IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.871 of 2017

Arising Out of PS. Case No.-148 Year-2015 Thana- PALASI District- Araria

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Deo Narayan Yadav @ Bhulla Yadav, Son of Tarkeshwar Yadav, Resident of Village- Bakradongi, P.S. Palasi, District-Araria.

... ... appellant

Versus

The State of Bihar

... ... Respondent

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Appearance :
For the appellant : Mr. Nagendra Kumar Singh, Advocate
Mr. Bijay Kumar Pathak, Advocate
For the State : Ms . Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 28-06-2024

The present appeal has been preferred for setting aside the impugned judgment of conviction and order of sentence dated 22.06.2017 and 23.06.2017, respectively passed by Ld. Ist Additional Sessions-cum-Special Judge (POCSO Act), Araria, in connection with Special (POCSO) Case No. 17 of 2015 / Sessions Trial No. 17 of 2015, arising out of Palasi P.S. Case No. 148 of 2015 dated 04.08.2015, whereby the sole appellant has been found guilty of offence punishable under Section 376 of the Indian Penal Code and Section ¾ of the POCSO Act, 2012 and sentenced to undergo imprisonment for life and pay a fine of Rs.50,000/- under Section 376 of the Indian Penal Code

and to undergo imprisonment for life and also pay a fine of Rs.20,000/- for the offence Punishable under Section ¾ of the POCSO Act, 2012 and in default to pay the fine, to undergo additional simple imprisonment of 1 year. All the sentences have been directed to run concurrently.

2. The FIR bearing Palasi P.S Case No. 148 of 2015 was registered on 04.08.2015 at 9:00 O'clock on the written report of the victim/informant against three accused persons namely, Bateshwar Yadav, Kinlal Yadav and Deo Narayan @ Bhulla Yadav for the offence punishable under Sections 376 read with Section 34 of the Indian Penal Code and Section ¾ of the POCSO Act, 2012.

3. The prosecution case is that the age of the victim is 13-14 years. She is 9th class student of Utkramit Madhyamik Vidyalaya, Maldwarpur. About six months ago, at 4:00 O' Clock, she was coming from Kujri Hatia to home, but all of a sudden, one Bateshwar Yadav gagged and lifted her to a nearby bamboo cluster and threw her on the ground. The other two persons viz. Kinlal Yadav and Deo Narayan Yadav @ Bhulla Yadav flicked knife and then committed rape on her one by one. On seeing the passers-by, they fled away. Her father had gone to Punjab on account of poverty and taking advantage of this

situation, they established physical relationship with her. After a week, accused Bateshwar Yadav promised to marry her, provided she submitted herself to him. She protested, but was threatened and raped against her wish. She informed her mother who advised her to wait for her father. In the meantime, she became pregnant. Hearing this news, her father came and organised a *panchayati*, but none of them obeyed the orders of the *panchayat*. Hence, she lodged the case. At that time, she was carrying a pregnancy of 5-6 months.

4. After registration of the FIR, the investigation commenced and charge-sheet bearing No. 172 of 2015 dated 31.10.2015 was filed against the accused Deo Narayan @ Bhulla Yadav under Section 376 read with Section 34 of the Indian Penal Code and Section ¾ of the POCSO Act, 2012; keeping the investigation pending against other co-accused persons. Subsequently, cognizance was taken and charges were framed against the sole accused facing the Trial.

5. During trial, the following seven witnesses were examined on behalf of the prosecution:

(1) **P.W.-1** - Father of the victim.
(2) **P.W.-2** - Mother of the victim.
(3) **P.W.-3** - victim/informant.
(4) **P.W.-4** - Surendra Paswan (Investigating Officer).
(5) **P.W.-5** - Dr. Shuvendu Dutta- (Doctor).
(6) **P.W.-6** - Dr. Mantasa (Doctor).

(7) **P.W. 7**- Gayanand Yadav

6. The prosecution brought on record the following documentary evidences.

(i) **Ext. 1**- Signature of witness on the written application.
(ii) **Ext.1/1** – Paging on written application.
(iii) **Ext.1/2** – Formal FIR.
(iv) **Ext. 2** - Medical Examination Report.

7. After closure of the prosecution evidence, accused was examined under Section 313 Cr.PC during which he was confronted with incriminating circumstances which had come in the prosecution evidence, so as to afford him an opportunity to explain those circumstances. During examination, he admitted that he had heard the evidence of the prosecution witnesses against him. However, he did not explain any circumstance, but denied every charge. He also stated that at the time of alleged occurrence, he was in Ludhiana.

8. The accused also examined following three witnesses in his defence:

(i) **D.W. -1**- Ram Krishna Yadav.
(ii) **D.W.-2**- Rama Nand Pd. Yadav,
(iii) **D.W.3** - Ankeshwar Yadav.

9. The learned Trial Court after appreciating the evidence on record and considering the submissions of the

parties passed the impugned judgment convicting the accused under Section 376 read with Section 34 of the Indian Penal Code and Section ¾ of the POCSO Act.

