

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.632 of 2023**

Arising Out of PS. Case No.-361 Year-2018 Thana- SABAUR District- Bhagalpur

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Md Quarban Son Of Md. Badruddin @ Baddo R/O Village- Soma Pranpur,  
P.S- Bakhri, Distt.- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar
2. [REDACTED] C/O Pramod Harijan @ Parmanand Harijan R/O  
Vill./Mauza- Arya Tola, P.S.- Sabour, Dist.- Bhagalpur.

... .. Respondent/s

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**Appearance :**

|                          |   |                                |
|--------------------------|---|--------------------------------|
| For the Appellant        | : | Md. Hussamuddin Azad, Advocate |
| For the State            | : | Mr. Sujit Kumar Singh, APP     |
| For the Respondent No.2: | : | Md. Najmul Hodda, Advocate     |

=====

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**And**  
**HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA**  
**CAV JUDGMENT**  
**(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)**

**Date : 06-04-2026**

Heard Md. Hussamuddin Azad, learned counsel for  
the appellant, Md. Najmul Hodda, learned counsel for the  
respondent no.2 and Mr. Sujit Kumar Singh, learned Additional  
Public Prosecutor for the State.

2. The present appeal has been preferred against the  
judgment of conviction dated 18.03.2023 and the order of sentence  
dated 22.03.2023 passed by the learned Additional District and  
Sessions Judge-VI-cum-Special Judge, POCSO Act, Bhagalpur in



POCSO Case No. 35 of 2020, arising out of Sabour P.S. Case No. 361 of 2018.

3. By the impugned judgment, the appellant has been convicted and was sentenced for the offences punishable hereunder:

| Offence<br>u/s | Sentences                                                                                                                              |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------|
| 363 IPC        | Rigorous Imprisonment for 7 years along with fine of Rs. 50,000/-; in default of payment of fine- simple imprisonment for three months |
| 341 IPC        | Simple Imprisonment for 1 year or fine of Rs. 500/-; in default of payment of fine- simple imprisonment for one week.                  |
| 323 IPC        | Simple Imprisonment for 1 year and fine of Rs. 1000/-; in default of payment of fine- simple imprisonment for fifteen days.            |
| 504 IPC        | Rigorous Imprisonment for 2 years and fine of Rs. 1,000/-; in default of payment of fine- simple imprisonment for one week.            |
| 4 POCSO<br>Act | Rigorous Imprisonment for 20 years along with fine of Rs. 1 lakh; in default of payment of fine- simple imprisonment for six months.   |

**Prosecution Case**

4. The prosecution case based on the written report of the informant unfolds with the allegation that the minor daughter (aged about 14 years) of the informant had gone for her tuition classes 15 days back, but did not return. He frantically searched



for his daughter but did not get to know of her whereabouts. When he could not find out anything even from his relatives, he gave the present written application on 28-12-2018 before police.

5. On the basis of the aforesaid written application, Sabour P.S. Case No. 361 of 2018, was registered against unknown for the offences punishable under sections 363, 365 of Indian Penal Code (hereinafter referred as IPC).

6. After investigation supplementary charge-sheet was submitted against the present appellant under sections 366A, 376, 341, 323, 504, 506, 427/34 of the IPC and section 6/8 of POCSO Act, whereafter cognizance was also taken under the aforementioned provisions by the Special Court POCSO, Bhagalpur.

7. Accordingly, the learned Trial Court on 10-08-2021, framed the charges against the appellant under sections 341, 323, 376, 366 A, 427 of IPC and 4 & 8 of POCSO Act and the same were explained to him to which he pleaded not guilty and claimed to be tried.

