IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION
CIRCUIT BENCH AT PORT BLAIR
****

PRESENT: HON'BLE JUSTICE RAJASEKHAR MANTHA
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

CRA (DB)/7/2025

SHYAM CHAND HALDER ***... APPELLANT***

Vs.

THE STATE AND ANOTHER ***... RESPONDENTS***

For the appellant	:	Mr. P. Munda
For the State	:	Mr. Sumit Kumar Karmakar
Heard on	:	05.08.2026
Judgment on	:	10.08.2026

PARTHA SARATHI SEN, J.

1. The subject matter of the instant appeal is the judgement dated 10.01.2022 as passed in Special Case No. 24 of 2020/ Special Trial No. 09 of 2021 by the learned Additional Sessions Judge-cum-Judge, Special Court (POCSO Act), Andaman and Nicobar Islands, Port Blair. By the impugned judgement the learned Trial Court found the accused guilty under Section 6 of the POCSO Act, 2012

(POCSO Act, in short) and sentenced him to suffer rigorous imprisonment for 20 years and to pay fine of Rs.5,000/- in default to suffer rigorous imprisonment for 6 (six) months more. The convict felt aggrieved and thus preferred the instant appeal.

2. For effective adjudication of the instant appeal the facts leading to initiation of the said criminal case are required to be dealt with in a nutshell.

3. One Smt. X (name not disclosed as per direction of the Hon'ble Supreme Court in order to prevent the disclosure of the identity) made a statement before the Station House Officer of Shaheed Dweep Police Station which was reduced into writing on 08.05.2020 wherein the said informant stated that she along with her family members including her husband and two minor daughters used to reside in a rented accommodation of one Paresh Halder of Laxmanpur for the last two years. It has been further stated that in the month of August, 2019 the appellant who happens to be the father-in-law of her landlord came to Shaheed Dweep from Kolkata. It is her further version that on one evening (the day and month she could not say) she was sitting in the verandah of her rented accommodation with her family members and talking to the accused and after sometime when her husband went to bathroom to clean his cycle, she took her youngest daughter

inside the rented accommodation to feed her and at that time the present appellant and her elder daughter were sitting in the verandah. It was her further version that after sometime she came out of her room and found that the present appellant and her elder daughter were not present in the verandah and while searching for her elder daughter she noticed that in a room the appellant laid on her said elder daughter on bed, lifted her frock, took off her pant and inserted his private part into her daughter's private part.

4. After noticing such horrifying incident she raised alarm and the appellant fled from the spot. She narrated the entire incident to her husband however she and her husband could not say anything to anyone due to slander or shame and after few days the appellant went back to Kolkata. She stated in her statement that on 08.05.2020 she got courage and thus approached the said Station House Officer to file a complaint.

5. On the basis of such version of the informant which was reduced into writing and was treated as a written complaint Shaheed Dweep Police Station case No.05/2020 dated 08.05.2020 under Sections 5/6 of POCSO Act was initiated. Investigation was taken up and on completion of the same charge sheet was submitted against the accused under Sections 5/6 of the POCSO Act.

6. At the time of consideration of charge the learned Trial Court after perusal of the entire materials as available in the CD prima facie found sufficient materials to frame charge under Section 6 of the POCSO Act alternatively under Section 376 of the Indian Penal Code and thus charges were framed under those two sections. Since the accused pleaded his innocence and claimed to be tried, the trial before the learned Trial Court proceeded.

7. In order to bring home the charges as framed against the accused, the prosecution had examined six witnesses in all and several documents have been exhibited. On behalf of the accused no evidence was however adduced. On careful perusal of the deposition of the PWs and the exhibited documents learned Trial Court came to a finding that charge under Section 6 of the POCSO Act as framed against the accused has been duly proved against the said accused and thus passed the impugned judgement which is assailed before us.