10. But the Trial Court did not give any finding regarding the age of the victim of the crime.

11. We have heard the learned Counsel for the appellant and the learned APP for the State.

12. The learned Counsel for the appellant submitted that the impugned judgment of conviction and order of sentence passed by the learned Trial Court are not sustainable in the eyes of law or on facts. The Trial Court has not applied its judicial mind and has failed to properly appreciate the evidence on record. He claims that the prosecution has failed to prove its case against the appellant beyond all reasonable doubts. It has failed even to prove foundational facts for raising presumption under Section 29 and 30 of the POCSO Act, 2012 and there is no material on record to connect the appellant with the alleged offence. The prosecution has miserably failed to prove that the alleged victim is minor in terms of Section 2(1)(d) of POCSO Act, 2012 and hence, provision of POCSO Act, 2012 is not applicable against the appellant.

13. To substantiate his claim, the learned Counsel for

the appellant submitted that the FIR was lodged after a long delay of 6-7 months and that there are numerous contradictions and discrepancies in the statements of the PWs. The case filed against the appellant is false and motivated**.** The burden of proof was on the prosecution to prove that the victim was a child as per the terms of Section 2(1)(d) of POCSO Act, but the prosecution has miserably failed to do so. In fact, the victim is above 18 years of age, and, hence, there is no question of application of the POCSO Act against the appellant.

14. However, the learned APP vehemently supported the impugned judgment and order of sentence and argued that there is no illegality or infirmity in the impugned judgment and sentence. As per evidence on record, the appellant has been rightly convicted and appropriately sentenced.

15. Before we proceed to consider the rival submissions of the parties, it would relevant to take note of Sections 29 and 30 of the POCSO Act which provide for presumptions in view of the object of the Act. These Sections read as follows:

> **"29. Presumption as to certain offences -** Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

> **30. Presumption of culpable mental state -**
> (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
> (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.
> **Explanation -** In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

16. From the reading of these Sections, it transpires that the presumptions as provided are those of law and mandatory in nature, but are rebuttable.

17. Section 29 provides for reverse burden on the accused facing prosecution under Sections 3, 5, 7 and 9 of the POCSO Act to prove his innocence, creating an exception to the ordinary rule of presumption of innocence available to an accused in a criminal trial.

18. Section 30 stipulates that in a prosecution under the POCSO Act, 2012 where the offence requires the existence of a culpable mental state, the court is to presume the existence of such culpable mental state on the part of the accused; but giving right to the accused to rebut it.

19. The meaning and import of the presumptions as provided in the POCSO Act, 2012 have been examined and

explained by Hon’ble Apex Court and High Courts on several occasions. Before raising presumption against the accused under Sections 29 and 30 of the POCSO Act, 2012 the prosecution is first required to prove the foundational facts as required under Sections 29 and 30 of the POCSO Act, 2012 beyond all reasonable doubts by relevant and legally admissible evidence and only thereafter the burden of proof would shift to the accused to rebut the presumptions on the touchstone of preponderance of probability and not proof beyond reasonable doubts. The accused may rebut the presumption by leading defence evidence or by discrediting prosecution witnesses through cross examination or by exposing the patent absurdities or inherent infirmities in the prosecution case by analyzing special features of the particular case. Presumption does not take away the essential duty of the court to analyze the evidence on record in the light of special features of a particular case. The courts are required to be on the guard to see that application of presumptions does not lead to any injustice or mistaken conviction. In this regard, the following case laws may be referred to:

20. In **Babu Vs State of Kerala, (2010) 9 SCC 189, Hon'ble Apex Court** has observed as follows:

"27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like Negotiable Instruments Act, 1881; Prevention of Corruption Act, 1988; and Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.

28. However, in cases where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstances, such as those of statutes as referred to hereinabove, that the burden on proof is on the accused. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution. (Vide: Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16; Narendra Singh v. State of M.P., (2004) 10 SCC 699: AIR 2004 SC 3249; Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70: AIR 2007 SC 451; Noor Aga v. State of Punjab, (2008) 16 SCC 417; and Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54: AIR 2008 SC 1325)."

(Emphasis supplied)

[Also refer to **Attorney General v. Satish, (2022) 5 SCC 545; Navin Dhaniram Baraiye Vs. State of Maharashtra, 2018 SCC Online Bom 1281; Joy V. S. Vs. State of Kerala, (2019) SCC Online Ker 783; Sahid Hossain Biswas Vs. State of West Bengal, 2017 SCC Online Cal 5023; Dharmender Singh Vs State (Govt. Of NCT of Delhi) (2020 SCC Online Del 1267); Sachin Vs. State of Maharashtra MANU/MH/3940/2015; Monish Vs. State of U.P, CRIM. MISC. BAIL APPLICATION No. - 55026 of 2021; Marriappan Vs. The Inspector of Police, (Crime No.27/2018) Crl.M.P.**

(MD) No.1396 of 2023 and Latu Das Vs. State of Assam, 2019 SCC OnLine Gau 5947]

21. Before we proceed to consider whether the prosecution has proved the foundational facts of the crime beyond reasonable doubts, it would be necessary to find out what is "proof beyond reasonable doubts" and when the accused is entitled to get benefit of doubt.

22. In regard to proof beyond reasonable doubts, **Hon'ble Supreme Court** in **Collector of Customs Vs. D. Bhoormal; (1972) 2 SCC 544**, has observed as follows:

> "30. ..... All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case. "
>
> (Emphasis Supplied)

23. In **Shivaji Sahabrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793, Hon'ble Supreme Court** has held as follows:-

> "6. ……. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch,

> hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light heartedly as a learned Author [Glanville Williams in 'Proof of Guilt'.] has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted "persons" and more severe punishment of those who are found guilty. Thus, too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent …." In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish marginal innocents."
>
> (Emphasis Supplied)
>
> (Also refer to **Dilavar Hussain Vs. State of Gujarat, (1991) 1 SCC 253,**)

24. Now coming to the evidence on record, we find that the **father of the victim** has been examined as **P.W.-1**. He has supported the prosecution case. He claimed that his daughter was 14 to 15 years old. After 20 days of the occurrence, rape was again committed upon her. She got pregnant and a son was also born. A *Panchayati* was held. He identified the accused Deo Narayan Yadav @ Bhulla Yadav standing in the dock.