8. The prosecution in order to substantiate its case, has examined as many as five witnesses and exhibited some documents on its behalf. The defence however has neither examined any witness, nor exhibited any documents. List of



prosecution witnesses and exhibits are being mentioned hereunder  
in tabular form: -

**List of Prosecution Witnesses :**

| Prosecution witness no. | Name of witness  | Description           |
|-------------------------|------------------|-----------------------|
| 1                       | Kiran Kumari     | Sister of victim      |
| 2                       | Arjun Harijan    | Informant             |
| 3                       | ‘X’              | Victim                |
| 4                       | Dr. Alpana Mitra | Medical Jurist        |
| 5                       | Suryadev Paswan  | Investigating Officer |

**List of Exhibits on behalf of the prosecution :**

| Exhibit No. | Description of the Exhibit                                                                                     | Proved by/attested by |
|-------------|----------------------------------------------------------------------------------------------------------------|-----------------------|
| 1           | Signature of the Doctor on Medical Report.                                                                     | P.W.4                 |
| 2           | Signature of the S.H.O. Rajeev Kumar on the Formal First Information Report (hereinafter referred as “F.I.R.”) | P.W. 5                |
| 3           | Signature of the S.H.O. on registration of the case.                                                           | P.W.5                 |
| 4           | Registration                                                                                                   | P.W.3                 |



|   |                                                                   |       |
|---|-------------------------------------------------------------------|-------|
|   | Certificate of Victim issued by Bihar School Examination Board.   |       |
| 5 | Signature of the victim on her statement recorded u/s 164 Cr.P.C. | P.W.3 |

9. The accused/appellant was examined under section 313 of the Code Of Criminal Procedure on 03-02-2023 wherein the appellant denied all the allegations and took a plea that he is innocent.

10. The defence did not adduce any oral or documentary evidence.

**Findings of the Learned Trial Court:**

11. The learned Trial Court, at the outset, has decided the primary issue relating to the minority of the victim and has recorded the fact that while the victim’s age has been disclosed as 14 years in both the FIR and the statement of the victim under section 164 Cr.P.C, the learned Magistrate has assessed her age as 15 years. The medical report (Ext. P1/PW4) indicates her age to be between 16 to 18 years. The date of birth of the victim as per her Registration Card in the Bihar School Examination Board has been recorded as 25.01.2004 and the said Registration Card



has been exhibited as Ext. P4/PW3. Learned Trial Court has, thus reached the conclusion that the victim was undoubtedly a minor on the basis of the aforementioned document which has been regarded to be a concrete and tangible evidence, unless proved otherwise.

12. Upon discussing the deposition of the prosecution witnesses, the learned Trial Court has recorded the fact that the victim (PW3) has completely supported the occurrence and has named and identified the appellant in Court. The deposition of the informant (PW2), who happens to be the father of the victim, has also been considered as being in support of the evidence of the victim. Further, the evidence of the doctor (PW4) who had medically examined the victim and found that she was carrying a pregnancy of 9-11 week, as per the learned Trial Court, corroborated the prosecution case. The I.O. (PW5) also found the case true and submitted charge-sheet.

13. The learned Trial Court has thus concluded that the solitary evidence of the victim itself is sufficient for proving the guilt of the accused and since there are no apparent contradictions in the prosecution evidence to doubt the veracity of the same, the prosecution has been able to prove its case beyond reasonable doubts. However, while holding that the case has been proved



under sections 323, 341, 376, 504 of the IPC along with section 4 of the POCSO Act and additionally finding the case to be proved under section 363 IPC also (under which no charge was framed), the accused/appellant has been acquitted of the charges under Section 427, 506, 366 A of the IPC and Section 8 of the POCSO Act as the same was held to be not proved beyond reasonable doubt.

**Submission of the Appellant**

14. Md. Hussamuddin Azad, the learned counsel appearing on behalf of the appellant has submitted at the outset that the judgment of conviction is against the weight of evidence and has been passed upon presumption of guilt. It has been argued that the FIR itself was lodged 15 days after the victim went missing, as such, there is an inordinate delay in lodging of the FIR leading to the inference that the same has been lodged by the father of the victim (PW2) after due thought and deliberation. The statement of the victim which is the sole basis of conviction of appellant, is not worth believing as she has been changing her statement with regard to the manner of the occurrence right from her statement recorded under Section 161 and 164 Cr.P.C. (Ext.P5) to her deposition before the Trial Court in course of trial.



