

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.188 of 2023**

Arising Out of PS. Case No.-45 Year-2021 Thana- MAHILA P.S. District- Muzaffarpur

Suraj Kumar S/o Harkhu Sahni R/v- Bedauliya, P.S.- Mushahari, District-
Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant	:	Mr. Manoj Kumar No. 1, Amicus Curiae
For the State	:	Mr. Dilip Kumar Sinha, Addl. PP
For the Informant	:	Ms. Bela Singh, Advocate Mr. Rajeev Ranjan, Advocate

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

Date : 26-09-2025

We have heard Mr. Manoj Kumar No. 1, learned Amicus Curiae and Ms. Bela Singh, learned counsel for the informant. The State is represented by Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor.

2. The present appeal arises out of the judgment of conviction dated 13.10.2022 (hereinafter referred to as the '*impugned judgment*') and the order of sentence dated 14.10.2022 (in short referred to as the '*impugned order*') passed by the learned 7th Additional Sessions Judge-cum-Spl. Judge, POCSO(W), Muzaffarpur in connection with Mahila P.S. Case No. 45 of 2021/G.R. No. 54 of 2021.



3. By the impugned judgment the appellant/Suraj Kumar and co-accused Jyoti Kumar have been convicted for the offences under Sections 341, 342, 323, 506/34 and 376(D) of the Indian Penal Code (in short referred to as the 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short referred to as the 'POCSO Act') and have been sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs. 50,000/- and in default of payment of fine to further undergo imprisonment of two years for the offences under Sections 376(D) IPC as well as under Section 6 of the POCSO Act; to undergo imprisonment for a term of one month and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo imprisonment of one week for the offence under Section 341 of the IPC; to undergo rigorous imprisonment of one year and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo imprisonment for one month for the offence under Section 342 of the IPC; to undergo rigorous imprisonment of one year and to pay a fine of Rs. 1000/- and in default of payment of fine, to further undergo imprisonment of one month for the offence under Section 323 of the IPC and to undergo rigorous imprisonment for a term of two years and to pay a fine of Rs.



1000/- and in default of payment of fine to further undergo imprisonment of three months for the offence under Section 506 of the IPC. All the sentences have been directed to run concurrently.

Prosecution Case:

4. The prosecution case is based on the written application dated 23.04.2021 given by the informant/victim (P.W. 1). In her written report she has stated that on 07.04.2021 at about 11:30 P.M. in the night while she went out of her house to attend the natural call, accused Jyoti Kumar and Suraj Kumar (appellant) forcibly made her to sit on the motorcycle and shutting her mouth took her towards Taraura Dam where both accused raped her one by one. Jyoti Kumar has also made video of the incident for which victim forbade him on which both of them slapped her. Victim also tried to raise alarm but on account of the place being isolated it was heard by none. Both the accused persons also threatened her to kill her father in case of disclosure of the incident to anyone. It is also alleged that the recorded video of the incident was made viral by the accused Jyoti Kumar.

5. On the basis of the aforesaid written application, Mahila P.S. Case No. 45 of 2021 dated 23.04.2021 was registered for the offences punishable under Sections 341, 342,



376(D), 509, 506, 323/34 of the IPC and Sections 4/6 of the POCSO Act and Sections 3(2)(va) of the SC/ST Act and Section 67(A) of the I.T. Act.

6. After completion of investigation of the case, the Investigating Officer (the I.O.) submitted Chargesheet being Charge Sheet No. 56 of 2021 dated 17.06.2021 under Sections 341, 342, 376(D), 509, 506 and 323/34 of the IPC and Sections 4/6 of the POCSO Act and Sections 3(2)(va) of the SC/ST Act.

7. The cognizance of the offences under Sections 341, 342, 376(D), 323/34, 506/34 of the IPC and Section 4/6 of the POCSO Act and Section 14(2) of the POCSO Act was taken on 09.07.2021 against appellant Suraj Kumar.

8. Charges were read over and explained to the appellants Suraj Kumar in Hindi to which he pleaded not guilty and claimed to be tried.