During his **cross-examination**, he has deposed that the present case is related with the first incidence. The case regarding second incident is still lying in the P.S. He did not remember the F.I.R. number of the second case. He also could not tell the date of lodging the second case. He has further deposed that in regard to the first occurrence, medical examination was conducted, but there was no medical test after the second occurrence. Of his own, he deposed that there was no second occurrence. He was just caught, but the case was not lodged. He did not see the occurrence. However, he has deposed that after six months of the occurrence, he was informed on telephone. D.N.A. test has not been conducted. *Panchayati* was held six months back. The *Panchas* were Vijaya Das, Sidheshwar Yadav, Ramnandan Yadav, Ramkrishna Yadav, Kinlal Yadav, Jhurilal Yadav and Rajesh Yadav. He has further deposed that her daughter is studying in class nine and she started studying at the age of ten years. He has denied the suggestion that he had lodged this case with intention to get her married.

25. The **mother of the victim/informant** has been examined as **P.W.-2**. In her **examination-in-chief,** she has deposed that the occurrence had taken place one year back. It was day time. Her daughter was coming from Hatia. She was

fifteen years old. She is studying in nine class. When she reached near *Basbiha*, Kinlal Yadav, Bateshwar Yadav and Deo Narayan Yadav @ Bhulla Yadav caught and raped her by threatening her with knife. On account of that rape, her daughter got pregnant. At that time, her husband was in Ludhiana and when he came back, *Panchayat* was held. When the accused did not follow the order of the *Panchayat*, case was lodged. One Six months' child which was born to her daughter. Medical test was conducted. She identified the accused Deo Narayan Yadav @ Bhulla Yadav standing in the dock. In her **cross-examination**, she has deposed that child is born after nine months and ten days. She has further deposed that after six months of the occurrence, her daughter had told about the rape and when she came to know about it, she informed it to her husband on telephone. She could not tell the telephone number. She has further deposed that in the *Panchayat*, Ramanand Yadav, Bateshwar Yadav, Kinlal Yadav and others had participated. But she did not remember the other names. But later on, she named one Rameshwar Yadav, who was also in the *Panchayat*. The *Panchayat* was held 8-9 months back. After three months of the *Panchayat*, the child was born from her daughter. The *Panchayat* was held after six months of the occurrence because

she was not aware of the occurrence prior to it. *Panchayat* had ordered the accused persons to pay Rs.50,000/-, but they did not obey the order of the *Panchayat*. She denied the suggestion that this case has been lodged for money and getting her daughter married.

26. The **victim** has been examined as **P.W.-3.** In her **examination-in-chief**, she has deposed that she herself has lodged the case against three persons, namely, Kinlal Yadav, Bateshwar Yadav and Deo Narayan Yadav @ Bhulla Yadav. About one year back, at 4:00 O' Clock, she was coming from Hatia and she was alone in between Hatia and her village. She was caught by the accused persons and taken to bush of the bamboo and all the three accused Persons committed rape upon her one by one. After one month, she was again dragged to the bush and rape was committed upon her. At that time, her mother was at home, but she had not informed about the occurrence to her mother, because she was threatened to be killed and not to disclose the occurrence to anybody. One son has been born out on account of that rape. She also deposed that *fardebayan* was recorded as per her statement and she identified her signature on it. When her father came, *Panchayati* was held, but *Panchyati's* order was not obeyed. She identified the accused Deo Narayan

Yadav @ Bhulla Yadav standing in the dock. In her **cross-examination**, she deposed that she is a ninth class student. The occurrence had taken place in February, 2015, but she did not remember the date. The occurrence had taken place at 4:00 PM. when she was returning from Kujri Hatia. She did not disclose to anybody regarding the occurrence. After passage of six months, she disclosed it to her family members. After six months, she had lodged the case in Police Station. The *Panchayati* was held after six months, but she did not remember the date of the *Panchayati*. Within one year of the first occurrence, accused Deo Narayan Yadav @ Bhulla Yadav again committed rape upon her in the bamboo bush situated behind newly created school in her village. Time was 6:00 O' Clock in the evening when she had gone to answer the call of nature, she was dragged by him. In the second occurrence, both Bateshwar Yadav and Deo Narayan Yadav @ Bhulla Yadav were involved. The child was born after nine months of the occurrence and at present, he is five months old. The child is born out of rape by Kinlal Yadav. However, she again deposed that she could not say by which accused, the child was born. She further deposed that the *Bahu* (daughter-in-law) of Kinlal Yadav had married her brother Narayan in Belwari and to revenge this act, Kinlal

Yadav committed this offence against her. She further deposed that two accused persons are fifty and forty years old. Bateshwar Yadav is fifty years old and Deo Narayan Yadav @ Bhulla Yadav is forty years old. Son of Kinlal is married. She denied the suggestion that accused persons had not committed any offence against her and she had lodged false case.