15. It has further been submitted by the learned counsel for the appellant that there was no proper age determination of the victim done in accordance with Section 94 of Juvenile Justice Act, 2015 as the document (Exhibit P4) is merely a Registration Card issued by the Bihar School Examination Board, Patna and a presumption of minority was drawn only on the basis of the said card which was exhibited by the victim (PW3) herself. The Investigating Officer has conducted no investigation upon the authenticity of the same nor any other witness competent to prove the contents thereof was examined, thereby making the finding of minority of the victim unsustainable. Learned counsel has also submitted that no independent witness has been examined on behalf of the prosecution either on the point of kidnapping of the victim or her recovery and the evidence of PW1 and PW2, who are the sister and father of the victim respectively, are in the nature of hearsay evidence and are of no consequence.

16. With regard to the medical evidence, the learned counsel has pointed out that in the opinion of the doctor (PW4), her age was assessed between 16 and 18 years and did not find any evidence of recent sexual assault.

17. Thus, on the basis of the aforementioned grounds, it has been submitted that the impugned judgment of conviction is fit



to be set aside as the prosecution has miserably failed to prove its case beyond reasonable doubts. Consequent to the setting aside of the impugned judgment, the impugned order of sentence shall also go.

**Submission on behalf of the Respondents**

18. The learned Counsel for the State and learned Counsel for the informant, have jointly argued before this court that the witnesses produced on behalf of the prosecution, have supported its case, including the victim (PW2) whose testimony is of credible nature, as such, the statement of the victim (PW2) itself can form the sole basis of conviction of the appellant /accused.

19. The learned counsel(s) have further argued that the victim is a minor aged about 15 to 16 years and in support of the same, a Registration Card issued by the Bihar School Examination Board, Patna, (Exhibit P4) has been brought on record and thus the presumption of Section 29 & 30 of POCSO Act would also operate against the appellant/accused, reversing the standard burden of proof.

20. The learned counsels have lastly pointed out the fact that the medical evidence indicates pregnancy of the victim and



thus it cannot be denied that the victim has not been subjected to sexual assault. It has thus been submitted that there is no illegality in the impugned judgment and order of conviction, as such, do not warrant any interference. The appeal is devoid of any merit and fit to be dismissed.

### **Analysis and Consideration**

21. Having heard learned counsel for the parties, considering the evidence led at the trial as well as upon perusal of the records, this court finds that out of five witnesses examined on behalf of the prosecution, PW4 and PW5 are the doctor (Medical Officer) and Investigating Officer respectively. While PW1, PW2 & PW3 are private witnesses, PW3 is the victim herself whereas PW1 & PW2 are her sister and father (informant) respectively. It is noticed that so far as PW1 & PW2 are concerned, their evidence is of no consequence, inasmuch as, while PW1 has only stated that she was told about occurrence by her father (PW2) and has no idea whatsoever about the perpetrator of the alleged offence, PW2 (Informant) has deposed during trial in his cross examination vide paragraph 5 that his statement was never recorded before the police. He stated that he had only given a written application and it is not in his memory as to what had been written in the said



application and that he had got it written from a ward member of a different village. Thus, it appears that for the first time, his statement has been recorded by the Trial Court and the evidentiary value of his deposition thus gets greatly diminished.

22. The case of the prosecution, as such, hinges on the solitary statement of the victim (PW3). The determinative factor or the central issue would thus be as to whether her evidence inspires complete confidence and whether she can be brought within the ambit of 'sterling witness'. Law is well settled that the witnesses can be classified into three categories: i. wholly reliable ii. wholly unreliable iii. Neither wholly reliable nor wholly unreliable. A conclusion thus has to be arrived at that as to whether the victim is a witness who can be classified as a wholly reliable witness. But if she falls in the third category, the Court has to be extremely circumspect to look for corroboration of her testimony which is the requirement of the rule of prudence, in order to reach a just and equitable decision.

23. Upon perusal of the entire records, it has come to the notice of this Court that the victim (PW3) has been giving vacillating statements at different stages of investigation and trial. It appears from the evidence of the Investigating Officer (PW5-para 11) that the victim, in her statement before police had stated



that she and her sister were all alone in the house when a girl came and knocked at the door and called her out of the house on the pretext that the victim's father was calling her but when she went outside, the appellant, who was on motorcycle, took her along forcibly. This has been recorded in paragraph 43 of case diary according to the I.O. (PW5).

