhanga

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Bambam Mukhiya @ Govind Mukhiya, Son of Ramrat Mukhiya, Residents
of Village- Mansara, P.S.- Ghanshyampur, District- Darbhanga.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ajay Kumar Thakur, Advocate

Mrs.Madhubala Verma, Advocate

For the Respondent/s : Mr.Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 17-09-2026

1. Introduction



This Criminal Appeal has been preferred by the sole appellant Bambam Mukhiya against the judgment of conviction dated 28.09.2018 and the order of sentence dated 04.10.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (POCSO Act), Darbhanga in G.R. Case No. 14 of 2017 (arising out of Darbhanga Mahila P.S. Case No. 35 of 2017), whereby the appellant has been convicted for the offences punishable under Section 376(2)(i) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012, and sentenced to undergo rigorous imprisonment for life together with a fine of ₹30,000/-, and in default of payment of fine, to undergo simple imprisonment for six months under Section 376(2)(i) IPC. No separate sentence has been awarded under Section 6 of the POCSO Act in view of the provisions of Section 42 of the said Act. The appellant has been in custody since 05.05.2017.

2. Prosecution Case

(i) The case of the prosecution, as unfolded in the fardbeyan of the victim-informant Ruby Kumari (aged about 8 years) recorded on 02.05.2017 at about 17:20 hours at the Gynaecology Ward of Darbhanga Medical College and



Hospital (hereinafter “DMCH”), is that on the previous day her mother had gone to Jhanjharpur for medical treatment and only she and her younger brother Rakesh Mahto (aged about 5 years) were present in the house. In the night she was sleeping inside the room while her brother was sleeping at the door. At about 3:00 a.m. her neighbour Bambam Mukhiya came near her, pressed her mouth, and forcibly committed rape upon her, as a result of which she started bleeding profusely. She cried out in pain, whereupon her aunt Ramdai Devi arrived; seeing her, the accused fled away and the victim became unconscious. She was thereafter brought to DMCH for treatment, where her fardbeyan was recorded.

(ii) On the basis of the said fardbeyan, Darbhanga Mahila P.S. Case No. 35 of 2017 dated 02.05.2017 was registered under Section 376 IPC and Sections 4/6 of the POCSO Act against the appellant. After investigation, charge-sheet No. 58 of 2017 dated 22.06.2017 was submitted under Section 376 IPC and Sections 4/6 of the POCSO Act. The learned trial court took cognizance of the offences under Section 376(2)(i) IPC and Section 6 of the POCSO Act. Charges under the said provisions were framed, read over and explained to the appellant, who pleaded not guilty and



claimed to be tried.

3. Course of Trial

(i) In order to prove its case, the prosecution examined six witnesses:

1. PW1 Meera Devi (mother of the victim),
2. PW2 Ruby Kumari (victim-informant),
3. PW3 Jogi Mahto (maternal grandfather of the victim),
4. PW4 Ramdai Devi (aunt of the victim),
5. PW5 Nilam Kumari (Investigating Officer), and
6. PW6 Dr. Sangita Singh (the doctor who examined the victim).

(ii) The prosecution also proved and marked twelve documents as exhibits, including the fardbeyan, the formal FIR, the seizure lists, the medical examination report, the statement of the victim recorded under Section 164 CrPC, and the arrest memo.

(iii) After closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 CrPC. The incriminating circumstances appearing against him were explained; he denied the same and pleaded innocence. The appellant declined to adduce any evidence in his defence.



(iv) The learned trial court, upon appreciation of the evidence, by the impugned judgment dated 28.09.2018, held the appellant guilty of the offences under Section 376(2)(i) IPC and Section 6 of the POCSO Act and convicted him accordingly. By the order of sentence dated 04.10.2018, the appellant was sentenced as indicated above. The trial court also directed payment of compensation of ₹6,00,000/- to the victim under the Bihar Victim Compensation Scheme.

(v) Being aggrieved by the said judgment of conviction and order of sentence, the present appeal has been preferred.

4. Points for Determination

Upon consideration of the rival submissions and the material on record, the following points arise for determination in this appeal:

1. Whether the prosecution has succeeded in proving beyond reasonable doubt that on the night intervening 01/02.05.2017 the appellant committed rape / penetrative sexual assault upon the victim Ruby Kumari?

2. Whether the prosecution has proved that the victim was a child below the age of 12 years on the date of the alleged occurrence so as to attract the enhanced punishment



under Section 376(2)(i) of the Indian Penal Code and Section 6 of the POCSO Act, 2012?