27. P.W.-4 is **Surendra Paswan**, who was **Investigating Officer** of the case. In this **examination-in-chief,** he deposed that there were three place of occurrences. First place of occurrence was Baswari of Natwarlal. The second place of occurrence is situated between husk house of Kisanlal Yadav and Motilal Yadav and the third place of occurrence is Baswari situated behind newly created primary school Bakradogi. During his **cross-examination,** he further deposed that description of the place of occurrences has been made as per the statements of the victim. Regarding the first place of occurrence, she had deposed that at that time, she was going to her home. Second time regarding the second occurrence, she had stated that she was going to take biscuit and regarding the third occurrence, she had stated she had gone to answer call of nature. He also deposed that the victim never stated the date of occurrence. He also deposed that no witness had stated that he

had witnessed the occurrence. He also deposed that he did not get D.N.A. test of victim and the accused.

28. P.W.-5 is **Dr. Shuvendu Dutta.** In his **examination-in-chief**, he deposed that on 06.08.2015, he was posted at Sadar Hospital, Araria. The victim was taken to the hospital by *Chowkidar* Sitabi Devi and she was examined by himself and Dr. Mantasa and Dr. Sadique Azam. As per examination, she was found to be 17-19 years old. Her hymen was ruptured. She was carrying pregnancy of 29 weeks. In his **cross-examination,** he deposed that there was no injury found on the private part of the victim.

29. P.W.-6 is **Dr. Mantasa,** who has also examined the victim on 06.08.2015, as she was posted at Sadar Hospital, Araria on that day. As per examination, she found no injury on the private part of the victim. Hymen was found ruptured. Her dental age was within 18-19 years and radiological age was 16-18 years and as per ultrasound report, her pregnancy was found to be of 29 weeks. She also deposed that at the time of the medical examination, she was below 18 years of age. She also deposed that even a minor girl can carry pregnancy, if she has started menstruating and hymen may be ruptured due to physical work.

30. P.W.-7 is a villager. In his **examination-in-chief,** he deposed that the father of the victim lived in Ludhiana. In his **cross-examination,** he deposed that the victim lived at the house of her brother-in-law and her father and mother lived in Ludhiana.

31. Coming to the **evidence of the accused,** we find that **D.W.-1, Ram Krishna Yadav**, is a villager of **father of the victim**. In his **examination-in-chief,** he deposed that the father and mother of the victim live in Punjab and the victim used to live at the house of her sister at Baharwari and she got pregnant there. He further deposed that in the village, about one and half year ago, *Panchayati* was held, which was called by the father of the victim. *Panchayat* had given direction to Deo Narayan Yadav and others to pay Rs.50,000/- to the victim. He also deposed that he was also a *panch* of the *Panchayati*. On non-compliance of the order, the case was filed. He also deposed that accused Deo Narayan Yadav was a good man and victim was his *Bua* (father's sister). In his **cross-examination,** he deposed that during the *Panchayat*, the victim had stated that Deo Narayan Yadav, Bateshwar Yadav and Kinlal Yadav had forcibly established physical relationship with her and consequently, she had become pregnant. The *Panchayat* had imposed a fine

Rs.50,000/- against Deo Narayan Yadav and others, but Deo Narayan Yadav did not obey the order of the *Panchayat*. One child was also born to the victim. He also deposed that he had no enmity with Deo Narayan Yadav.

32. **D.W.-2** is **Ramanand Prasad Yadav.** In his **examination-in-chief**, he deposed that he was also a *Panch* of the *Panchayat*. The *Panchayat* had decided that Rs.50,000/- had to be paid to the victim. Bateshwar Yadav agreed to pay, but rest two accused persons did not agree. He also deposed that the father and mother of the victim lived in Punjab. The victim used to go to her sister and brother-in-law. He also deposed that the case was false. He had further deposed that Deo Narayan Yadav had gone to Punjab eight months prior to the alleged occurrence. At the time of the *Panchayat*, the victim was pregnant. In his **cross-examination**, he deposed that he did not remember the date of *Panchayat* which was held. He also deposed that the child was born to the victim in December, 2016 or January, 2017. He also deposed that no document was prepared by *Panchayat*. Rambriksh, Ramanand Yadav, Deo Narayan Yadav and Jageshwar Yadav were *panch*.

33. **D.W.-3** is **Ankeshwar Yadav** who is also a **villager of the father of the victim**. In his **examination-in-**

chief, he deposed that the father and mother of the victim used to live in Punjab. The victim sometimes used to live at her brother's-in-law house. When the father of the victim came from Punjab, the victim told him that Bateshwar Yadav, Kinlal Yadav and Deo Narayan had committed rape upon her and hence, she had become pregnant. *Panchayat* was held, but in the *Panchayat*, all the three accused denied the occurrence. accused persons were good men of character and they were family persons and victim was their *Bua* in relation. In his **cross-examination**, he deposed that he was not aware on which date the victim got pregnant, but at the time of *Panchayati*, she was carrying pregnancy of more than six months. Even child was born to her, but *Panchas* had not directed her for D.N.A. test. He further deposed that he did not know on which date the victim had gone to the house of her sister. He was also not aware of the name of brother-in-law of the victim, nor had he witnessed the victim and her brother-in-law establishing physical relationship. He also deposed that the child was born to the victim alive for three months and thereafter, she died. The victim is at present 14-15 years old.