8. In the instant appeal we are to consider as to whether the learned Trial Court is at all justified in coming to a conclusion that the charge under Section 6 of the POCSO Act has at all been proved against the convict and the learned Trial Court is at all justified in passing the judgement of conviction in terms of the provision of

section 235 (2) Cr.P.C. thereby sentencing the accused for a term of 20 years with fine.

9. At the time of hearing Mr. Munda, learned Advocate appearing on behalf of the appellant submits before this court that there occurred inordinate delay of nine months in lodging FIR which has not been properly explained by any of the PWs. It is thus submitted by Mr. Munda that the learned Trial Court in his impugned judgement has completely overlooked the effect of unexplained delay in a criminal trial and for not considering the same a serious miscarriage of justice occurred while passing the impugned judgement.

10. In his next fold of his submission Mr.Munda took us to the previous statements of the victim girl as recorded under Section 161 Cr.P.C. as well as before the doctor who had examined the victim girl medically. It is submitted that on comparative study of the aforementioned two previous statements vis-à-vis the deposition of PW-1 being the victim girl it would reveal that there occurred chronological development with regard to the alleged illegal action of the accused with the victim girl which the learned Trial Court has miserably failed to consider. It is further submitted by Mr. Munda that the learned Trial Court has also failed to visualize the material omissions and/or contradictions in the deposition of PW-2. It is

further submitted by Mr. Munda that before the learned Trial Court the prosecution had miserably failed to establish the foundational facts for drawing adverse presumption under Section 29 of the POCSO Act against the accused which the learned Trial Court had also failed to notice. It is thus submitted by Mr. Munda that it is a fit case for allowing the instant appeal by setting aside the impugned judgement.

11. Per contra, Mr. Karmakar, learned Public Prosecutor appearing on behalf of the State however supports the impugned judgement. It is submitted by Mr. Karmakar that the alleged delay in lodging the FIR has been properly explained. It is further argued by Mr. Karmakar that the evidence of PW-1 being the victim ought not to be disbelieved except on cogent reason. It is further argued on behalf of the State that the evidence of PW-1 gets due corroboration from the evidence of PW-2 which had been given due weightage by the learned Trial Court while passing the impugned judgement.

12. It has been further submitted by Mr. Karmakar that from the oral evidence of the PW-1 and the exhibited documents foundational facts relating to the charge as framed against the accused have been duly established and therefore the learned Trial Court was absolutely justified in presuming that the accused had committed offence as framed against him since the accused before the learned

Trial Court had made no endeavour at all to prove that such charge is not proved.

13. Mr. Karmakar thus submits that this is a fit case for dismissal of the instant Criminal Appeal.

14. We have meticulously gone through the entire materials as placed before us. We have given our due consideration over the submissions of the learned Advocates of the contending parties.

15. Since in course of his argument, Mr. Munda was very vocal with regard to the alleged delay in lodging the FIR, we at the very outset propose to look to the law of the land relating to delay in lodging the FIR in sexual offences. In the reported decision of ***State of Himachal Pradesh Vs. Prem Singh*** reported in ***2009 Cr.L.J 786*** the Hon'ble Supreme Court held thus:

> *"Delay in every case cannot be a ground of suspicion. It can only be so when the delay is unexplained. That apart, delay in sexual offences, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of prosecutrix and her family member before coming to police station to lodge a complaint. In a tradition bound society prevalent in our country more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the First Information report."*

16. The same view was taken in the case of ***State of Uttar Pradesh Vs. Manoj Kumar Pandey*** reported in ***AIR 2009 SC 711***.

