

GAHC010179582023



2025:GAU-AS:3746

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./303/2023

PROMUD YADAV
S/O LT. MOHAN YADAV,
VILL.- AMRAJAN, NEAR GORI SANKAR MILL, P.S.- BOKAJAN, DIST.-
KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
TO BE REP. BY THE LEARNED P.P., ASSAM.

2:KALUWA SHAH
S/O RAMMSAKAL SHAH
VILL.- SUKANJAN
KRISHNA NAGAR
P.S.- BOKAJAN
DIST.- KARBI ANGLONG
ASSAM

Advocate for the Petitioner : MR SARFRAZ NAWAZ, MR S A BARBHUYAN, MR A W
AMAN, SAMIM RAHMAN, MS SURAYA RAHMAN

Advocate for the Respondent : PP, ASSAM, MR. D GOGOI, LEGAL AID COUNSEL FOR R-2

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant : Mr. S. Nawaz, Advocate

For the Respondent : Mr. R. R. Kaushik, Addl. P.P., Assam

: Mr. D. Gogoi, Amicus Curiae,
(for the respondent No. 2/informant)

Date of Judgment : **01.04.2025**

JUDGMENT & ORDER (CAV)

1. Heard Mr. S. Nawaz, learned counsel for the appellant. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor, Assam as well as Mr. D. Gogoi, learned Amicus Curiae appearing for the respondent No. 2/informant.

2. This Criminal Appeal has been filed, under Section 374(2) of the Code of Criminal Procedure, 1973, by the appellant, *Promud Yadav*, impugning the judgment and order dated 14.06.2023 passed by the learned Special Judge (POCSO), Karbi Anglong, Diphu in the POCSO Case No. 08/2022 whereby the appellant was convicted under Section 10 of the POCSO Act, 2012 and was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo simple imprisonment for two months.

3. The facts relevant for consideration of the instant appeal, in brief, are as follows:-

i. That on 08.11.2021, the father of the victim girl had lodged an FIR before the Officer-in-charge of Bokajan Police Station, *inter alia*, alleging that on 07.11.2021 at about 8:00 PM, his elder daughter who was aged about seven years at the time of alleged incident informed him that on 06.11.2021 at about 11:00 PM when they were sleeping, the appellant took her away gagging her mouth and committed rape on her thereafter he threatened her not to disclose the matter to anyone else.

ii. On receipt of the said FIR, Bokajan P.S. Case No. 205/2021 was registered under Section 448 of the Indian Penal Code read with Section 6 of the POCSO Act, 2012 and investigation was initiated. After completion of the investigation, charge-sheet was laid against the appellant under Section 448 of the Indian Penal Code read with Section 8 of POCSO Act, 2012.

iii. During the course of investigation, the appellant was arrested and he faced the trial remaining in custody. The Trial Court after considering the materials available on record and after hearing the learned counsel for both the sides, framed charges under Section 448 of the IPC and Section 4 of POCSO Act, 2012 against the appellant. When the said charges were read over and explained to the appellant, he pleaded his innocence and claimed to be tried.

iv. To bring home the charges against the appellant, the prosecution side examined as many as 8 (eight) prosecution witnesses including the informant as well as the victim girl. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the appellant denied the truthfulness of the testimony of the prosecution witnesses. He also adduced two defence evidences in his defence. However, ultimately on culmination of the trial, the appellant was convicted and sentenced, by the impugned judgment, in the manner as already described in paragraph No. 2 hereinabove.

4. Before considering the submissions made by the learned counsel for both the sides, let us go through the evidence of the prosecution witnesses,

which is available on record.

5. The PW-1, who is the victim girl herself, has deposed that on the date of deposing before the Trial Court she was aged about 9 years and she was reading in Class-IV. Before recording her testimony, the Trial Court put her some general questions to ascertain her capacity to understand and give rational answers to the questions posed to her and after satisfying with her capacity, the Trial Court recorded her testimony. She has deposed that she knows the appellant and the incident took place on the next day of Diwali and at that time she was eight years old. She has deposed that the incident occurred at night and she came out of her house to attend the call of nature. At that time, her father and younger sister were sleeping inside the house. She has deposed that the appellant suddenly came and gagged her mouth and took her to Verandah to the backside of their house. There was a bed at the Verandah. She deposed that the appellant laid her on the bed and after removing her clothes, pushed his penis into her vagina and raped her for about one hour. At that time, she raised hue and cry, however, the appellant was gagging her mouth with his hand. After about one hour, she was released and the appellant went away. She has further deposed that on the next day morning, she informed the matter to her father and her father took her to the Bokajan Police Station and lodged the FIR and the Police arrested the appellant. She has also deposed that the Police took her to the doctor and her medical examination was conducted. She was also taken to the Court for recording her statement. She has exhibited her statement as Exhibit- 1/PW-1.