34. The **first and foremost question** is whether the prosecution has proved that the alleged victim was child i.e.

below 18 years of age on the date of occurrence in terms of Section 2(1)(d) of the POCSO Act. It is one of the foundational facts to be proved by the prosecution, as it is a prerequisite for application of the POCSO Act against the appellant. However, before considering this question, we would have to find what is the procedure to prove the age of the victim of the alleged offence. Here, it would be relevant to refer to Section 34 of the POCSO Act, as it stands at relevant time in 2015. In 2019, there was an amendment in sub Section 1. The unamended Section 34 reads as follows:-

> **"34. Procedure in case of commission offence by child and determination of age of Special Court.-**
> (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).
> (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
> (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person."

35. From the reading of the aforesaid statutory provisions of Section 34 of the POCSO Act, we find that there is no specific provision provided regarding determination of age of the victim. Sub Section (2) of Section 34 of the POCSO Act only provides that question regarding the age of the victim can

be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. However, in land mark judgment of **Jarnail Singh Vs. State of Haryana; (2013) 7 SCC 263,** which is still holding the field and being followed by all Courts, **Hon'ble Apex Court** has held that the procedure provided for determination of age of juvenile in conflict with law should be adopted for determination of age of the victim of crime also, because there is hardly any difference, insofar as issue of minority is concerned, between a child in conflict with law and a child who is the victim of a crime. At the time of consideration of the **Jarnail Singh Case (supra)**, the Juvenile Justice (Care and Protection of Children Act), 2000, was in operation, Section 49 of which dealt with presumption and determination of age and the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 made under the Act of J.J. Act 2000 provided the procedure to be followed in determination of age. In this background, **Hon'ble Supreme Court** in **Jarnail Singh Case (supra)** held that the procedure provided for determination of age of juvenile in conflict with law as provided in Rule 12 will be applicable, even for determination of age of the victim of a crime. The relevant paragraph of **Jarnail Singh Case (supra)**

may be referred to, which is as follows:-

> "23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6……."
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> (Emphasis Supplied)

36. Similar view has been taken by Hon'ble Supreme Court in recent case of **P. Yuvaprakash Vs. State; 2023 SCC Online SC 846,** referring to Section 34 of the POCSO Act and Section 94 of the J.J. Act, 2015, which was effective at the time of the consideration by the court and sub - Section 1 of Section 34 of the POCSO Act was already amended in 2019 in view of the J.J. Act 2015 coming into force since 01.01.2016.

37. Section 34 of the POCSO Act, as it stands after amendment in 2019, reads as follows:-

> **"34. Procedure in case of commission offence by child and determination of age of Special Court.-**
> (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).
> (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
> (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age

of a person as determined by it under sub-section (2) was not the correct age of that person."

38. Section 94 of the J.J. Act, 2015 dealing presumption and determination of age reads as follows:

"**Presumption and determination of age.-** (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of *(i)* and *(ii)* above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person."

39. Hon'ble Apex Court in **P. Yuvaprakash Case (supra),** after considering Section 34 of the POCSO Act and Section 94 of the J.J. Act, 2015 held as follows:

> "13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:
>
> "(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board".

40. From the aforesaid authorities, it clearly emerges that procedure for determination of age of the victim of a crime is the same as provided for determination of age of a child in conflict with law in the prevailing Juvenile Justice Act at the relevant time.

41. As such, the procedure for determination of the age of the alleged victim of a crime in the case on hand would be the same as provided in the J. J. Act, 2000, because the alleged offence in the case on hand has been committed in February, 2015 when the Act of 2000 was in operation. J.J. Act, 2015 came into operation since 1st of January, 2016.

42. Hence, it becomes relevant to refer to relevant statutory provisions of the J.J. Act, 2000 regarding

determination of age. Section 49 of the J.J. Act, 2000 deals with presumption and determination of age. It reads as follows:

> **"Section 49. Presumption and determination of age.—**
>
> (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.
> (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person."

43. The Rule 12(3) of Juvenile Justice (Care and Protection of Children) Rules, 2007 made under the Act provides for the procedure to be followed in determination of age. It reads as follows:

> "**12. Procedure to be followed in determination of age.**
> (1)……..
> (2) …….
> (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-
> (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
> (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
> (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

> (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.
>
> (4)……..
> (5)……..
> (6)…….”

44. Here, again it would be relevant to refer to **Jarnail Singh (supra)** which has discussed and elucidated the procedure for determination of age as provided under Rules 12 of J.J. Rules, 2007. The relevant paragraph of the case reads as follows:

> “23……...The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3),

> matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion."

45. Now, question is whether the prosecution has proved that the alleged victim was below 18 years of age as per the procedure as prescribed in J.J. Act, 2000 and the Rules made thereunder.

46. In the case on hand, we find that no certificates whatsoever are on record regarding the age of the alleged victim despite the fact that the alleged victim was studying in class 9th. It goes against the prosecution. Withholding documentary proof regarding age of the victim gives rise to adverse inference against the prosecution in regard to age of the victim. Initial burden of proof regarding the age of the victim lies on the prosecution despite Section 29 of the POCSO Act, because it is a foundational fact to be proved by the prosecution for

application of the POCSO Act and raising presumption against the accused/appellant as we have already seen.