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

List of Prosecution Witnesses:

P.W. 1	Victim
P.W. 2	Bina Devi
P.W. 3	Ram Garib Das
P.W. 4	Nawal Kishore Das @ Kishori Das



P.W. 5	Ramnath Das
P.W. 6	Ramashankar Das
P.W. 7	Dr. Priya Priyam
P.W. 8	S.I. Sarita Kumari

List of Exhibits on behalf of the Prosecution:

Ext. P-1	Signature of the victim on written application
Ext. P-2	Signature of Ramgarib Das on seizure memo
Ext. P-3	Medical injury report of the victim
Ext. P-4	Supplementary medical report
Ext. P-3/P.W.-8	Endorsement of SHO on written application
Ext. P-4/P.W.-8	Signature of SHO on FIR
Ext. P-5/P.W.-8	Signature of I.O. on seizure memo of jeggings
Ext. P-6/P.W.-8	Signature of I.O. on seizure memo of pen-drive
Ext. P-7/P.W.-8	Photo-copy of mark-sheet of victim regarding age proof
Ext. P-8/P.W.-8	Charge-sheet
Ext. P-9	Statement of victim recorded u/s 164 Cr.P.C.
Ext. P-10	FSL report.

List of Defence Witnesses:

D.W. 1	Anandi Devi
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10. Thereafter, the statement of the appellant was recorded under Section 313 of the Cr. P.C. The appellant denied all



the allegations and took a plea that he is innocent.

Findings of the Learned Trial Court:

11. The learned trial court after examining all the evidences available on the record found that in a case of sexual assault, it is not easy for a girl to disclose immediately to anybody. Therefore not reporting the matter to the police immediately alone cannot discredit the testimony of the girl which is otherwise cogent and trustworthy. The victim has also supported the incident in her statement recorded under Section 164 Cr.P.C. Learned trial court has appreciated the fact that not finding spermatozoa on the body of the victim is just because the life of spermatozoa is generally for 72 hours which has already elapsed in this case at the time of her medical examination. According to the mark-sheet of the victim she was found minor on the date of occurrence just one month short to the age of eighteen years.

12. The learned trial court has found that the defence has not been able to shift the burden and the prosecution has successfully proved the fundamental facts of this case establishing the link between the offence committed and the accused committing the offence.

13. The trial court on the FSL report, with respect of the leggings of the victim in which no blood or semen have been detected, held that the cloth of the victim was seized after gap of number of days from the date of occurrence therefore it is quite



natural that the blood or semen could not be detected on the seized cloth. It ultimately concluded that the prosecution has been able to prove the facts of this case of committing the offence of penetrative sexual assault upon the minor victim. When the victim resisted for making video of the incident she was threatened by the accused for not disclosing the incident to anybody otherwise her father will be killed and that is why she did not reveal about the incident to her family members until the video was made viral. The prosecution has also proved the facts constituting the offences under Sections 323 and 506 of the IPC. The charge under Section 14(2) of the POCSO Act could not be proved by the prosecution for the reason of non-compliance of mandatory certificate under Sections 65(B) of the Indian Evidence Act. The presumption under Sections 29 and 30 does not come in the aid of prosecution in this regard as well.

Submission on behalf of the appellants:

14. The learned counsel for the appellant submits that the present case was lodged after 16 days of delay without any explanation as the date of occurrence was 07.04.2021 whereas the written report was filed on 23.04.2021.

15. It has been further submitted that no independent witness has been examined and all the prosecution witnesses are the family members of the victim and who are all interested witnesses. It has next been submitted that there is severe infirmity



and contradiction in the evidence of the prosecution which creates serious doubt on the prosecution version and such facts have not been taken into account by the learned Trial Court.

16. The learned counsel for the appellant has pointed out that there is serious contradiction in between the statement of P.W. 1 and her mother (P.W. 2) as according to P.W. 1 she along with her mother had gone to the Mahila Police Station and submitted her written report upon which the FIR was registered but her mother (P.W. 2) has stated that she along with the victim P.W. 1 went to Mushahari Police Station but they were subsequently referred to the Mahila Police Station, however this contradiction was not taken note of by the learned Trial Court.

17. The learned counsel has pointed out another infirmity with regard to the place of occurrence as P.W. 1 in her deposition has categorically stated that she had not gone to the place of occurrence after lodging of the FIR but according to P.W. 2 the victim had accompanied the police to the place of occurrence.

18. The learned counsel for the appellant has emphasized upon the fact that no site plan of the place of occurrence was prepared, as admitted by the I.O. (P.W. 8) and the clothes worn by the victim at the time of occurrence was stated to have been washed except the *leggings* which was seized for



further examination. It is submitted that the victim is not a sterling witness and conviction on the basis of her sole testimony would be a miscarriage of justice.