6. During her cross-examination, she has deposed that she knows that appellant since a long time. She used to sleep in the house of her aunt. After the incident, she had informed the matter to her father only and not to her

aunt. She has denied the suggestion that the appellant did not commit rape on her.

7. The PW-2, who is the father of the victim girl as well as the informant of this case, has deposed that the occurrence took place on 06.11.2021 and the appellant is known to him. He has deposed that on the day of Diwali after closing his tea stall, he asked the appellant to take his two daughters to home and accordingly he took them to his house (house of the PW-2). The PW-2 has further deposed that after the informant return to his house, the appellant again came to his house and they drank liquor together. He has also deposed that he fell asleep and on the next day morning when he woke up, his 8 years old daughter told him that the appellant again came to their house and took her away by gagging her mouth to nearby bamboo bush and again took her back to the Verandah of their house and committed rape on her. He also deposed that when his daughter shouted, the cousin sister of PW-2 came out from nearby house and chased the appellant with a *dao* and the appellant fled away from there. In the next day morning, the villagers caught the appellant and brought him to his house. Thereafter, the appellant was handed over to the Police. The PW-2 has exhibited the FIR as well as the birth certificate of the victim girl.

8. During his cross-examination, the PW-2 has deposed that the FIR was written as per his instructions. He has also stated that he has not mentioned in the FIR that he drank liquor with the appellant on the night when the incident occurred. He also deposed that his sister did not tell him about the exact time when she saw the appellant at the Verandah of his house. He denied the suggestion that he has deposed falsely before the Court.

9. During his re-cross-examination, the PW-2 has deposed that on the day of incident, the victim and her younger sister were alone in the house and

the incident took place during his absence. He has also deposed that local villagers apprehended the appellant from a road and took him to the Bokajan Police Station.

10. The PW-3, Smti Sarita Gour, has deposed that the informant is her cousin brother and she also knows the appellant. She has deposed that on the day of the incident, the appellant came to her house at night and left when she asked him to go away. On the next day, the informant called him and other people of neighborhood to his house and told them that on previous day, the appellant committed rape on his daughter. The members of the Mahila Samity went to the house of the appellant to search him but he could not be found. Later on, some boys caught him from the jungle where he was hiding and thereafter handed him to the Police. During cross-examination, she has deposed that on the day of incident, only the daughters of the informant were present in his house along with him.

11. The PW-4, Gita Gour, has deposed that about one year ago, the informant called her and some other villagers to his house and when they went there, they were informed by the informant that the appellant had committed rape on his daughter when she came out of her house to attend the call of nature. She has also deposed that later on the villagers apprehended the appellant and handed him over to the Police. During cross-examination, she has deposed that the informant showed her the panty of the victim girl. She has also deposed that she has never seen the appellant coming out of the house of the informant. She denied the suggestion that she has deposed falsely before the Court.

12. The PW-5, Amrita Dey, has also deposed that on the next day of occurrence in the morning, the father of the victim girl (informant) came to her

house and informed her that his daughter has been raped by the appellant. Later on, the members of the Mahila Samity of the village went to the house of the victim and asked her about the incident. On being asked, the victim girl informed them that when she went out of her house to attend the call of nature, the appellant forcefully took her to nearby abandoned house and committed rape on her.

13. During cross-examination, she has deposed that she along with Saritha Dhar, Gita Gour, Raj Das, Puchu Singh, Lili and many others visited the house of the appellant. However, he was not found there. She has also deposed that she did not ask anything to the victim about the incident and she does not know as to who informed the members of the Mahila Samiti about the incident.

14. The PW-6, Smti Lili Mali, has deposed that the informant and the victim girl are known to her and on the morning of the next day of the incident, her aunt Sarita Gaur informed her that the appellant has committed rape on the victim girl in an abandoned house belonging to her aunt. She has deposed that she along with the other villagers went to the place of occurrence where she saw the victim girl crying. On being asked by the Members of the Mahila Samity, the victim girl told them that the appellant had committed rape on her.