47. However, there is medical opinion on record along with oral evidence regarding age of the victim. P.W.-5 is Dr. Shuvendu Dutta who found the victim to be 17-19 years of age. Again, as per P.W.-6, Dr. Mantasa, the dental age of the alleged victim was within 18-19 years whereas radiological age was 16-18 years.

48. It is a settled position of law that medical opinion regarding age of a person is not conclusive evidence, because exact assessment of the age cannot be done on the basis of medical test as there is always possibility of errors on both-higher and lower sides. However, medical opinions can be very useful guiding factors to be considered in the absence of the documents as mentioned in Rule 12 (3) of Juvenile Justice Rules, 2007 or Section 94 (2) of the J.J. Act, 2015. Reliance is placed on the following authorities:

(i) **Rishipal Singh Solanki Vs. State of U.P., (2022) 8 SCC 602**
(ii) **Mukarrab v. State of U.P., (2017) 2 SCC 210;**
(iii) **State of M.P. v. Anoop Singh, (2015) 7 SCC 773**
(iv) **Abuzar Hossain v. State of W.B., (2012) 10 SCC 489;**

49. Here, it would be relevant to refer to **Mukarrab Case (supra)**, wherein **Hon’ble Supreme Court** has held as

follows in regard to evidentiary value of medical opinion:

> "26. Having regard to the circumstances of this case, a blind and mechanical view regarding the age of a person cannot be adopted solely on the basis of the medical opinion by the radiological examination. At p. 31 of *Modi's Textbook of Medical Jurisprudence and Toxicology*, 20th Edn., it has been stated as follows:
>
> > "In ascertaining the age of young persons radiograms of any of the main joints of the upper or the lower extremity of both sides of the body should be taken, an opinion should be given according to the following Table, but it must be remembered that too much reliance should not be placed on this Table as it merely indicates an average and is likely to vary in individual cases even of the same province owing to the eccentricities of development."
>
> Courts have taken judicial notice of this fact and have always held that the evidence afforded by radiological examination is no doubt a useful guiding factor for determining the age of a person but the evidence is not of a conclusive and incontrovertible nature and it is subject to a margin of error. Medical evidence as to the age of a person though a very useful guiding factor is not conclusive and has to be considered along with other circumstances.
>
> 27. In a recent judgment, *State of M.P.* v. *Anoop Singh*, (2015) 7 SCC 773, it was held that the ossification test is not the sole criteria for age determination. Following *Babloo Pasi* v. *State of Jharkhand*, (2008) 13 SCC 133 and *State of M.P.* v. *Anoop Singh*, (2015) 7 SCC 773 , we hold that ossification test cannot be regarded as conclusive when it comes to ascertaining the age of a person. More so, the appellants herein have certainly crossed the age of thirty years which is an important factor to be taken into account as age cannot be determined with precision. In fact in the medical report of the appellants, it is stated that there was no indication for dental x-rays since both the accused were beyond 25 years of age.
>
> 28. At this juncture, we may usefully refer to an article "A study of wrist ossification for age estimation in paediatric group in Central Rajasthan", which reads as under:
>
> > "There are various criteria for age

> determination of an individual, of which eruption of teeth and ossification activities of bones are important. Nevertheless age can usually be assessed more accurately in younger age group by dentition and ossification along with epiphyseal fusion.
>
> [Ref. : *Gray H. Gray's Anatomy*, 37th Edn., Churchill Livingstone Edinburgh London Melbourne and New York : 1996; 341-342];
>
> A careful examination of teeth and ossification at wrist joint provide valuable data for age estimation in children.
>
> [Ref. : *Parikh C.K. Parikh's Textbook of Medical Jurisprudence and Toxicology*, 5th Edn., Mumbai Medico-Legal Centre Colaba : 1990; 44-45];
>
> ***
>
> Variations in the appearance of centre of ossification at wrist joint shows influence of race, climate, diet and regional factors. Ossification centres for the distal ends of radius and ulna consistent with present study vide article "*A study of wrist ossification for age estimation in paediatric group in Central Rajasthan*" by Dr Ashutosh Srivastav, Senior Demonstrator and a team of other doctors, Journal of Indian Academy of Forensic Medicine (JIAFM), 2004; 26(4). ISSN 0971-0973]."

50. Hence, medical opinion has to be always considered along with the attending circumstances. As per the evidence on record, the attending circumstances have come in the oral evidence of the father of the victim, who is P.W.-1, who in his examination-in-chief has deposed that the victim was 14-15 years old. However, in his cross-examination, he has deposed that the victim started studying at the age of 10 years and she was in class 9th at the time of occurrence. Hence, as per his deposition, the age of the victim comes around 19 years on the

alleged date of occurrence. If the medical opinion is considered along with the oral evidence of the father of the victim, it emerges that the alleged victim was above 18 years of age at the time of alleged occurrence and, hence, the provisions of POCSO Act do not apply against the appellant.

51. Now only question is whether the prosecution has proved the charge framed under Section 376 of the Indian Penal Code against the appellant.

52. After perusal of the evidence on record, it emerges that the informant lodged the case to the Police regarding the alleged occurrence after 5/6 months on 04.08.2015. There is reasonable explanation for such delay. As per the evidence on record, the informant/victim was threatened by the accused/appellant not to disclose the occurrence to anybody otherwise she would be killed. It further transpires that the informant got pregnant due to the rape and after six months, she disclosed the occurrence to her mother, who in turn, informed the occurrence to her husband, who was living at Ludhiana for manual work. After getting information regarding the occurrence, the father of the victim came back from Ludhiana and got held a village *Panchayat* against the accused and other two co-accused persons and in that *Panchayat*, there was fine

imposed upon the accused/appellant and co-accused. But when the order of the *Panchayat* relating to payment of fine to the victim was not obeyed, the criminal case was initiated by the informant/victim by giving written report to the Police. It also transpires that one child was born to the victim in December, 2016 or January, 2017 on account of the rape in February, 2015.

