

it found the explanation for delay in registration of FIR to be satisfactorily explained by the complainant PW-1.

Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, (1983) AIR(SC) 753 Siddharth Dagadu Sonde Vs. State of Maharashtra, (2017) AllMR(Cri) 4192; referred.

Paresh @ Kamlesh Prakash Dhanvatkar v. State of Maharashtra, Through Pso, Panchpaoli, Nagpur (2018) All MR (Cri) 4007

Acquittal — as the injuries on the victim cannot be defined as grievous, we find that the injuries noted by P.W.5 and P.W.6 can only be categorized as “simple injuries” as defined under Section 323 of the IPC, despite the physical injuries which are sufficient to make a normal person cringe.

Criminal Procedure Code, 1973 (CrPC) - Section 164, Section 374(2) Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 23 Penal Code, 1860 (IPC) - Section 320, Section 323, Section 325 Protection of Children from Sexual Offences Act, 2012 - Section 5(m), Section 5(n), Section 6, Section 7 – Held, The injuries listed in the Medical Reports of the victim Exhibit 3“A” and Exhibit 4“A” do not fall within the parameters as described in Section 320 of the IPC. Even if this Court were to take advantage of the latitude in “Eighthly” of Section 320 IPC which provides that any hurt which endangers life is also grievous hurt but we hasten to clarify that it is qualified with the words “which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits.” No medical evidence is forthcoming on this point. Hence, as the injuries on the victim cannot be defined as grievous, we find that the injuries noted by P.W.5 and P.W.6 can only be categorized as “simple injuries” as defined under Section 323 of the IPC, despite the physical injuries which are sufficient to make a normal person cringe.

Since the prosecution has failed to establish sexual intent in the acts of the Appellant against the victim, the conviction and sentence handed out to the Appellant under Section 5(m) and Section 5(n) of the POCSO Act are set aside.

The enormity of the inhuman and barbaric acts perpetrated by the Appellant on the unsuspecting and innocent victim, who was brought to reside with the Appellant on the promise of educating

did not mention anything about the respondent forcibly removing her clothes or threatening to establish sexual relations on the next date. Furthermore, the parents of the victim have also not corroborated the testimony of the victim – Acquittal justified.

Criminal Procedure Code, 1973 (CrPC) - Section 164, Section 313 Penal Code, 1860 (IPC) - Section 342, Section 354, Section 354B, Section 363, Section 366 Protection of Children From Sexual Offences Act, 2012 - Section 8 – Statement of the victim was recorded under Section 164 Cr.P.C. wherein she stated that the respondent took her to a hotel and did “Ched Chad” with her. She refused to make physical relations with him, slapped him and left the hotel. Victim was examined as PW-2 who deposed in sync with her complaint to the police. She additionally stated that she came in contact with the respondent through a facebook friend after which they started talking to each other. The respondent had told her that he had a government job and was unmarried. On 30th October, 2014 her father received a phone call from the wife of the respondent due to which she got to know that he was married. Pursuant to this she made a complaint to the police. In her crossexamination she stated that she used to make phone calls and send messages to the respondent from the mobile phone of her parents. She spoke to the respondent regularly from 16th October 2014 to 30th October 2014. Court finds that there was a delay of 14 days in lodging the FIR for which a reasonable explanation has not been provided by the prosecution. Further, it has been established through the Call Detail Records of the respondent and parents of the victim, that the victim and the respondent were regularly in contact with each other even after the incident of 16th October 2014. It is highly improbable that the victim continued to talk to the respondent even after the alleged sexual assault. The victim has also considerably improved her statement made before the court. In her statement recorded under Section 164 Cr.P.C., she did not mention anything about the respondent forcibly removing her clothes or threatening to establish sexual relations on the next date. Furthermore, the parents of the victim have also not corroborated the testimony of the victim – Acquittal justified.

State (Govt of NCT of Delhi) v. Pappu Giri; (2019) 1 JCC 207.

Allegations of Sexual Assault – Acquittal Justified – Held, The victim has also considerably improved her statement made

an opportunity to complain against the conduct of the accused but she had not complained to anybody. Taking totality of circumstances, we cannot rule out that it is a case of consensual sexual relationship. Consequently, by extending benefit of doubt, we accept the present appeal. The conviction and sentenced awarded by the trial Court upon the appellant is set aside and he is acquitted of all the charges.

Guman Nath v. State of Rajasthan (2019) 3 CriCC 362.

Constitution of India – Double jeopardy – Sentence under POCSO and IPC cannot run parallel.

Appellant, a man of 40 years, was found guilty of having sexually assaulted a minor victim of 14 years and was consequently convicted and sentenced as imprisonment was imposed both under S. 376(2) (i) of the Indian Penal Code, 1860(IPC) and under S. 4 of the POCSO, for the offence of rape – Held, Section 42 of POCSO has a non-obstante clause which provides that regardless of anything contained in any law for the time being in force, the offender found guilty of offences as described above, shall be liable to punishment either under the POCSO or under the Indian Penal Code as provides for punishment which is greater in degree. Court is aware and conscious of the fact that as per the constitutional provisions, no person can be convicted twice for the same offence. It is also true that the offender cannot be punished for more than once for a similar offence. The sentence imposed under S. 4 of the POCSO, is hereby set aside.