17. Keeping in mind the aforementioned propositions of law if we look to the statement of the informant which was reduced into

writing and was treated as a written complaint it reveals that the informant being the PW-2 and the mother of the victim while giving her statement before the Station House Officer of the jurisdictional police station on 08.05.2020 though stated that in the month of August, 2019 the accused came to the house where she used to reside with her family members as a tenant however she could not divulge as to when and on which day the alleged incident occurred. However in the later part of her statement she has stated that due to slander or shame she could not say anything to anyone about the incident except to her husband. We have meticulously perused the statement of the PW-2 (exhibit P-2) as recorded under Section 164 Cr.P.C. wherein we found no whisper regarding the alleged delay in lodging the FIR. At this juncture, if we look to the evidence of PW-2 it reveals that in her examination-in-chief she stated that the alleged incident occurred in the month of August, 2019 in one evening and she lodged police complaint in the month of May 2020 and the reasons for such delay was fear and social stigma. Admittedly, in her cross-examination PW-2 was not cross-examined on this point. Curious enough PW-3 being the father of the victim and the husband of the PW-2 also remained absolute silent with regard to the delay in lodging the FIR. At this juncture, the moot question arises for our consideration as to whether the delay in lodging the

FIR is at all explained and in the event the answer is affirmative, how far it is believable.

18. On careful perusal of the statement of the informant before the Station house Officer of the jurisdictional police station as has been reduced into writing we find that it was not the version of the PW-2 in such statement that either she or her husband was ever threatened by the accused immediately after occurrence of the incident. On the contrary it is the version of PW-2 before the police that after a few days of the incident the accused went back to Kolkata. At this juncture if we again look to the evidence of PW-2 and PW-3 conjointly we noticed that immediately after seeing the alleged incident PW-2 reported the matter to her husband PW-3 and thereafter PW-3 scolded the accused. It thus appears to us that no case has been made out by the prosecution that soon after the occurrence of the alleged incident the parents of the victim being PW-2 and PW-3 are at all threatened by the accused. It has also been noticed by us that it is the specific case of the PW-2 that few days after the alleged incident the accused went back to Kolkata but no explanation had come forward from the version of the PW-2 and PW-3 as to what prompted them to lodge the FIR in the month of May, 2020 when the alleged incident occurred in the month of August, 2019. In view of such we are constrained to hold that before

the learned Trial Court the prosecution has miserably failed to explain the delay in lodging the FIR which raises a serious doubt with regard to the genuineness of the allegation as levelled against the accused.

19. It is equally pertinent to mention herein that it is the consistent version of PW-2 and PW-3 in their respective depositions that immediately after occurrence of the incident they noticed that the private parts of the victim girl was swollen and despite such fact they made no endeavour to take their daughter to a nearby hospital or a doctor for her treatment. The investigating officer has also failed to seize any document of injury/injury report of the victim at the time of investigation. Such inaction on the part of PW-2 and PW-3 also remained unexplained which in our considered view affects the very foundation of the prosecution case.

20. On perusal of the Trial Court record it further reveals to us that the written complaint was lodged on 08.05.2020. It further appears that the Medico Legal Examination of the victim was carried on on 08.05.2020 whereas the statement of the victim under Section 164 Cr.P.C. was recorded on 19.06.2020. The Medical Practitioner who conducted the Medico Legal Examination of both the victim and the accused was examined as PW-5 and in her examination-in-chief

she duly proved the Medico Legal Examination report of the victim as exhibit-P-7.

21. On perusal of exhibit-P-7 it appears that the said PW-5 being the Medical Practitioner recorded the narration of the incident of the victim wherein it has been recorded by her that the father-in-law of their landlord came to her one afternoon and boarded her and then tried to penetrate his penis through her vagina and when she screamed and called for her mother, her mother ran to her for rescue. At this juncture if we look to the statement of the victim (exhibit-12) as recorded u/s 164 Cr.P.C. it would reveal that it is her version before the learned Judicial Magistrate that on the relevant day and hour the accused took her to his home, climbed on her and played with her private part. She further stated before the said learned Judicial Magistrate that the accused took off her pant. At this juncture if we look to the evidence of PW-1 it reveals that in her examination-in-chief she stated the following: -

> *"Thereafter he opened his pant and also opened my frock and inserted his 'nunu' inside my 'nunu' and I shouted."*