15. During his cross-examination, the PW-6 has deposed that the house of the informant is far away from her house. She also deposed that Sarita Gaur informed her over telephone about the incident at about 5:00 AM. She has also deposed that when she went to the house of the victim girl, she saw the victim girl was crying and was not in good health.

16. The PW-7, Dr. Sainjali Haflongbar, has deposed that on 08.11.2021, she was posted at Diphu Medical College & Hospital as an Assistant Professor in

the Department of Forensic Medicine. She has further deposed that on that day at about 1.40 PM, she examined the victim girl in connection with Bokajan P.S. Case No. 205/2021 with a history of alleged rape. On her examination, she has found as follows:-

“General Physical Examination:-

Height 111 CM, Weight 19 KG. Pulse 80 per min. BP 120/60 mm of Hg. Temperature-37 Degree Celsius, Respiratory rate -16 per min, Chest girth-56 CM. Abdomen Girth: 50 CM.

Teeth: Temporary- 8 Permanent- 16 Total 12/12 =24

Hairs: Scalp hair: 35 to 36 cm in length black in colour.

Axillary and pubic hair: Not yet erupted. Breast- Child like,

Menarche: Not yet attained.

On genital Examination: Genital organ- Developed

Vulva- healthy

Hymen; Intact

Vagina- Healthy

Cervix- cannot be examined

Uterus- Not palpable per abdomen

Evidence of venereal disease- not detected clinically

Evidence of Injury on her body or private parts: Not detected.

Vaginal smear- collected from Hymenal Oriface and clitoris

Anal smear- collected from anal margin and canal

Oral smear - collected from space between buccal mucosa and gums.

Evidence of struggle and evidence of stain on wearing clothes- the wearing panty of the alleged victim girl properly signed and sealed labelled and packed and handed over to escorting police for further

necessary investigation. (The panty she wore at the time of incident.)

The mental condition- No abnormality detected. She was co-operative and good. Intelligent and memory is average. Gait is normal.

Result of Laboratory Examination: Spermatozoa detection report VS No. 80/2021 dated 09.11.2021.

Specimen- Vaginal oral and anal smear for detection of spermatozoa.

Pus cell- 1-2/HPF

Epithelial cells- 5-6/HPF

RBC- Not seen

Spermatozoa- not seen

Gonococcus- Not seen

Impression- No spermatozoa detected

Signed by Dr. A Manta, Department of pathology, DMCH, Karbi Anglong."

17. The PW- 7 has deposed that on the basis of physical examination, radiological examination and laboratory examination done on the victim girl, she was of the opinion that there is no evidence of recent sexual intercourse on her person. There was also no evidence of any injury detected on her person. Her cross-examination was declined by the defence side.

18. The PW-8, Shri Haokam Changsan, who is the Investigating Officer of the case, has deposed that on 08.11.2021, he was posted at Bokajan Police Station as Attached Officer. On that day, he received the FIR from the informant and registered the same as Bokajan P.S. Case No. 205/2021 under Section 448 of the Indian Penal Code read with Section 6 of POCSO Act, 2012 and took up the investigation. During investigation, he examined the informant as well as the victim girl and recorded their statement. He also forwarded the victim girl to

Diphu Medical College & Hospital for her medical examination. He also recorded the statement of other witnesses. On the same day, he arrested the accused person (the appellant) and forwarded him to Diphu Court. The statement of victim girl was also recorded under Section 164 of the Code of Criminal Procedure, 1973. He has also deposed that he visited the place of occurrence and prepared the sketch map of the place of occurrence and after completion of the investigation, he laid the charge-sheet against the appellant under Section 448 of the Indian Penal Code read with Section 8 of the POCSO Act, 2012.

19. During cross-examination, he has deposed that in the FIR, the time of alleged incident has been mentioned as 11:00 PM on 06.11.2021 whereas the FIR was lodged on 08.11.2021 at about 10:00 AM. He has also deposed that the informant had narrated about the incident to the people of the locality. He denied the suggestion that he has not properly investigated the case.

20. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the appellant has denied the truthfulness of the testimony of prosecution witnesses and has pleaded his innocence. He also stated that there was an altercation between him and the informant and because of the said fact, the informant filed a false case against him. He also adduced the evidence of two defence witnesses in his defence.