53. We find that the parents of the victims, who are P.W.-1 and P.W.-2, are villagers and illiterate. They have put their thumb impressions and not signatures on their depositions. There are some minor discrepancies in their statements on trivial matters, not touching the core of the prosecution case. We further find that there is no reason for false implication. The claim of the appellant that he was falsely implicated for marriage but there is no substance in such claim because allegation has been made not only against the appellant but even against other two co-accused. Even, the claim of the appellant that there may be motive for extortion of money behind lodging the case against him, does not inspire confidence of this Court as per the evidence on record. No parent of any girl in our society can damage reputation of his/her daughter regarding her chastity. It has been seen in our society that even in case of commission of sexual assault, victims and their parents are

hesitant/reluctant to go public to file a criminal case, because after such incident, life of the girl is almost spoiled. Hence, we are not persuaded to accept the claim of the appellant that the case has been false and filed for extortion of money or getting her married with the accused. In fact, one child has been born to the informant after about nine months after the alleged occurrence, which itself proves that the Informant has been subjected to ravishment by the appellant and other co-accused. Even village *Panchayat* has imposed fine upon the appellant and other co-accused for the crime, though the order was not obeyed by the appellant and other co-accused. The manner and place of occurrence is also proved. The Informant was forcibly taken by the appellant to the bush of Bamboos situated in between Hatia and village of the victim where the Informant was ravished by the appellant against her will and consent. It is true that the date of occurrence could not be stated by the victim, it could not be fatal in view of other evidence on record.

54. It is also important to note that three defence witnesses have been also examined and out of three, two defence witnesses were *Panchas* of the village *Panchayat* which was held against the appellant and other co-accused. They are D.W.1, Ram Krishna Yadav and D.W.2. Ramanand Prasad

Yadav and they have admitted that fine was imposed upon the appellant and other co-accused for the alleged offence. However, the fine was not paid by them and, hence, criminal case was lodged by the Informant/Victim.

55. D.W.-3 was not part of the *Panchayat.* He has tried to give impression that the alleged victim used to live at her Brother's-in-law house. But he is not aware of the name of the Brother-in-law of the victim, nor had he witnessed the victim and her Brother-in-law ever establishing physical relationship. Hence, D.W.-3 is not reliable and consequently deposition of D.W.-3 is also of no help to the appellant.

56. Hence, as per the evidence on record, we find that the appellant is guilty of the offence punishable under Section 376 (1) of the Indian Penal Code and in view of totality of the facts and circumstances of the case, rigorous imprisonment of ten years and fine of Rs.10,000/- and in case of default to pay the fine, additional simple imprisonment of three months would meet the ends of justice. The Convict/appellant is, accordingly, sentenced and the impugned judgment of conviction and order of sentence stands accordingly modified, and the Appeal is partly allowed. The appellant has been in custody only since 23.09.2015.

57. However, before we part with the Appeal, we are duty bound to give finding regarding who is victim of the crime in terms of Section 2(wa) Cr.PC and pass order regarding compensation to the victim as per the statutory provisions as provided in Section 357 and 357A Cr.PC and State Victim Compensation Scheme as made thereunder. In this regard, the law has been comprehensively dealt with by this Court in **Sunil Kumar Jha @ Sunil Jha Vs. State of Bihar; (2024 SCC OnLine Pat 960, AIRONLINE 2024 PAT 354)** wherein it has been held as follows, after referring to relevant statutory provisions and case laws:

> "105. It clearly emerges from the aforesaid statutory provisions and case laws that the Court conducting a criminal trial is duty bound to pass reasoned order, on the conclusion of the trial, regarding compensation to victims as per Section 357 and Section 357 A Cr.PC, irrespective of conviction, acquittal or discharge. Such order has to be passed by the Trial Court even when the victim has not filed an application for compensation. In such order, the Court is required to give finding whether the alleged offence has been committed or not, and if committed who is victim of the committed offence, and if there is any victim in terms of Section 2 (wa) Cr.PC, whether victim is entitled to compensation under Section 357 and Section 357 A Cr.PC and if yes, how much and from whom.
>
> 106. The Appellate and Revisional Court are equally duty bound to pass such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.
>
> 107. Moreover, victims are entitled to benefits under State Victim Compensation Scheme made under

> Section 357A Cr.PC even when the concerned offence has been committed prior to the scheme coming into force if the trial, appeal or revision are pending on or after the scheme came into force.
>
> 108. In case of conviction of the accused, compensation payable to the victim may be imposed upon the convict as per his paying capacity either by way of fine or otherwise under Section 357 Cr.PC and if the compensation directed to be paid under Section 357 Cr.PC is not sufficient to rehabilitate the victim, the Court is empowered to recommend the Legal Services Authority to pay the compensation to the victim from the State fund created under Victim Compensation Scheme made under Section 357A Cr.PC. In case of acquittal of the accused-appellant, the Court is duty bound to resort to Section 357A Cr.PC to recommend Legal Services Authorities to pay compensation to the victim as per Victim Compensation Scheme of the State as made under Section 357A Cr.PC."