3. Whether the evidence of the victim (PW2), read with the medical evidence and the other surrounding circumstances, is reliable, consistent and sufficient to sustain the conviction, or whether material contradictions, improvements, investigative lapses and other circumstances create reasonable doubt in the prosecution case?

5. Summary of the Evidence

Oral Evidence

(i) PW1 Meera Devi (mother of the victim) is not an eyewitness. She was at Jhanjharpur at the relevant time. She received telephonic information that the appellant had committed rape upon her daughter, came to DMCH, and found her daughter admitted. She stated that the police seized the victim's clothes from the house. She identified the appellant in court. In cross-examination she admitted that she had not seen any part of the occurrence, could not state the exact date, and that her knowledge was based on what others told her.

(ii) PW2 Ruby Kumari (victim-informant) is the sole eyewitness. In her examination-in-chief she stated that the



occurrence took place about ten months earlier at about 3:00 a.m. while she was sleeping in the house with her younger brother; her mother was away at Jhanjharpur and her father was out of the village. The appellant entered the house, pressed her mouth, opened her salwar and committed rape; she started bleeding, cried out, her aunt Ramdai Devi arrived, and the appellant fled. She was taken to DMCH and treated for four days. She identified her signatures on the fardbeyan, the Section 164 CrPC statement and the seizure list, and identified the appellant in court.

(iii) In cross-examination she stated that the families had prior good relations; a lamp was burning in the room; her brother was sleeping outside; she remained conscious after the occurrence; there was a neighbouring marriage of Runa Devi with baarat (procession), tents, music and generator on the same night; she had gone to the wedding but returned when sleepy; and she denied the elaborate suggestions of false implication involving Shanti Devi and another boy. She also stated that the Sub-Inspector had first asked her aunt about the incident before writing her statement.

(iv) PW3 Jogi Mahto (maternal grandfather of the victim) is a hearsay witness. He stated that Ramdai Devi



telephoned and informed him of the occurrence; he came to the village, met the victim, and helped take her to DMCH. In cross-examination he gave shifting versions about the source of information, initially claimed to have seen the occurrence and then corrected himself, stated that the victim was unconscious when he reached and regained consciousness after three days, and admitted that his house is about 8 km away.

(v) PW4 Ramdai Devi (aunt of the victim) stated that she was at home; the appellant raped the victim and fled; when she went she found the victim covered in blood and the victim disclosed the name of the appellant; later the appellant came and took away his mobile which had fallen at the place of occurrence. She claimed that she, the mother and the maternal uncle took the victim to DMCH. In cross-examination she stated that she came to know of the incident only at about 6:00 a.m., that the victim became unconscious and regained sense after two days, that it was actually Shanti Devi who took the victim to her house and for treatment, that there was a neighbouring marriage with generator and noise, and that the case had been filed on the initiative of Shanti Devi, a politically influential person.



(vi) PW5 Nilam Kumari (Investigating Officer) proved the recording of the fardbeyan at DMCH on 02.05.2017, the registration of the FIR, the seizure of the victim's clothes, the inspection of the place of occurrence on 03.05.2017, the recording of statements of the family witnesses, the arrest of the appellant, the preparation of seizure lists, the recording of the Section 164 CrPC statement, and the submission of the charge-sheet. She admitted in cross-examination that no independent witness was examined, that the accused was not medically examined, that the oozing blood of the victim and the semen of the accused were not sent for examination, that no sketch map of the place of occurrence was prepared, and that she had received only oral directions from superior officers which were not recorded in the case diary.

(vii) PW6 Dr. Sangita Singh examined the victim on 02.05.2017 at 3:30 p.m. She found blood stains on the clothes and genital area, multiple abrasions around the hymen (including two large abrasions on the lower aspect), torn hymen and active bleeding. Vaginal swab showed superficial squamous cells but no spermatozoa. Radiological examination indicated bony age between 10 and 12 years. In cross-examination she stated that the victim was conscious and



walked into the ward, that she had applied Dettol but no stitches were required, that no mud or sand was found, that the size, age and colour of the injuries were not mentioned in the report, and, significantly, that the injuries found by her could have been caused by a fall or injury. She also stated that she had not examined the victim for marks of struggle.