19. The learned counsel for the appellant has further submitted that even the medical examination does not support the factum of rape by two persons, as alleged by the victim/informant and the Doctor (P.W. 7) has stated that she did not find any injury on the private part of the victim and there was no mark of violence on the private part of the victim. He points out that even in the FSL report in respect to the *leggings* of the victim neither any blood nor semen was detected on the said clothes during forensic examination.

20. The learned counsel for the appellant has submitted that the father of the victim P.W. 3 in his deposition has stated that the date of birth of the victim is 24.10.2002 and taking the same into consideration the age of the victim would be more than 18 years at the time of the so called occurrence. The learned counsel for the appellant, lastly, has submitted that without considering the aforesaid facts and circumstances and the evidence which has come on record the learned Trial Court merely on the basis of conjectures and hypothesis has convicted the appellant which is not tenable in law and thus fit to be set aside.



Submissions on behalf of the informant:

21. Ms. Bela Singh, learned counsel for the informant has opposed the submissions made by the learned counsel for the appellant primarily on the fact that all the witnesses examined on behalf of the prosecution have been able to prove the factum of the incident with the help of both oral and documentary evidence.

22. The learned counsel for the informant has submitted that all the prosecution witnesses including the victim have supported the case of the prosecution and there are minor contradictions which cannot be taken into account as the same is bound to occur because of the nature of offence committed against the minor victim. She has further submitted that the family members of the victim through their deposition have corroborated the prosecution story without any infirmity in the same and therefore the conviction cannot be challenged on such ground. She has next submitted that as far as the submissions made on behalf of the appellant with regard to delay in lodging of the FIR is concerned, the same is immaterial as it has been specifically stated by the prosecutrix that the two accused persons were threatening of dire consequences and also had threatened to make the video viral. It was because of such threatening that the victim could not gather strength to report the incident to her immediate family



members within time and therefore the delay in lodging of the FIR.

23. Ms. Bela Singh, learned counsel for the informant has submitted that from the evidence on record the age of the victim girl has been found to be within 18 years and therefore there is no quarrel with regard to her being a minor and therefore the conviction under the provisions of POCSO Act was justified. She has lastly submitted that the present case involves two sequence of offences committed by the appellant i.e. firstly they committed rape upon the victim and recorded the same on mobile phone and thereafter made the said video viral. She has thus submitted that in view of such incriminating circumstances the appellant does not deserve to be acquitted and there is no infirmity in the impugned judgment and order of sentence and the appeal is fit to be dismissed.

Submissions on behalf of the State:

24. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing for the State has submitted that the prosecution has been able to prove the case beyond all reasonable doubt by leading oral and documentary evidences. He has submitted that the prosecution witnesses were consistent in their examination and they have all proved the factum of the incident and also the fact that it was the appellant and one Jyoti Kumar who



were involved in committing the said crime. He has pointed out that even the Doctor who was examined as P.W. 7 has found the hymen ruptured and therefore the possibility of sexual assault is being proved from the medical examination. He has further pointed towards the examination of the I.O. (P.W. 8) who has conducted the investigation and from her evidence it could be gathered that the place of occurrence as well as the factum of the occurrence has been proved and therefore the prosecution has been able to establish that the offence was committed by the appellant and one another. He has lastly submitted that in view of such consistent and impeccable evidence there is no illegality in the impugned judgment and the same may be sustained.

Findings:

25. Before we proceed, it would be apt to refer to various deposition of the prosecution witnesses in order to find out whether the prosecution through its oral as well as documentary evidence has been able to prove the case beyond all reasonable doubt.

26. In the present case, the prosecution has examined altogether eight witnesses and have also proved ten documents as evidence in order to establish their case. P.W. 1 is the victim/prosecutrix of the present case who has stated in her deposition that her present age was 18 years and the incident was