21. The DW-1, Smti. Promila Yadav, has deposed that the appellant is his son. She has deposed that in the month of November, 2021 at around 10:00 AM, the informant along with Raj, Sarita Garh, Sankar Garh and Baby Das came to their house and caught hold of her son and beaten him up badly. She has further deposed that when she tried to interfere, she was also assaulted by those persons. She has also deposed that on the day of alleged incident, her son Pramud Yadav (appellant) was at home along with other family members

and the informant had lodged false FIR against her son. During cross-examination, she has deposed that she did not lodge any case against the informant and other persons who had assaulted her son.

22. The DW-2, Smti Sabha Devi, has deposed that the appellant is her brother and in the month of November, 2021, on the day at about 9:00 AM to 10:00 AM, the informant with some other persons came to their house and caught hold of her brother and beat him up badly. She has deposed that when she tried to interfere, she was also assaulted by them. She has deposed that on the day of incident, her brother Pramud Yadav (the appellant) was at home along with other family members and the informant has lodged a false FIR against her brother.

23. During cross-examination, she has deposed that she got married 11 years ago. However, on the date of alleged incident, she was in her maternal home. She has also deposed that her family members did not lodge any complaint against the persons who had assaulted her brother.

24. Mr. S. Nawaz, the learned counsel for the appellant has submitted that the accusation against the appellant has been constantly shifting during different stages of the criminal proceeding. He submits that while in the FIR, it was alleged that the appellant had committed a bad act upon the victim girl and the said FIR was registered under Section 448 of the Indian Penal Code read with Section 6 of the POCSO Act, 2012. However, after the investigation, charge-sheet was laid under Section 8 of the POCSO Act, 2012. He further submits that though the cognizance of offence was taken under Section 8 of the POCSO Act, 2012, charges were framed against the appellant on 14.07.2022 under Section 4 of the POCSO Act, 2012 and ultimately charges were altered at the stage of delivery of judgment on 11.05.2023 under Section 6 of the POCSO

Act, 2012. However, the conviction was made under Section 10 of the POCSO Act, 2012. He submits that due to constant tinkering with the accusation against the appellant, at various stages of the trial, the appellant was deprived of a fair opportunity of putting up proper defence and same has caused prejudice to him.

25. The learned counsel for the appellant has further submitted that the only eye-witness in the case is the victim girl herself and there is inherent inconsistency in the evidence of the victim girl. He submits that while the victim girl, while deposing as the PW-1, has categorically stated that the appellant has pushed his penis into her vagina and committed rape on her for about one hour, however, the PW-7 who is the Medical Officer who examined the victim girl found the vulva and vagina of the victim girl healthy as well as hymen intact. He also did not detect any injury on her person or on the private part of the victim girl. The learned counsel for the appellant submits that the uncontroverted evidence of the PW-7 belies the testimony of the PW-1.

26. The learned counsel for the appellant has also submitted that even the Trial Court has opined in the impugned judgment that rape might not have been taken place, however, there might be an aggravated sexual assault, which according to the learned counsel for the appellant is only a speculative assumption on the part of the Trial Court without there being any materials on record to support such a finding.

27. The learned counsel for the appellant has submitted that there is no evidence on record to prove the charge under Section 10 of the POCSO Act, 2012 against the appellant. He submits that when the allegation of aggravated penetrative sexual assault under Section 6 of the POCSO, 2012 could not be proved by the prosecution side, the appellant ought to have been acquitted

instead of being convicted under Section 10 of the POCSO Act, 2012 without there being any basis for the same.

28. The learned counsel for the appellant has submitted that it has been alleged in the FIR which is exhibited as Exhibit-P2 that the alleged incident of rape took place at 11:00 PM, however, the evidence of the PW-2, who is the father of the victim girl, shows that the appellant has come to his house at around 11:30 to 12:00 PM midnight and thereafter they drank together and after that the informant went to asleep. The learned counsel for the appellant submits that if the informant went to sleep after 12:00 midnight, it is not possible for the appellant to have committed rape on her daughter at 11:00 PM on that day as alleged in the FIR.

29. The learned counsel for the appellant has also submitted that the prosecution side has failed to prove the foundational fact regarding the allegations of rape made against the present appellant and, therefore, presumption under Sections 29 and 30 of the POCSO Act, 2012 could not have been made by the Trial Court against the appellant.

30. The learned counsel for the appellant has also submitted that the Trial Court did not consider the evidence adduced by the DW-1 and DW-2 wherein they have categorically stated that the appellant was in his house on the day of the alleged incident.

31. The learned counsel for the appellant has also submitted that as the plea taken by the appellant in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973, as well as the evidence adduced by the defence witnesses has not been considered by the Trial Court, it may in itself be sufficient to set aside the conviction of the appellant in view of the judgment of

the Apex Court in the case of “**Reena Hazarika -Vs- State of Assam**” reported in “**(2018) 13 SCR 1108**”.