Documentary Evidence

(viii) The prosecution proved, among other documents, the fardbeyan (Ext. 4), the formal FIR (Ext. 6), the seizure lists of the victim's clothes and of the materials collected from the place of occurrence (Exts. 7 and 10), the medical examination report (Ext. 11), and the statement of the victim recorded under Section 164 CrPC (Ext. 12). The fardbeyan and the Section 164 CrPC statement both record that the victim fainted / became unconscious after the occurrence and regained consciousness in the hospital.

Statement of the Accused under Section 313 CrPC

(ix) The incriminating circumstances were explained to the appellant. He denied the same and pleaded innocence. He did not lead any defence evidence.

6. Submissions on behalf of the Appellant

Learned counsel for the appellant has assailed the



impugned judgment of conviction and order of sentence on several grounds.

(i) It is submitted that the conviction is bad in law and on facts. The appellant has been falsely implicated on account of previous enmity existing between the parties. The witnesses examined by the prosecution, other than the official witnesses, are close relatives of the victim and are therefore interested witnesses whose testimony requires close scrutiny.

(ii) It is further contended that the medical evidence does not conclusively establish rape. The examining doctor (PW6) herself admitted in cross-examination that the injuries found on the victim could have been caused by a fall or injury. The trial court erred in rejecting the defence theory that the injuries were the result of a fall.

(iii) Attention has been drawn to the fact that on the night of the alleged occurrence a marriage ceremony was taking place in a neighbouring house with baarat, tents, music, generator and noise. The victim and others had gone to see the marriage. In such circumstances, the possibility of the occurrence remaining unnoticed is highly doubtful, and the prosecution story appears tailored.

(iv) It is argued that the identification of the appellant



at about 3:00 a.m. is doubtful in the absence of a reliable source of light being mentioned in the earliest statements. The First Information Report naming the appellant with specific allegations was lodged in suspicious circumstances.

(v) Learned counsel has also highlighted material contradictions in the evidence of the prosecution witnesses. Particular emphasis has been placed on the contradiction regarding the consciousness of the victim after the occurrence (the fardbeyan and the Section 164 CrPC statement record that she fainted/became unconscious, whereas in court the victim claimed she remained conscious). There are further contradictions among the family witnesses regarding the timing of discovery of the occurrence, who took the victim to the hospital, and the role of one Shanti Devi.

(vi) It is submitted that Shanti Devi is a politically influential person and that the case has been filed at her instance. The mobile-phone version given by PW4 is unnatural and unreliable. The investigation is defective inasmuch as no independent witness was examined despite the existence of numerous neighbouring houses, the accused was not medically examined, and crucial forensic evidence was not collected.



(vii) On the question of sentence, it is urged that the appellant is a young man with no criminal antecedents, is the sole earning member of his family, and that the sentence of imprisonment for the remainder of natural life is unduly harsh.

(viii) On the basis of the above submissions, it is prayed that the impugned judgment of conviction and order of sentence be set aside and the appellant be acquitted of all the charges.

7. Submissions on behalf of the State

Learned Additional Public Prosecutor appearing for the State has supported the impugned judgment of conviction and order of sentence.

(i) It is submitted that the prosecution has proved its case beyond reasonable doubt. The victim (PW2), a child of tender years, has given a consistent and reliable account of the occurrence in her fardbeyan, her statement recorded under Section 164 CrPC, and her deposition before the trial court. She has clearly named the appellant as the perpetrator, described the act of rape, the bleeding that followed, the arrival of her aunt, and the flight of the appellant. She has also identified the appellant in court. The law is well settled that the sole testimony of a prosecutrix, if found trustworthy and



reliable, is sufficient to base a conviction in a case of rape, and no corroboration is necessarily required.

(ii) The medical evidence (PW6 and Ext. 11) provides strong corroboration. The doctor found blood stains on the clothes and genital area, multiple abrasions around the hymen, a torn hymen, and active bleeding, which are consistent with recent penetrative sexual assault. The radiological examination established the bony age of the victim as between 10 and 12 years, thereby bringing the case within the ambit of Section 376(2)(i) IPC and Section 6 of the POCSO Act.

(iii) The evidence of PW4 (the aunt) further corroborates the prosecution case inasmuch as she found the victim covered in blood immediately after the occurrence and the victim disclosed the name of the appellant to her. The seizure of blood-stained clothes of the victim and blood-stained material from the place of occurrence lends additional support.