of 07.04.2021 at 11:30 P.M. in the night. She has stated that while she was returning from the fields after easing out two persons approached her on a motorcycle and asked her as to where she was coming from and she even replied to them and thereafter the two persons covered her mouth and made her to sit on the motorcycle and tied her up. She has further stated that when she reached there though she tried to run away but she could not and the two accused namely Jyoti Kumar and Suraj Kumar took turns committed rape upon her and Jyoti Kumar recorded a video of the incident. She has further stated that when she asked him not to make a video two accused scolded her and slapped her and thereafter they made the video viral. P.W. 1 has identified the signature on the written report. During her cross-examination she has categorically stated that she had not submitted any proof of her birth either before the Court or before the police. The victim has further stated that she came back after the incident and slept with her sister. She has specifically stated that she had gone to attend the call of nature to a place which was next to her house across the road. She further stated that she had gone near the bridge where there are no houses. P.W. 1 has specifically stated that she did not tell her mother about the incident in fact, she did not tell any of the family members about the said incident. She has stated that she did not go for any treatment after the incident. She has admitted that her mother had



asked about the incident after 10-12 days of the occurrence. She has stated that she had lodged the case before the police on 23.04.2021 in the evening and her mother, father and uncle were along with her. She has stated that one of the friends of her uncle had assisted her in writing the report, whose name she did not know. P.W. 1 has stated that the two persons who had committed rape were around 25-30 years of age and looked like they were married however she has stated that she did not know them prior to the incident and only when the accused persons were apprehended then she could know their names and the name of their village. The victim has stated that she could not disclose the number of motorcycle on which she was taken away. She has also stated that after giving the written report to the police, the police had not taken her to the place of occurrence. She has stated that the clothes which she was wearing at the time of occurrence was given to the police by her and the police had taken away those clothes. She has stated that she was not the only one in the video which was recorded. The victim has shown ignorance to the fact that Suraj (appellant) was arrested while he was undergoing treatment at the hospital.

27. P.W. 2 is the mother of the victim and she has in her examination-in-chief stated that the incident was of 07.04.2021 and she was at her home and her daughter had gone to ease herself



outside the house and while she was returning two boys on a motorcycle took her at an isolated place and when they reached there one of the boys went to ease himself, then her daughter tried to flee however, the appellant/Suraj Kumar caught hold of her and assaulted her and thereafter both the accused persons committed rape upon her and even recorded a video and threatened that they would kill her father. P.W. 2 has further deposed that when the video went viral then on 23.04.2021 this fact came to the knowledge of her brother-in-law (Devar) and the news had spread to the entire village. She has stated that her brother-in-law had informed that the entire village is having the said video which has gone viral and thereafter when she asked her daughter about it she told about the incident and also stated that they have threatened to kill her father and brother therefore she did not disclose the same to her. P.W. 2 has specifically stated that they had gone to Mushahari Police Station for lodging the FIR however they did not register the same and asked them to go to the Mahila Police Station and thereafter the present case was lodged.

28. P.W. 2 has stated that she does not recognize the two accused persons and it was only when the video went viral that she came to know about the two persons and their name being Suraj Kumar and Jyoti Kumar. During the course of cross-examination this witness has stated that she is not literate and has



stated that the year of birth of her daughter was 2003. She has stated that it was her brother-in-law/Ramnath Das who had informed her about the incident when the video went viral however she did not know Suraj Kumar/appellant from before. She has further stated that she had gone to the place of occurrence on the same night with Mahila Police Station at around 07:00 P.M. and her daughter was also along with her. She has stated that the distance between her house and the place of occurrence was of 5 -10 minutes. She has further stated that the place where her daughter had gone to attend the call of nature, there is a house in the west, road in the north and south and field in the east. While house of Shivnandan Pandit is on the west.

29. P.W. 3 is the father of the victim girl and he has also supported the date and the factum of the prosecution story as narrated by the victim to him. He has stated that police had come and taken the clothes of his daughter and prepared the seizure list on which he had signed along with one Pramod Kumar. He has stated that Pramod Kumar, the witness of the seizure list is his neighbour in the village. He has stated that he had seen Suraj Kumar several times in the village and had not heard any complaint against him. In paragraph -7 of his deposition he has categorically stated that the date of birth of his daughter is 24.10.2002 and has said that her birth certificate is with him. He



has stated that he came to know about the video from his brother Ramashankar and he had not seen the video of said incident. He subsequently states that whatever he has stated in the Court was told to him by his daughter and she had told him about the same when he had inquired from her after seeing the video. He in his cross-examination has categorically stated that the place where his daughter had gone to ease herself was around 200 meters from his house and there is no house situated around it and has denied the suggestion that there is a house of one Shvidhari Thakur near the place of occurrence.