32. The learned counsel for the appellant also submitted that though the sole testimony of the victim may be sufficient for arriving at the conclusion of guilt in a case involving sexual offences, however, for that the evidence of the victim must be of sterling quality so as to inspire confidence. However, in the instant case, he submits that in view of the evidence of the PW-7 (doctor), the allegation of rape could not be proved by the prosecution side and there is no corroboration to the testimony of the victim who is also a child witness. He submits that the Trial Court ought to have been extra cautious while convicting the appellant mainly on the basis of the sole testimony of child victim. In support of his submissions, the learned counsel for the appellant has cited following cases:-

(i) “**Ganesan -Vs- State represented by its Inspector of Police**” reported in “**(2020) 10 SCC 573**”

(ii) “**Suryanarayana -Vs- State of Karnataka**” reported in “**(2001) 9 SCC 129**”

(iii) “**State of Madhya Pradesh -Vs- Ramesh and Anr.**” reported in “**(2011) 4 SCC 786**”

(iv) “**Phool Singh -Vs- The State of Madhya Pradesh**” reported in “**LiveLaw 2021 SC 696**”

33. On the other hand, Mr. R. R. Kaushik, the learned Additional Public Prosecutor has submitted that the Trial Court has rightly convicted the appellant under Section 10 of the POCSO Act, 2012 on the basis of sufficient evidence on record and the conviction and sentence imposed on the appellant does not justify any interference by this Court.

34. The learned Additional Public Prosecutor submits that in a case involving sexual offences, if the evidence of the prosecutrix inspires confidence, there is no bar in convicting the appellant on the basis of such sole testimony of the prosecutrix. He submits that in the instant case, the prosecutrix has categorically implicated the appellant of having committed aggravated sexual assault on the victim girl as the victim girl was below the age of 12 years. He has also submitted that when ocular evidence is contradictory to the medical evidence, the ocular evidence may be relied if such ocular evidence inspires confidence. He submits that there was no reason for a child of 8 years of age to falsely implicate the appellant with offence of such nature. He also submits that in cases involving offences of such nature, there is no requirement of law that the testimony of the prosecutrix cannot be accepted unless corroborated. In support of his submission, the learned Additional Public Prosecutor has relied upon a ruling of the Apex Court in the case of "**Ranjit Hazarika -Vs- State of Assam**" reported in "**(1998) 8 SCC 635**". He, therefore, submits that the conviction and sentence imposed on the appellant by the Trial Court should not be disturbed and this appeal should be dismissed.

35. Mr. D. Gogoi, the learned Amicus Curiae for the respondent No. 2/informant has submitted similar to that of the learned Additional Public Prosecutor and has prayed for dismissal of the instant appeal.

36. I have considered the submissions made by the learned counsel for both sides and I have also gone through the records of POCSO Case No. 08/2022 which was requisitioned from the Trial Court in connection with this appeal.

37. There is no dispute regarding the question that out of 8 (eight) prosecution witnesses, only the victim girl is the eye-witness to the alleged

incident. It is also pertinent to note that in offences of such nature, normally except the victim, there is always an unlikelihood of the availability of other eye-witnesses to such incidents. It is also not disputed at the bar that there is no bar for the Court to arrive at the conclusion of guilt of the accused on the basis of uncorroborated testimony of the prosecutrix if she is found to be trustworthy and her evidence is of sterling quality. However, in the instant case, it appears that the victim girl has deposed in her testimony that the appellant had pushed his penis into her vagina and raped her for one hour. The victim girl was a minor of about 8 years of age at the time of the alleged incident. If she was subjected to penetrative sexual intercourse by the appellant for about one hour, there would certainly be some signs of the said incident on her private part not to speak of injuries, if she is examined immediately after the incident. In the instant case, the testimony of the PW-7 who is the doctor who examined the victim girl on 08.11.2021 at about 1:40 PM i.e., within 48 hours of the date of alleged incident, she found no evidence of any recent sexual intercourse on her person and also, no injury was detected on her person. She also found her hymen to be intact.

38. This Court finds the submission of the learned counsel for the appellant persuasive wherein he submits that if a minor girl of 8 years old is subjected to forceful penetrative sexual assault, there would certainly be some injuries on her private part and her hymen is unlikely to remain intact. It appears that even the Trial Court found the testimony of the PW-1 to be an exaggeration of facts, however, it came to a conclusion that this case is a case of aggravated sexual assault merely on the assumption that had such incident had not occurred, the informant as well as victim would not have come to the police.