(iv) It is contended that the minor contradictions and discrepancies pointed out by the defence are natural in the evidence of a child witness and the relatives, and do not go to the root of the prosecution case. The trial court has rightly discarded the theory of injuries being caused by a fall, as the



nature of the genital injuries is inconsistent with a simple fall. The suggestion of false implication on account of enmity has remained unsubstantiated.

(v) The First Information Report was lodged promptly on the same day the victim was brought to the hospital. The investigation, though not free from all shortcomings, does not suffer from such illegality or unfairness as would vitiate the prosecution case. The non-examination of independent witnesses is not fatal when the evidence of the victim and the medical evidence inspire confidence.

(vi) On the question of sentence, it is submitted that the offence is of the gravest nature involving the rape of a child below 12 years resulting in serious injury. The trial court has rightly awarded the sentence of imprisonment for the remainder of natural life, keeping in view the legislative intent behind Section 376(2)(i) IPC and the POCSO Act. No interference with the sentence is called for.

(vii) On the above premises, it is prayed that the appeal be dismissed and the impugned judgment of conviction and order of sentence be affirmed.

8. Appreciation of Evidence

A. Reliability and Consistency of the Victim's



Testimony (PW2)

(i) The prosecution case rests primarily on the evidence of the victim PW2. The Hon'ble Supreme Court has held down in ***State of Punjab v. Gurmit Singh, (1996) 2 SCC 384***, that the sole testimony of a prosecutrix, if found credible, consistent and trustworthy, is sufficient to base a conviction in a case of sexual assault and does not require mandatory corroboration from independent sources. The relevant paragraph of the said judgment is reproduced below:

“21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman'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 molestations.”

(ii) Along the similar lines, the Hon’ble Supreme Court in ***Rameshwar v. State of Rajasthan, 1951 SCC 1213***, held that when the prosecutrix is a child of tender years the Court is required to scrutinise her evidence with care, yet once the evidence is found reliable it can form the sole basis of conviction. The relevant paragraph of the said judgment is



reproduced below:

“21. There is a class of cases which considers that though corroboration should ordinarily be required in the case of a grown-up woman it is unnecessary in the case of a child of tender years. Bishram Bahorik Satnami v. Emperor [Bishram Bahorik Satnami v. Emperor, AIR 1944 Nag 363 : 1945 Cri LJ 371 : 1944 SCC OnLine MP 83] is typical of that point of view. On the other hand, the Privy Council has said in Mohd. Sugul Esa Mamasan Rer Alalah v. R. [Mohd. Sugul Esa Mamasan Rer Alalah v. R., AIR 1946 PC 3 at p. 5 : 222 IC 304 : 1945 SCC OnLine PC 38] that as a matter of prudence a conviction should not ordinarily be based on the uncorroborated evidence of a child witness. In my opinion, the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the Judge. In a jury case he must tell the jury of it and in a non-jury case he must show that it is present to his mind by indicating that in his judgment. But he should also point out that corroboration can be dispensed with if, in the particular circumstances of the case before him, either the jury, or, when there is no jury, he himself is satisfied that it is safe to do so. The rule, which



according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained. The tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury, as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.”

(iii) The victim has given three successive versions of the occurrence: the fardbeyan recorded on 02.05.2017, the statement under Section 164 CrPC recorded on 06.05.2017, and the deposition before the trial court. The essential features of the occurrence remain consistent across all three versions. In each of them she has stated that at about 3:00 a.m. the



appellant entered the house, pressed her mouth, opened her salwar and committed rape upon her, as a result of which she started bleeding. She has named the appellant from the very inception and has identified him in court. The trial court in paragraph 21 of the impugned judgment correctly observed that the statement of the victim under Section 164 CrPC is fully corroborated with her evidence given before the Court and also with the fardbeyan.

(iv) The apparent contradiction regarding the victim's state of consciousness after the occurrence requires careful consideration. In the fardbeyan she stated that she fainted. In the statement under Section 164 CrPC she stated that she fell unconscious and regained consciousness in the hospital. In her court deposition (paragraph 17) she stated that she did not faint and remained conscious. This variation can be attributed to the trauma suffered by a child victim of penetrative sexual assault. It is judicially recognised that victims of such offences, particularly children, may have imperfect or fluctuating recollection of peripheral details on account of shock and trauma. What is material for the decision of the case is that the victim was fully conscious during the commission of the act itself and was able to perceive, resist to



the extent possible, and identify the appellant. The subsequent state of consciousness is a secondary detail that does not destroy the substratum of her evidence. The trial court in paragraph 21 rightly placed reliance on the core consistent version rather than on peripheral variations.