24. Further, such manner of occurrence has also been disclosed in the victim's statement under Section 164 Cr.P.C. (Exhibit P5) before the Magistrate with further additional facts that the family members of the appellant coerced her to marry the appellant, whereafter she was ill-treated and confined in the house.

25. As against such statement, the victim during trial has revealed a different manner of occurrence stating that while she was going to the tuition with a neighbourhood girl, who was her friend, she took her to some place on the pretext that her teacher was calling her and when she reached the said place, she was taken away forcibly on the motorcycle by the appellant. In her further cross-examination, she has stated the name of the girl who had taken her along as Muskan and has given reason for not making any attempt to flee away as she was sitting on motorcycle and was



scared, although she has also stated that there were many shops in the vicinity and the shops were open.

26. The evidence of the victim (PW3) as discussed above needs to be analysed in the backdrop of other factors which would have a direct bearing on the case of the prosecution. It is evident from the deposition of victim read conjointly with the evidence of the I.O. (PW5) that she has been changing the narration of the manner of occurrence during investigation and trial, leading to the inference thereby that she has been giving totally inconsistent and conflicting versions of the occurrence. Further, a vital witness who is the neighbourhood girl, has been withheld by the prosecution for reasons not explained.

27. The story as revealed by the victim of making her forcibly sit on the motorcycle and being taken away to the house of the appellant, with several shops open and yet the victim not raising any alarm, renders the same highly suspicious. The victim's inability to name the teacher at the tuition also makes her story of going to the tuition doubtful. No witness from her centre for tuition or any other witness on the point of she being possibly taken away on a motorcycle by the appellant, has been brought forward by the prosecution to lend support to the story of the victim. Even the sister of the victim who has been examined as PW1, who,



according to the victim, had opened the door and was in the house along with her, has not mentioned such facts in her examination-in-chief and has rather stated in her cross-examination that no occurrence had taken place in her presence. The I.O. (PW5) has admitted in his deposition in paragraph 17 that he did not record the statement of any independent witness during the entire investigation neither did he indicate the place in the case diary from where the victim was recovered.

28. After having analysed the trend of evidence as disclosed by the victim (PW3), it would be difficult to place her in the category of 'sterling witness' whose evidence would be complete and sufficient in itself to base a conviction, as such, the evidence of victim (PW3) must undergo a strict scrutiny through the well-settled legal principles as established by law in a catena of decisions. The concept of a sterling witness has been succinctly discussed in the case of **Rai Sandeep alias Deepu Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21** and para 22 of the said judgment of the Hon'ble Apex Court is being reproduced as hereunder: -

*“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any*



*hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of*



*the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”*

29. This view was further reiterated by a three judges bench of the Hon’ble Apex Court in the case of **Nirmal Prem Kumar & Anr. Vs State represented by Inspector of Police, (2024 INSC 193) Cr. Appeal No. 1098 of 2024** disposed off on 11.03.2024.

30. The veracity of the prosecution story also needs to be viewed and tested in the backdrop of the FIR itself being lodged after an inordinate delay of 15 days. This fact compels this court to take a view that there is something more in this case that meets the eye, as no father whose daughter went missing or was kidnapped would wait for fifteen days for lodging an FIR. Further, the medical examination of the victim conducted by the medical officer (PW4) reveals that there was no physical or chemical injury on her body including her private parts and upon pathological investigation no spermatozoa was detected in the vaginal swab, however the urine pregnancy test was found positive.

31. Her age was assessed between 16 to 18 years but no evidence of any recent sexual assault has been noted by the doctor,



thereby making it abundantly clear that even the medical report (Ext. P1) does not stand in support of the contentions of the victim. Merely because the pregnancy test was found to be positive, it would not lead us to the irresistible conclusion that the entire prosecution story narrated against the appellant has an element of truth and there could be other reasons, including one of consensual sexual relation, leading to the pregnancy of the victim.