30. P.W. 4 Nawal Kishore Das @ Kishori Das is the grand-father of the victim and he has stated that when he saw the viral video then he inquired from his grand-daughter then she informed that the two accused Jyoti Kumar and Suraj Kumar had committed wrong with her and that Jyoti Kumar had recorded the video and thereafter made the same viral and they had also threatened her grand-daughter that if she would disclose about the incident they would kill her father. In his cross-examination, P.W. 4 has stated that he does not know the date of birth of his grand-daughter. He has further stated that the incident is of 07.04.2021, while he came to know about the incident from his grand-daughter on 17.04.2021. He has stated that he came to know about the name of the appellant/Suraj Kumar during chat at the tea stall. He has



stated that he had not seen the video and had heard about it.

31. P.W. 5 is Ramnath Das, who is the uncle of the victim and he has stated that he came to know about the incident when the video went viral and he has also reiterated the incident as told to him by the victim. He has stated that at the time of incident the age of his niece was below 18 years. However, in his cross-examination he has stated that he could not tell the exact date of birth of his niece. This witness has stated that his statement was recorded by the police earlier also at Mushahari Police Station. He has stated that after looking at the viral video he had verified it from his niece. He has stated that he had seen the video on the mobile phone of one co-villager namely Ramashankar. He had further stated that Ramashankar is a witness in this case and he has denied the suggestion that Ramashankar is not a witness in the present case. In paragraph – 15 he has stated that the place where his niece had gone to attend the call of nature has fields on the east and west side while there is road on the north and south side.

32. P.W. 6 Rama Shankar in his examination-in-chief has stated that when he saw the video he told to the guardians of the victim and when they inquired she informed that it was Jyoti Kumar and Suraj Kumar who had committed rape upon her and Jyoti Kumar had recorded a video and thereafter he made the said video viral. In his cross-examination he has stated that the victim



is his niece and his house is separated from that of the victim which is situated side by side. He has further stated that he had received the video on his mobile phone sent by one Bittu Kumar, though he does not remember the date on which the said video was sent to him. He has stated that he had inquired from Bittu from where he has got the said video he has stated that the said video was shown to him by Jyoti Kumar. He has stated that the police had recorded his statement at his doors on 23.04.2021 and he had put his signature on the same and he had signed it in Hindi. He has stated that police had taken him to the place of occurrence and along with the mother and father of the victim. He has stated the boundary of the place of occurrence in paragraph 18 of his deposition and has described the boundary as Ganga Pul in the east, Dhiranpatti in west, Mushahari in north and Bhataulia and Taraura in north.

33. The Doctor who had examined the victim at the Sadar Hospital namely Dr. Priya Priyam (P.W. 7) has stated that during the examination the victim had not complained of any pain during walking and no injury was found on the face and any part of the body. She has further deposed that no injury external or internal was found on the valva and vagina and there was no pain reported. She has further stated that the vaginal swab was taken and the same was sent for pathological examination and a



supplementary report was also prepared taking the pathological report into account wherein no spermatozoa was found. During her cross-examination P.W. 7 has categorically accepted that no injury was found on the private part of the victim and there was no mark of violence was found over the body of the victim.

34. The last prosecution witness, Sarita Kumar, I.O. (P.W. 8) of the case in her deposition has stated that she had received the written report after the same was forwarded by the S.H.O. and the same was proved by her and was marked as Ext. P-3/P.W. 8. She has also identified the signature of the S.H.O. on the formal FIR which was marked as Ext. P-4/P.W. 8 and thereafter she had taken the charge of the investigation of the present case. P.W. 8 has stated that she had visited the house of the victim where the family of the victim had given the *Jeggings* of the victim and a seizure list was prepared which was also identified by her and was marked as Ext. P-5/P.W. 8. She had further stated that the family of the victim had also given her pen-drive which was marked as Ext. P-6/P.W. 8. She has stated that she had recorded the statement of the mother, father and grand-father of the victim. She has further deposed that one mark-sheet issued by the Bihar School Examination Board relating to the age of the victim was given by the family of the victim and the same was identified and exhibited as Ext. P-7/P.W. 8. P.W. 8 during her cross-examination has



accepted that she had not prepared any site plan of the place of occurrence. She has stated that she had not recorded the statement of witness Shobha Singh and Shivnandan Pandit who were near the boundary of the first occurrence while she had also not recorded the statement of Shivdhari Pandit a resident of the second place of occurrence. She has also stated that she did not seize the motorcycle. She has categorically stated that she had demanded for all the clothes of the victim which she was wearing at the time of occurrence however barring the *jeggings* no other clothes was given and she was told that all the other clothes were washed and dried. She has stated in paragraph-20 that she had not gone to the house of the accused and in fact she had arrested the accused from Mithila Nursing Home where he was under treatment.