(v) The difference in the estimated time of the aunt's arrival (approximately 3:00 a.m. according to the victim and approximately 6:00 a.m. according to PW4) is equally explicable. A child of about eight to ten years cannot be expected to give precise clock time. The estimation of time by the victim is approximate. The trial court in paragraph 16 of the judgment noted the victim's evidence that she slept at 6:00 p.m. and woke up at 3:00 a.m. because the occurrence took place at that time. Minor variations in such estimates do not amount to material contradiction.

(vi) The question of precisely who accompanied the victim to the hospital is immaterial once the core incident of penetrative sexual assault stands established by the medical evidence. Whether the aunt, the mother, Shanti Devi or others took the victim to DMCH does not affect the proof of the act of rape itself.

(vii) The victim's admission in cross-examination that



the Sub-Inspector first enquired from her aunt before writing the fardbeyan does not amount to tutoring. In cases involving very young children it is common for the investigating officer to seek the assistance of an accompanying relative to elicit a coherent narrative. The prompt recording of the fardbeyan on the same day the victim was brought to hospital and the subsequent recording of the statement under Section 164 CrPC, both of which name the appellant, reinforce rather than weaken the credibility of the victim's account. The trial court in paragraph 23 correctly observed that the FIR was registered at the earliest and the victim was medically examined on the next day, leaving no room for doubt about the occurrence.

B. Medical Evidence (PW6 and Ext. 11)

(viii) The medical examination was conducted on 02.05.2017 at 3:30 p.m. by PW6. The findings recorded in Ext. 11 and deposed by the doctor are clear: blood stains all around the clothes and the genital area, multiple abrasions around the hymen with two big abrasions on the lower aspect, torn hymen, and bleeding present all around the hymen. These findings are consistent with recent penetrative sexual assault.

(ix) The trial court in paragraph 21 of the judgment correctly held that the medical report and the evidence of



PW6 confirm that the victim had intercourse and that blood was also found on the soil, pillow and blanket at the place of occurrence. The doctor's observation in cross-examination that the injuries could have been caused by a fall is only a theoretical possibility. The nature, location and multiplicity of the genital injuries, particularly the torn hymen accompanied by active bleeding and multiple abrasions, are far more consistent with penetrative assault than with a simple fall. The trial court in paragraph 22 rightly rejected the defence theory of fall, observing that such multiple injuries in the genital area cannot be caused by falling down.

(x) The absence of spermatozoa (living or dead) in the vaginal swab does not negate the commission of rape. It is well settled that penetration is sufficient to constitute the offence of rape and emission of semen is not necessary. Section 375(a) of the Indian Penal Code, 1860 makes it clear that penetration is sufficient to constitute the sexual intercourse necessary for the offence.

(xi) In the matter giving rise to the appeal in ***State of Himachal Pradesh v. Asha Ram, (2005) 13 SCC 766***, the accused was acquitted on the ground that spermatozoa were found on the salwar and underwear of the prosecutrix, though



according to the prosecution, complete act of sexual intercourse was committed. The Hon'ble Supreme Court reversed the finding of the Himachal Pradesh High Court, and held that the absence of spermatozoa cannot be treated as a circumstance in favour of the accused. The relevant paragraph of the said judgment is reproduced below:

5. We record our displeasure and dismay, the way the High Court dealt casually with an offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on minor girls. The High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim



of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

(xii) It is also medically recognised that penetration need not always be accompanied by ejaculation. Even when ejaculation occurs, spermatozoa may not be detected if the sample is collected after a certain interval, or if there has been washing, bleeding or other intervening factors. Spermatozoa can survive in the vaginal tract for a variable period, ordinarily up to three to five days under favourable conditions, yet their non-detection in a particular case does not rule out recent penetration.

(xiii) On the question of age, the radiological examination established the bony age of the victim as between 10 and 12 years. The trial court in paragraph 24 correctly



accepted this opinion in the absence of birth or school records and held that the prosecutrix was below the age of 12 years on the date of the offence. Section 29 of the POCSO Act raises a presumption against the accused once the foundational facts are established. The appellant has led no evidence to rebut the presumption.

**C. Evidence of the Other Prosecution Witnesses
(PWs 1, 3 and 4)**

(xiv) PW1, the mother, is a hearsay witness. Her evidence only confirms that she received information about the occurrence and that the victim was hospitalised. It adds nothing to the core case and may be left out of consideration.