58. Now, coming to the case on hand, we find that the informant is undisputedly victim of the crime of rape committed by the appellant and other co-accused and she is entitled to get compensation from the Convict/appellant under Section 357 Cr.PC and in case the compensation payable by the Convict/appellant is insufficient, she is also entitled to get compensation from the State of Bihar under Bihar Victim Compensation Scheme made under Section 357A Cr.PC.

59. Here, it would be pertinent to mention that Bihar Victim Compensation Scheme, 2014 was made under Section 357A Cr. PC providing for compensation to victims from State fund named as "Victim Compensation Fund". The schedule annexed to the Scheme describes the offence/injuries or loss for

which compensation is to be paid. Such offences include offences against women also. It also specifies the minimum and maximum amount of compensation provided for specific offences or injuries. The discretion to decide the quantum of compensation has been left with State/District Legal Services Authority as per the Scheme. The Scheme was amended in 2018 enhancing the amount of compensation payable to the victim. In 2019, by way of Bihar Victim Compensation (Amendment) Scheme, 2019, the compensation scheme for women victims/survivors of sexual assault/other crimes, 2019 was added in the Bihar Victim Compensation Scheme, 2014 as its part-II in view of the direction of Hon'ble Apex Court in Civil Writ No. 565/2012 titled "Nipun Saxena and Ors. Vs. Union of Indian and Ors." and approval of "the compensation scheme for women victims/survivors of sexual assault/other crimes-2018 prepared by NALSA." For clarity, the preamble of the Bihar Victim Compensation (Amendment) Scheme, 2019 is referred to hereunder:

> **"Bihar Victim Compensation (Amendment) Scheme, 2019**
>
> **Preamble :- Whereas in view of** Compliance of the direction given by the Hon'ble Supreme Court in the Civil Writ No.-565/2012 Nipun Saxena and others Vrs. union of India and others on dated 10.05.2018 it is necessary to amend the Bihar Victim Compensation Scheme, 2014;
>
> and whereas it necessary to apply The Compensation Scheme for Women Victims/Survivors of Sexual

> Assault/Other Crimes-2018 prepared by NALSA, and which is approved by the Hon'ble Supreme Court of India:
>
> and whereas this Scheme has to apply as part- II of the Bihar Victims Compensation Scheme, 2014;
>
> Now, therefore, in exercise of the powers conferred by section 357A of the Code of Criminal Procedure, 1973, the Governor of Bihar is hereby please to make the following scheme to amend The Bihar Victim Compensation Scheme, 2014:-.
>
> 1. Short title extent and commencement..— (1) This scheme may be called Bihar Victim Compensation (amendment) Scheme, 2019.
>
> (2) It shall extent to the whole state of Bihar.
>
> (3) It shall come into force from date of its publication in the official gazette..
>
> 2. Addition of Part -II in the Bihar Victim Compensation scheme, 2014.—The following shall be added as Part-II in the Bihar Victim Compensation scheme, 2014:-”

60. After the aforesaid preamble to the Amendment Scheme, “the compensation scheme for women victims/survivors of sexual assault/other crimes-2018” as prepared by NALSA has been reproduced verbatim. However, by Explanation, it has been clarified that newly added part-II of the Scheme does not apply to the minor victims under the POCSO Act because compensation to such victims are required to be dealt with under Section 33(8) of the POCSO Act and the Rules made under the Act.

61. It is also relevant to mention that part-I of the Scheme of 2014 and newly added part-II of the Scheme, at

times, overlap because Part-I of the Scheme also deals with offences against women, but the quantum of the compensation provided in part-I is less than what has been provided in part-II. Hence, after addition of part-II, specifically dealing with compensation to women victims, part-I of the Scheme has become redundant to the extent the offence is covered by Part-II and the State is duty bound to apply part-II of the Scheme in case payment of compensation to women victims is covered by both parts of the scheme.

62. Now, coming back to the case on hand, we find that the appellant has been found guilty of the offence punishable under Section 376(1) of the Indian Penal Code and hence, he is liable to pay compensation to the victim under Section 357(3) of Cr.PC. However, he appears to be belonging to a poor strata of the society. Hence, seeing the paying capacity of the Convict/appellant, he is directed to pay Rs.20,000/- to the victim towards compensation under Section 357(3) Cr.PC and in case of default by the appellant to pay the compensation to the victim within two months, he would be liable to undergo further simple imprisonment of six months. Hon'ble Supreme Court in **Hari Singh Vs. Sukhbir Singh; (1988) 4 SCC 551** has held that Court may enforce order of compensation by imposing

sentence in default.

63. Needless to say that compensation of Rs.20,000/- payable by the Convict/appellant would not be sufficient for rehabilitation of the victim. Hence, Bihar State Legal Services Authority is recommended to pay additional compensation to the victim as per Part-II of the Bihar Victim Compensation Scheme, 2014 within two months of the receipt of this order.

64. Office is directed to send a copy of this order to Secretary of Bihar State Legal Services Authority for information and needful.

(Jitendra Kumar, J.)

I agree

(Ashutosh Kumar, J.)

chandan/S.Ali/
Ravishankar/Shoaib

AFR/NAFR	AFR
CAV DATE	13.05.2024
Uploading Date	28.06.2024
Transmission Date	28. 06.2024