35. The defence has also examined one witness namely Anandi Devi who happens to be the mother of the appellant/Suraj Kumar. She in her examination-in-chief has stated that Suraj was not caught by the police rather he was called by Ramashankar, Kishori Das and Ramnath Patar at an isolated place where even she was also called. She has stated that they both have gone to the said place where they demanded money from them in order to release Suraj thereafter the said persons assaulted her son and took them to the home and locked them inside. She has further stated that the ladies of the house let her go thereafter she went to



the police station and thereafter police came and they rescued her son from the house and took him to the police station. Thereafter her son was taken to the hospital for treatment.

36. We have considered the deposition of the prosecution witnesses from which it could be gathered that with regard to the place of occurrence there is severe contradiction between the statement of the prosecution witnesses which leads to adverse inference as it would be clear that no person, who all are family members of the victim, has come out with a clear picture of the actual place of occurrence. We have observed that P.W. 1 had given a different boundaries of the place of occurrence in comparison to what has been stated by the other witnesses who have stated that they had also gone to the place of occurrence along with the police.

37. We have also observed with regard to the manner of disclosure of the said incident it is also doubtful as P.W. 1 on the one hand says that her mother had asked her about the incident after 10 -12 days of the incident while P.W. 2 has stated in her examination-in-chief that when the video went viral and her brother-in-law saw the same on 23.04.2021 then she came to know about the same. In complete contrast to the aforesaid statements the grand-father of the victim stated in his cross-examination that he came to know about the incident from his grand-daughter on



17.04.2021.

38. As far as the age of the victim is concerned, we have come across three different versions of the same during the perusal of the records. We have noted that the mark-sheet issued by the Bihar School Examination Board (Ext. P-7) was brought on record wherein the date of birth of the victim has been entered as 09.05.2003 which would go on to show that the victim was 17 years 11 months and 28 days. While the father of the victim in his deposition has stated that the date of birth of his daughter is 24.10.2002 and he also has the birth certificate with him.

39. In view of the aforesaid evidence and from perusal of the various statements of the prosecution witnesses it would be clear that all the private witnesses are related witnesses of the victim and they have come out with various description of the incident, the manner of disclosure of the incident and the explanation of the delay in lodging the FIR.

40. We have observed that the video which is said to have gone viral was not proved before the learned court below, and the same has also not been taken into account by the learned Trial Court because of the fact that no certificate as required under Section 65(B) of the Indian Evidence Act has been placed on record nor the prosecution has proved any such certificate. In absence of the video what this Court is left with is the oral



evidence of the prosecution witnesses and barring the victim all other witnesses are hearsay and therefore in order to establish the rule of sterling witness we need to examine the evidence of the victim vis-a-vis her statement given in the written report as well as her statement given under Section 164 Cr.P.C.

41. As discussed earlier, in the written report P.W. 1 has stated that on 07.04.2021 while she had gone to the nearby field to attend the call of nature at the field, the two accused persons namely Suraj Kumar and Jyoti Kumar made her sit on a red coloured motorcycle and upon closing her mouth they took her near Taraura Dam of her village and thereafter committed rape upon her taking turns. While the prosecutrix/P.W. 1 has further alleged that Jyoti Kumar recorded the video of the said incident and when she forbade him to make such video they slapped her. She has stated that though she was shouting at the time of occurrence but the place being an isolated one, nobody heard her voice. She had further alleged that both the accused had threatened her and warned her from disclosing the incident to anybody else they would kill her father. In the last she had stated that Jyoti Kumar had made the recorded video viral.

42. While in her 164 Cr. P.C. statement the prosecutrix/victim has stated that she had gone to attend the call of nature near her house at 11:30 P.M., two boys namely Jyoti and



Suraj came on a red motorcycle and inquired from her as to from where she was coming and thereafter they closed her mouth and took her on their motorcycle near the dam and started forcing themselves upon her. She has stated that first Jyoti committed rape and thereafter Suraj committed rape upon her and while Suraj was committing rape, Jyoti had recorded a video of the same and even though she opposed the recording of the video but they continued to record the same and even made the same viral. She has stated that she had not disclose about the incident as the accused had threatened that they would kill her father.