(xv) PW3's deposition is replete with internal contradictions and repeated self-corrections. He first claimed that Ramdai Devi telephoned him, then stated that the call was received by his daughter, then claimed information from the parents, and still later from his granddaughter. He initially asserted that he had seen the occurrence with his own eyes and immediately corrected himself. In these circumstances his inconsistencies can safely be ignored. No benefit can be derived by the defence from the evidence of a witness who is unable to maintain consistency even on basic particulars.



(xvi) PW4, the aunt, supports the prosecution on the vital aspects that she found the victim covered in blood and that the victim immediately disclosed the name of the appellant. The trial court in paragraph 21 relied upon this disclosure and upon the mobile-phone version given by PW4 to infer the presence of the appellant at the place of occurrence. The mobile-phone version was stated by PW4 in examination-in-chief and was not effectively demolished in cross-examination. She did not accept the contradictory suggestions put to her on this point. The shift in her evidence regarding the precise role of Shanti Devi in taking the victim to hospital is a peripheral detail. It does not affect the core prosecution case that the victim was found in a blood-stained condition and named the appellant.

D. Quality of Investigation and Surrounding Circumstances

(xvii) The investigation is not free from shortcomings. No independent witness was examined and certain forensic steps were not taken. However, defective investigation by itself is not a ground for acquittal when the evidence of the victim and the medical evidence inspire confidence. Reference in this regard may be made to *C. Muniappan v.*



State of Tamil Nadu, (2010) 9 SCC 567, the relevant paragraph of which is reproduced below:

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (Vide Chandrakant Luxman v.



State of Maharashtra [(1974) 3 SCC 626 : 1974 SCC (Cri) 116 : AIR 1974 SC 220] , Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977] , Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085 : AIR 1998 SC 1850] , Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] , State of Karnataka v. K. Yarappa Reddy [(1999) 8 SCC 715 : 2000 SCC (Cri) 61 : AIR 2000 SC 185] , Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] , Allarakha K. Mansuri v. State of Gujarat [(2002) 3 SCC 57 : 2002 SCC (Cri) 519] and Ram Bali v. State of U.P. [(2004) 10 SCC 598 : 2004 SCC (Cri) 2045])”

(xviii) The trial court in paragraph 23 correctly held that the testimony of the prosecutrix is reliable and that minor contradictions are not enough to throw out the evidence.

(xix) The neighbouring marriage ceremony does not render the occurrence improbable. From the evidence of the victim it can reasonably be inferred that she had gone to the wedding but returned home before the arrival of the baarat and had gone to sleep. The presence of noise in the neighbourhood does not make the commission of the offence impossible.

(xx) The appellant has not produced any alibi. If his



defence of false implication were genuine, independent witnesses from the village or from those who attended the marriage could have been examined. No such evidence has been led. The trial court in paragraph 21 noted that no specific and cogent suggestion was given by the defence as to why the appellant had been falsely implicated except a suggestion involving Shanti Devi, which was found to have no concern with the victim.

(xxi) The involvement of Shanti Devi can be viewed in the social context of the case. The victim belongs to an extremely poor and illiterate family living in a house made of straw, asbestos and mud. It is not uncommon for local political or social workers to extend moral support and assistance to such vulnerable victims so that the crime is reported and the victim receives medical attention. The prompt reporting of the occurrence on the same day, far from creating suspicion, reinforces the bona fides of the prosecution case. It is a matter of common knowledge that a large number of rape cases involving children of poor families go unreported. The fact that everything was reported so quickly supports the inference that the family and those assisting them wanted the victim to receive justice.



E. Defence of False Implication and Previous Enmity

(xxii) The suggestions of previous enmity and false implication at the instance of Shanti Devi remained at the level of suggestions and were denied by the material witnesses. The appellant led no positive evidence to probabalise the theory. The trial court in paragraph 21 correctly rejected the plea of false implication.

Conclusion

(xxiii) On a cumulative appraisal of the entire evidence the following position emerges. The core version of the victim is consistent across her three statements and is corroborated by the medical findings of recent penetrative genital injury. The peripheral contradictions are explainable by the trauma suffered by a child victim, the natural limitations of a child witness in estimating time, and the social circumstances of the case. The trial court in paragraphs 21 to 25 of the impugned judgment correctly appreciated the evidence, placed reliance on the testimony of the prosecutrix and the medical evidence, and discarded the defence theories of fall and false implication. The prosecution has proved beyond reasonable doubt that the appellant committed



penetrative sexual assault upon the victim, a child below the age of 12 years.