39. This Court is unable to accept the conclusion arrived at by the Trial Court for the reason that once the testimony of victim girl was not found to be of sterling quality, same may not be utilized, without corroboration, for the purpose of convicting the appellant for a lesser offence.

40. In this case, the medical evidence does not support the testimony of the victim girl i.e., the PW-1. Rather, it belies her testimony as no internal or external injury was found on the person of the victim girl. Her hymen was also found intact. Same would be unlikely if she was subjected to penetrative sexual intercourse by the appellant for above one hour.

41. This Court is of considered opinion that once it is found that the prosecutrix has not deposed truthfully before the Trial Court, her evidence no longer remains of a sterling quality and, therefore, it becomes unsafe for the Trial Court to rely on such testimony and to come to the finding of guilt of the appellant on the basis of uncorroborated testimony of such a witness. It is also pertinent to note that the victim, in this case, is also a child witness and, therefore, possibility of tutoring her may not be excluded.

42. Moreover, though the PW-2 has deposed that when the appellant committed rape on the victim girl, she shouted and on this the cousin sister of informant came out from nearby house and chased the appellant with a *dao*. However, the cousin sister while deposing as the PW-3 did not corroborate the testimony of the PW-2. She only deposed that the appellant went to her house on that day and when she asked him to go away, he went away.

43. Another aspect of this case is that though the appellant has taken a plea during his examination under Section 313 of the Code of Criminal Procedure, 1973, that due to altercation which occurred between the informant

and the appellant, he lodged false case against him as well as both the defence witnesses deposing that the appellant was in his home on the date of alleged incident, however, the said defence plea was not considered by the Trial Court in the impugned judgment. The Apex Court in the case of "**Reena Hazarika -Vs- State of Assam**" (supra) has observed as follows:-

"Whether the defence is acceptable or not and whether it is compatible or incompatible with the evidence available is an entirely different matter. If there has been no consideration at all of the defence taken under Section 313 of the Code of Criminal Procedure, in the given facts of the case, the conviction may well stand vitiated. To our mind, a solemn duty is cast on the court in dispensation of justice to adequately consider the defence of the accused taken under section 313 Code of Criminal Procedure and to either accept or to reject the same for reasons specified in writing".

44. In the instant case, the Trial Court failed to consider the plea taken by the appellant during his examination under Section 313 of the Code of Criminal Procedure, 1973 as well as evidence adduced by the defence witnesses while coming to the conclusion of the guilt in the impugned judgment.

45. The victim girl, in the instant case, was of about 8 years of age at the time of occurrence of alleged offence. The Apex Court in the case of "**Suryanarayana -Vs- State of Karnataka**" (supra) has observed that the evidence of the child witness cannot be rejected *per se*, but the Court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of statements and its reliability, base conviction by accepting the statement of child witness.

46. However, in the instant case, the Trial Court did not accept the statement of victim girl to be true and it was held to be exaggerated and, thereafter, convicted the appellant for a lesser offence based on the same testimony. This approach, in the considered opinion of this Court, is not a correct approach. More so, when the deposition of the PW-1 (victim) has been belied by the medical evidence as well as testimony of the PW-7 (doctor), it would be unsafe for the Court to rely on such testimony without any corroboration to come to the conclusion of guilt of the appellant even for a lesser offence. The Trial Court without there being any reliable evidence to that effect on record assumed that the appellant had committed aggravated sexual assault on the victim girl, which is a wrong approach. The finding of the Trial Court has to be based on evidence available on record.

47. At the cost of repetition, it is again stated that if the evidence of victim is of sterling quality which inspire confidence, only on that condition the conviction may be recorded on the basis of sole testimony of such witnesses, however, that is not the case in the instant case. Hence, the conviction of the appellant under Section 10 of the POCSO Act, 2012, based on the sole testimony of the victim girl is not sustainable in law.

48. For the reasons discussed hereinabove, this Court gives benefit of doubt to the appellant and set aside his conviction under Section 10 of the POCSO Act, 2012 as well as sentenced imposed on him by the impugned judgment.

49. The appellant shall be set at liberty forthwith if not required in connection with any other case.

50. Sent back the records of the Trial Court to the Trial Court along with a copy of this judgment.

JUDGE

Comparing Assistant