43. In the course of trial the prosecutrix/victim/P.W. 1 has stated that she had gone to attend the call of nature near her house across the road and further stated that she had gone near the bridge. P.W. 1 has given the boundary of the place of occurrence as Dam on east and west while main road on the north and passage in the south which is not the description of the place of occurrence as given by the other persons including the fact that the I.O. in her cross-examination has accepted that she had not even prepared the map of the place of occurrence. PW-1 has stated in paragraph 16 of her cross-examination that on the date of occurrence, it was a dark night and not a moonlit night.

44. From the perusal of the aforesaid discrepancies, we have noted that the own family members of the victim have



given different versions with regard to the manner of occurrence and the mode of disclosure including the date on which they came to know about the incident. Even the cause of delay of lodging of the FIR is not being answered because the victim has stated that she did not disclose about the incident because of the threaten given by the accused persons of killing her father but at the time of lodging of the FIR and the various depositions of the prosecution witnesses it would appear that they have stated that they decided to lodge the case only when they came to know that the video has become viral, which in turn demolishes the earlier explanation given for lodging the FIR with a delay of 16 days.

45. At this juncture, we are reminded of the judgment rendered by the Hon'ble the Supreme Court in the case of *Raju and Others vs. State of Madhya Pradesh* reported in (2008) 15 SCC133, wherein the Supreme Court on the testimony of the prosecutrix and its evidentiary value had held that though the testimony of the victim is believable at par with that of an injured witness but her testimony cannot always be presumed to be gospel truth. It was observed that possibility of exaggeration or embellishment or false implication cannot be ruled out. In the said case the Hon'ble Supreme Court has observed in paragraphs – 10 and 11 which reads as hereunder:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a



prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

46. We have also observed that the clothes worn by the victim at the time of incident was washed and dried while only one *leggings* was handed over to the police which was sent for chemical examination and as per the FSL report no blood or semen was found on the same. Even the medical evidence does not support the factum of rape committed by two persons upon the victim as suggested by the Doctor/P.W. 7.

47. It is well settled that in rape cases the factum can



solely be based on the evidence of the victim, provided such evidence inspires confidence in the mind of the Court. In the present case, we have seen that at one hand the victim says that she was taken on a motorcycle however she did not raise any hulla at that relevant time and states that the accused had closed her mouth. However, she has categorically stated that while one of the accused was committing rape, the other was recording a video of the same but still there is no reference to any protest being raised by her during such occurrence which creates a semblance of doubt.

48. We have already observed that the medical evidence does not support the allegations levelled by the prosecutrix, no blood or semen was found on the clothes of the victim coupled with the fact that there was a delay of 16 days in lodging of the FIR. Such discrepancy raises serious doubt about genuineness of the prosecution case.

49. From the discussions made hereinabove, We have found the age of the girl was 17 years 11 months and 28 days to be exact on the date of occurrence *i.e.* merely one month two days short from 18 years of age. We have also taken note of the fact that the incident was reported to the police after 16 days of the occurrence and the cause of delay was stated to be the threat given by the accused persons, including the appellant. However, from the evidence of the prosecutrix as well as the other witnesses it



would be evident that the occasion to lodge the FIR arose only when the video had gone viral as has been unanimously stated by all the prosecution witnesses who were members of the family of the victim. The said video has not been proved. The fact that the prosecutrix is going to a lonely place to defecate near road side at dead of night i.e. 11:30 PM, then she comes back and does not say anything to her family member and keeps quite, has made this Court to take a possible view that the prosecutrix is suppressing some material information as to her relationship with the accused and her explanation for the delay in lodging of FIR is a mere pretext not acceptable to this Court.

This Court further finds that :-

(i) the victim's description of the place of occurrence as per the three versions of her statement made in the written report, 164 Cr.P.C. statement as well as her testimony during the course of trial vis-a-vis the description of the place of occurrence by I.O. does not show it to be an isolated place;

(ii) the manner of knowledge of the incident being stated by all the prosecution witnesses which has varied from mouth to mouth further doubts the story of the prosecution as P.W.- 2, grand-father has stated that he came to know about the incident after one hour of the incident from the victim, who was crying while rest witnesses have stated they came to know on



23.04.2021;

(iii) the non-production of the pen-drive along with the certificate by the person who had forwarded the same to the uncle of the victim raises a question mark over the prosecution story and lastly;

(iv) the non-examination of the boy namely Bittu who had forwarded the video on to the mobile phone of the uncle of the victim in order to verify the veracity of such video, which though was never proved during the course of trial.