32. The issue of a consensual sexual relation brings us to the crucial question as to whether the victim was actually a minor and whether her age determination was done in consonance with the procedure laid down under Section 94 of Juvenile Justice Act, 2015. With regard to the minority of the victim, the only document which has been brought on record is the Registration Card (Exhibit- P4) issued by the Bihar School Examination Board, wherein her date of birth is recorded as 25.01.2004. This document has been proved and marked as Exhibit P4 by the victim herself and no other evidence has been adduced in support of the said document. Neither the school admission register has been produced nor the headmaster of the concerned school has been brought forward for examination in order to lend support to the case of the victim that she was a minor at the relevant period. Further, the fact that all the witnesses including the I.O., have maintained a curious



and suspicious silence on the aspect of age of the alleged rape victim, is very intriguing and raises considerable doubt in the mind of this court with regard to the minority of the victim. None of the victim's family members i.e. her sister or her father, have mentioned a word about the age of the victim in their deposition made in the Court. The victim too has remained effectively silent on the said aspect and only on recall for recording further examination-in-chief after about 10 months of her cross-examination, she produced the above-mentioned Registration Card which was marked as Exhibit-P4. Such evidence may be admissible but its evidentiary value, in the entire scenario, gets lost, especially in absence of any supporting evidence and non-examination of the maker of the said document to vouchsafe of the contents thereof. Exhibit-4 did not form part of the charge-sheet and the police papers supplied to the accused.

33. Since the determination of age has not been done in accordance with law and there is no other evidence, much less clinching, to establish the minority of the victim, this court would go on to consider the medical evidence whereby the doctor has assessed her age to be between 16 and 18 years. The Hon'ble Apex Court has in many cases taken a view that radiological examination for purpose of age determination is not very reliable and there is



always a possibility of an *error of plus and minus two years*. Reliance may be placed on the judgments of the Hon'ble Supreme Court in the case of **Ram Suresh Singh versus Prabhat Singh and Another**, reported in **(2009) 6 SCC 681** and **Om Prakash versus the State of Rajasthan and Another**, reported in **(2012) 5 SCC 201**. Further, in the case of **Rajak Mohammad Vs. H.P.**, reported in **(2018) 9 SCC 248** it has also been laid down that the age determination on the basis of radiological examination may not be accurate determination and thus sufficient margin on either side has to be allowed. Paragraph 9 of the said judgment is being quoted hereunder, for ready reference:

*“9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”*

34. In the case of Court on its **Own Motion Vs. NCT of Delhi** reported in **2024 SCC OnLine Delhi 4484**, the Hon'ble Division Bench of Delhi High Court framed two questions and answered the same as under:-

**“46.** As an upshot of our foregoing discussion, the Reference is answered as under:—



*(i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?*

*Ans : In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in 'reference range' be considered as age of the victim.*

*(ii) Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.*

*Ans : Yes. The margin of error of two years is further required to be applied."*

35. Applying such principle laid down by the Hon'ble Apex Court, the upper extremity of the age of the victim is rather raised to 20 years and thus the victim can be safely considered to be major, thereby excluding the applicability of the POCSO Act.

36. It is however made clear at this juncture that the theory of presumption under the POCSO Act would only come into play once the foundational facts are established and it is also a fact that the presumption of innocence of accused is not completely lost in POCSO cases. The degree of rebuttal by the defence in POCSO cases cannot be said to be *at par* with proving of a case by the prosecution beyond reasonable doubts. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the case of **Ramanand vs. State of U.P.** reported in **AIR 2022 Supreme**



**Court 5273.** The relevant paragraphs '99' and '101' read as under:-

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

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

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



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

[Emphasis supplied]

37. After having closely considered, analysed and scrutinised the evidence on record, we find that the determination of guilt cannot be based on vague estimations. The evidence adduced on behalf of the prosecution with regard to age of the victim was not sufficient to arrive at a finding of minority of the victim as the said evidence was totally uncorroborated and unsupported by any other evidence. Considering the age of the victim to be pivotal factor, it would not be safe or fair to place any reliance on such an uncorroborated and not sufficiently proved piece of evidence.