(xxiv) The conviction recorded by the trial court under Section 376(2)(i) of the Indian Penal Code and Section 6 of the POCSO Act is therefore sustainable in law and on facts.

9. Answers to the Points for Determination

Point No. 1

Whether the prosecution has succeeded in proving beyond reasonable doubt that on the night intervening 01/02.05.2017 the appellant committed rape / penetrative sexual assault upon the victim Ruby Kumari?

Finding: Yes. The core version of the victim is consistent across her fardbeyan, the statement under Section 164 CrPC and her deposition before the trial court. She has clearly named and identified the appellant. The medical evidence establishes recent penetrative genital injury. The peripheral contradictions regarding consciousness after the occurrence, the precise timing of the aunt's arrival and the identity of the persons who took the victim to hospital are explainable by the trauma suffered by a child victim and the natural limitations of a child witness. These contradictions do not destroy the substratum of the prosecution case. The



prosecution has proved the charge beyond reasonable doubt.

Point No. 2

Whether the prosecution has proved that the victim was a child below the age of 12 years on the date of the alleged occurrence?

Finding: Yes. The radiological examination has determined the bony age of the victim as between 10 and 12 years. The approximate age of 8 years was mentioned in the fardbeyan and assessed by the Magistrate. In the absence of any contrary evidence, it is held that the victim was below 12 years of age on the date of the occurrence. The provisions of Section 376(2)(i) of the Indian Penal Code and Section 6 of the POCSO Act are therefore attracted.

Point No. 3

Whether the evidence of the victim (PW2), read with the medical evidence and the other surrounding circumstances, is reliable, consistent and sufficient to sustain the conviction, or whether material contradictions, improvements, investigative lapses and other circumstances create reasonable doubt in the prosecution case?

Finding: The evidence of the victim on the essential features of the occurrence is reliable and consistent. It is duly



corroborated by the medical findings. The peripheral contradictions are not material and stand explained. The investigative shortcomings are not of such a nature as to create reasonable doubt when the testimony of the prosecutrix and the medical evidence inspire confidence. The evidence is sufficient to sustain the conviction.

Operative Order

(i) In view of the findings recorded on the points for determination, the appeal is dismissed.

(ii) The judgment of conviction dated 28.09.2018 and the order of sentence dated 04.10.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (POCSO Act), Darbhanga in G.R. Case No. 14 of 2017 (arising out of Darbhanga Mahila P.S. Case No. 35 of 2017) are affirmed.

(iii) The appellant Bambam Mukhiya shall serve out the sentence of rigorous imprisonment for the remainder of his natural life under Section 376(2)(i) of the Indian Penal Code together with the fine of ₹30,000/-, and in default of payment of fine to undergo simple imprisonment for six months, as awarded by the trial court. The decision of the trial court not to award a separate sentence under Section 6 of the POCSO Act is also affirmed.



(iv) The direction of the trial court for payment of compensation of ₹6,00,000/- (Rupees Six Lakh only) to the victim under the Bihar Victim Compensation Scheme is maintained. The amount, if not already paid, shall be paid to the victim within thirty days from the date of receipt of a copy of this judgment. The District Legal Services Authority, Darbhanga, shall ensure compliance and file a report before the trial court.

(v) Before parting with the case, this Court is constrained to observe that the investigation conducted by PW5, the then Station House Officer of Mahila Police Station, Darbhanga, leaves much to be desired. Several elementary and necessary steps (examination of independent witnesses, medical examination of the accused, collection and dispatch of vital forensic material, preparation of a site plan, etc.) were omitted. Although these lapses have not ultimately prejudiced the prosecution case, they do reflect a perfunctory approach in the investigation of a serious offence involving the sexual assault of a minor child. The Senior Superintendent of Police, Darbhanga, is directed to examine the matter and to take appropriate departmental action against the concerned officer in accordance with law, after affording her a reasonable



opportunity of hearing. A compliance report shall be submitted to this Court within three months.

(vi) Let a copy of this judgment be transmitted to the trial court for information and necessary compliance.

(vii) The appeal is, accordingly, dismissed.

(Bibek Chaudhuri, J)

Rana Vikram Singh, J: I agree.

(Rana Vikram Singh, J)

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