Bishal Lamgadey v. State of Sikkim 2016 CrI. L. J. 3443

Constitutional Validity of Act – Held, A bare reading of Section 29 of POCSO Act, provision makes it clear that the presumption raised against the accused is a rebuttable one. It is now well settled that reverse burden as also statutory presumptions can be raised in several statutes. Single judge has formed a wrong opinion that Section 29 of the Act of 2012 is unconstitutional.

Criminal Procedure Code, 1973 (CrPC) - Section 395 Protection of Children from Sexual Offences Act, 2012 - Section 29 – Reference under Section 395 of the Code of Criminal Procedure has been made by the Special Judge, Cachar, for declaring Section 29 of the Protection of Children from Sexual Offences Act, 2012 as unconstitutional. According to the prosecution case, on 23.5.2013, the accused committed penetrative sexual assault on a minor girl. The sexual assault on the victim fell within the meaning of Section

never shifts on the accused — The fact that the accused have not taken any defence does not mean that they are not entitled for benefit of doubt — The prosecution, thus miserably failed to prove that the accused forcibly committed intercourse with her and she was minor at the time of incident. The offence charged against the accused persons are not established — Accused Acquitted.

Sunil Vrs. State of Haryana, (2010) 1 SCC 742; Birad Mal Singhvi Vrs. Anand Purohit, 1988 (Supp) SCC 604; Mahadeo s/o Kerba Maske Vrs. State of Maharashtra and another, (2013) 14 SCC 637; Relied on.

Raju Sukhdeo Dabhade v. State of Maharashtra AIR Online 2018 Bom 542

Fair Investigation, The Investigating Officer of the case is directed to get the investigation concluded of the case within a period of the two months from the date of production of a certified copy of this order and also to make efforts for recovery of the victim girl.

Penal Code, 1860 (IPC) - Section 363, Section 366 — Protection of Children From Sexual Offences Act, 2012 - Section 3, Section 4— petition has been filed by the petitioner with a prayer to direct the respondent nos.2 and 3 to conclude the fair investigation— On facts, The Investigating Officer of the case is directed to get the investigation concluded of the case within a period of the two months from the date of production of a certified copy of this order and also to make efforts for recovery of the victim girl.

Parojna Devi @ Saroj Devi v. State of U.P. and others 2018 Law Suit (All) 423.

Finding recorded by the scientific expert cannot be taken as a conclusive evidence — Bail granted. The finding recorded by the Scientific expert cannot be taken as a conclusive evidence. In the complaint as well as in her statement recorded under Section 164 of Cr.P.C., the victim has implicated the petitioner and has narrated the consequences of events which prima-facie make out the ingredients of the offences alleged against the petitioner.

Further, having regard to the fact that the victim was a minor and residing in the same village where the accused is residing, possibilities of the accused either threatening or influencing the victim cannot be ruled out, PW.1 and is cross examined on 23.02.2018 and therefore,

Kalu Khan Vs. State of Rajasthan, (2015) 16 SCC 492
 Kanhaiya Lal Vs. State of Rajasthan, (2014) 2 SCC(Cri) 413
 Machhi Singh Vs. State of Punjab, (1983) SCC(Cri) 681 Nizam
 and Anr. Vs. State of Rajasthan, (2016) 1 SCC(Cri) 386
 Rameshbhai Chandubhai Rathod(2) Vs. State of Gujarat,
 (2011) 2 SCC 764 Ramreddy Rajesh Khanna Reddy Vs. State
 of Andhra Pradesh, (2006) 3 SCC(Cri) 512 Reksona Bibi @
 Eksona Vs. State of West Bengal, (2017) 4 CalCriLR 486
 Selvam Vs. State, (2014) 12 SCC 274 Sharad Birdhichand
 Sarda Vs. State of Maharashtra, (1984) SCC(Cri) 487 State of
 Gujrat Vs. Kishanbhai, (2014) 2 SCC(Cri) 457; State of West
 Bengal Vs. Palash Ghosh, (2016) 3 CalCriLR 348 Surendra
 Pal Shivbalakpal Vs. State of Gujarat, (2005) 3 SCC 127;
 Referred.

*State of West Bengal v. Sukol Tudu Alias Chhattu (2018) 4
 CalHCN 565 : (2019) 1 CallJ 144 : (2018) 4 CallT 107*

Penetrative Sexual Assault – Medical Evidence of – Bail Rejected.

Perusal of the record reveals that the ‘Complainant P’ has taken a consistent stand in her statements recorded under Section 161 Cr.P.C. and subsequently under Section 164 Cr.P.C. whereby she has made serious allegations of penetrative sexual assault committed upon her daughter ‘K’ by the petitioner – Moreover the Status report filed by the State reveals that the FSL report was obtained wherein it was opined that “semen was detected on the undergarments of the victim and the DNA profile of the detected semen was matched with the DNA profile generated from the petitioner seized blood sample” – Bail Rejected.

Shamsher v. State AIR Online 2019 Del 609.

Penetrative sexual assault - No evidence was led to show there was enmity between the appellant on the one hand and the family of the victim on the other hand on such score which would prompt them to implicate the appellant in the heinous crime of subjecting a mentally challenged child to penetrative sexual assault.

Penal Code, 1860 (IPC) - Section 376(2)(I), Section 420, Sec. 506 – Protection of Children From Sexual Offences Act, 2012 - Section 26, Section 3(a), Section 38, Section 4 – PW 1, father of the child deposed she was 13 years of age. No serious challenge is thrown to such evidence. Evidence has also come on record that