50. From the questions framed herein above, this Court is constrained to look at the present case from an angle where a consented sexual activity between the victim of the present case could not be ruled out. We have seen that the prosecutrix was of 17 years, 10 months and 28 days old therefore, the question is whether merely because she had not touched the threshold age of 18 years and merely 32 days away from attaining the majority as per law whether such an act would attract the offence under the POCSO Act and would it amount an offence of rape as contemplated under Section 375 of the IPC.

51. We are constrained to observe that the manner in which the victim has stated about the incident only after the video going viral after 16 days of the alleged occurrence and when confronted by her parents that the matter was reported giving rise



to a presumption that “had the matter not gone viral, the same would not have been reported to the police”.

52. On close scrutiny of the record, it is evident that the deposition of the prosecutrix and her relatives i.e. mother, father and uncle are riddled with material contradictions. The written report, the statement under Section 164 Cr.P.C. and the testimony during trial contains inconsistencies regarding the occurrence, the identity of the exact place of occurrence and even the identity that she did not know the two boys and on the other during her deposition has stated their names. We haste to add at this stage that during her cross-examination the victim/P.W. 1 at one stage even stated that she knows both the accused Jyoti Kumar and Suraj Kumar.

53. We have noted the fact that the witnesses, being closely related to the victim, are interested witnesses. The statements vary not only with regard to the manner of commission of the offence but also with regard to the place of occurrence. No independent witnesses have come forward to support the prosecution case and the testimony of the victim does not inspire complete confidence so as to qualifying as evidence of sterling quality.

54. A significant aspect of the prosecution case was the video of the victim with Suraj Kumar purportedly going viral.



However, the prosecution has failed to produce any forensic report, original device or any technical expert to establish the genuineness of the content of the video. Neither the person who had seen the video first and had forwarded the same to the uncle of the victim was examined nor the said video was proved during the course of trial. In absence of such evidence, the alleged video cannot corroborate the testimony of the victim or got of to supplement the prosecution evidence.

55. It is a settled principle of law that if evidence is filled with contradictions and/or omissions and is not supported by independent or cogent corroborative material then the benefit of doubt must go to the accused.

56. The aforesaid fact reminds us of the judgment rendered by the Hon'ble Supreme Court in the case of ***Santosh Prasad @ Santosh Kumar vs. State of Bihar*** reported in (2020) 3 SCC 443, wherein the Apex Court in paragraph '5.4.1' has observed thus:-

"5.4.1. In Raju, it is observed and held by this Court in paras 11 and 12 as under: (SCC p. 141)

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused



must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an



injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

57. In the present case, as we have already observed, material contradictions among prosecution witnesses and the non-production of the alleged viral video make it difficult to convict the appellant beyond all reasonable doubt. The evidence which has been led by the prosecution does not stand to prove as contemplated under Criminal Jurisprudence and therefore possibility of false implication cannot be ruled out. As in the present case, we have seen that evidences contain material contradictions and the place of the occurrence being not proved without an iota of doubt. The circumstances which has been alleged by the prosecution thus remains in doubt.

58. In view of the aforesaid discussions and taking into account the various judicial pronouncements, we find that the conviction of the appellant cannot be upheld with the kind of evidence which is inconclusive and accordingly the conviction and sentence of the appellant cannot be sustained and is, therefore, set aside giving him the benefit of doubt.



59. The appellant is in incarceration in connection with this case, so he will be released forthwith if not wanted in any other case.

60. This appeal is allowed.

61. Let a copy of this judgment together with the trial court's records be sent down to the learned trial court.

62. Before we part with the appeal, we must appreciate the assistance provided by learned Amicus Curiae Mr. Manoj Kumar No. 1 on behalf of the appellant. Secretary, Patna High Court Legal Services committee is directed to pay Rs. 15000/- to the learned Amicus Curiae towards honorarium.

(Sourendra Pandey, J)

Rajeev Ranjan Prasad, J:

(Rajeev Ranjan Prasad, J)

krishna/-

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