38. So far as the allegation of forcibly taking away of the victim and subjecting her to rape is concerned, undoubtedly conviction can be sustained on the sole testimony of the victim, provided that she can be covered within the ambit of a 'sterling



witness' inspiring confidence. In this regard, reference be made to a recent judgment of the Hon'ble Supreme Court in the case of **Birka Shiva Vs. State of Telangana** reported in **2025 SCC OnLine SC 1454** and para 18 thereof, is being quoted hereunder:-

*18. The prosecution has sought conviction of the appellant under Section 376 IPC, asserting that he had committed forcible sexual intercourse with the victim. It is trite law that a conviction for rape can be sustained solely on the testimony of the prosecutrix/victim, provided that her evidence inspires confidence in the mind of the Court and appears to be natural and truthful. However, if the version given by the prosecutrix is inconsistent, unsupported by any medical evidence, or the whole surrounding circumstances are highly improbable and believable in the case set up by the prosecutrix, the Court shall not act on the solitary evidence of the prosecutrix.*

39. A further reference is being made to the case of **Santosh Prasad Vs. State of Bihar** reported in **(2020) 3 SCC 443** wherein the Hon'ble Apex Court has clearly held that solitary version of prosecutrix in a case under Section 376 of the IPC, is not to be taken as gospel truth in absence of any other supporting or corroborative evidence. The Hon'ble Supreme Court had also considered the factum of delay in lodging of the First Information Report as also the fact that the medical report of the victim did not support the allegations made by her and considering all these facts cumulatively, the accused was acquitted giving him the benefit of doubt.

40. Similarly, in the present case in view of the fact that the victim has been giving vacillating statements with regard



to the manner of occurrence and these inconsistencies in the prosecution's narrative significantly undermines the credibility of the prosecution version and takes away the veracity of the evidence of the victim. We also take into consideration the fact that there is total want of evidence on record to corroborate the case of the victim and it appears that for the reasons best known to the prosecution, material witnesses who could have shed some light on correct facts have also been withheld.

41. The cloud of doubt upon the entire prosecution case starts from the very inception as the informant (PW2) did not lodge an FIR upto fifteen days of her daughter being allegedly kidnapped which is not a normal phenomenon. Moving further, the factum of non-raising of alarm by victim while being forcibly taken away on a motorcycle points towards a probability of a consensual act with no resistance offered at the end of the victim. The age of the appellant at the relevant period being about 19 years i.e., of the same age group as the victim, further contributes to such a probability. The evidence of both the father and the sister of the victim during trial failed to lend support to the case of the prosecution. PW1, the sister of the victim, rather stands out as she has deposed no incident happened in her presence which is absolutely contradictory to the story as propounded by the victim.



42. All these inconsistencies and conflicting versions of the prosecution case which is apparent from the deposition of the prosecution witness render the prosecution case considerably doubtful. The failure of the prosecution to prove the foundational facts with regard to age and sexual assault makes the entire edifice of the prosecution crumble against the weight of evidence.

43. In view of the aforesaid facts and circumstances and on account of all the foregoing reasons, including the consideration of several missing links and loopholes in the case of the prosecution, we come to a clear finding that the circumstances and evidence on which the conclusion of guilt has to be drawn, has not been fully established and the appellant is entitled to be extended benefit of doubt, inasmuch as, the prosecution has miserably failed to prove its case by adducing credible and trustworthy evidence.

44. Thus, in the totality of the facts and circumstances and also taking into account the overall perspective and the entire conspectus, it would be extremely unsafe to sustain the conviction of the appellant, as such, the finding of conviction recorded by the learned Trial Court is not sustainable and requires interference. Accordingly, the impugned judgment of conviction dated 18.03.2023 and the order of sentence dated 22.03.2023



passed by the learned Additional District and Sessions Judge-VI-cum-Special Judge, POCSO Act, Bhagalpur in POCSO Case No.35 of 2020, arising out of Sabour P.S. Case No.361 of 2018, is hereby set aside and the appellant is acquitted of all the charges levelled against him.

45. The appellant, who is said to be in custody, is directed to be released forthwith, if not required in any other case.

46. Accordingly, the present appeal stands allowed.

47. Let a copy of the judgment along with the Trial Court's records be sent down to the learned Trial Court.

**(Soni Shrivastava, J.)**

I agree.  
**(Rajeev Ranjan Prasad, J.)**

Trivedi/-

**(Rajeev Ranjan Prasad, J.)**

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
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