22. On comparative study of the aforementioned two statements of the PW-1 i.e. before the doctor and before the learned Judicial Magistrate vis-à-vis the evidence of the PW-1 we thus notice gradual exaggeration and/or contradictions which definitely affects the credibility of the prosecution case. In this regard we may safely

place our reliance upon the judgement in the case of the ***Allauddin and Others Vs. State of Assam and another*** in ***Criminal Appeal No. 1637/2021 dated 03.05.2024*** reported in ***2024 SCC online SC 760*** wherein the Hon'ble Supreme Court expressed following view: -

> *"7. When the two statements cannot stand together they became contradictory statements. When a witness makes a statement in his evidence before the court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161 or Section 164 Cr.P.C. has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161 (1) or Section 164 Cr.P.C, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the police, which he states before the court in his evidence. The explanation to Section 162 Cr.P.C. indicates that an omission may tantamount to contradiction when it is significant and relevant. Thus every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the Procedure provided to sub section (1) of Section-162 must be followed for contradicting witnesses in the cross-examination."*

23. On perusal of the impugned judgement it appears to this Court that the learned Trial Court on examination of the testimony of PW-1 and PW-2 in the perspective of the statement of the victim as recorded under Section 164 Cr.P.C came to a conclusion that the said testimonies get due corroboration from the previous statement of the victim. In our considered view such finding of the learned Trial Court is not proper and contrary to the principle of law as enunciated in the case of ***Allauddin*** (Supra).

24. We have gone through the deposition of the investigating officer being PW-6. In his deposition he stated that he arrested the accused on 26.06.2020. On perusal of the arrest memo as available in the Trial Court record it reveals to us that place, date and time of arrest are at police station at Shaheed Dweep on 26.06.2020 at 18:05 hours. At this juncture, if we again look to the complaint being the statement of the informant as reduced into writing we found that it was the version of the informant/PW-2 that few days after the incident, the accused went back to Kolkata. On behalf of the prosecution no plausible explanation could be given as to how the investigating officer arrested the accused from Shaheed Dweep police station especially when it was not the case of the prosecution that after commission of the alleged crime the accused went back to Kolkata and again came back to the P.O. i.e. in the house of his son-in-law.

25. It is settled principle of law that in a criminal trial when two views are possible, the view which is in favour of the accused is adopted. In this regard this Court places its reliance upon the judgement as passed by the Hon'ble Supreme Court in the case of **State of Rajasthan V. Raja Ram** reported in **2003 (8) SCC 180** wherein the Hon'ble Supreme Court expresses the following :

> *"The golden thread which runs through the web of administration of Justice in criminal cases is that if two views are possible on the*

> *evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."*

26. Admittedly, Section 29 of the POCSO Act is an enabling provision for the Special Court to presume that an accused who is prosecuted for commission of an offence under Sections 3/5/7/9 of the said Act has committed the offence unless the contrary is proved however in our considered view such presumption would not relieve the prosecution to discharge its initial burden to prove by establishing certain foundational facts upon which said presumption can be drawn.

27. In this regard we propose to place our reliance upon the judgement in the case of **In Just Rights for Children Alliance & Anr. v. S. Harish & Ors.** reported in **2024 INSC 716 : 2024 SCC online SC 2611** wherein the Hon'ble Supreme Court expressed the following view: -

> ***"169.*** *One good reason for providing such statutory presumptions in different legislations is owed to the fact that at times having regard to the peculiar case the prosecution may find it extremely difficult to know the mind of the accused so as to establish his intention and mental state. In contrast, the accused may not have to face the same degree of difficulty because he is fully aware of his mental state and can explain his intentions on the basis of his conduct or actions.*
>
> ***170.*** *However, since the courts were in seisin of the harshness of such presumptions and the inherent danger they pose - particularly in blurring the line between the presumption of a culpable mental state and the presumption of the guilt itself and thereby undoing or compromising the fairness of such criminal proceeding, this Court for the first time in Baldev Singh (supra) sowed the seeds for a test to ascertain as to when such presumption can be safely attracted which was later more fully evolved in Noor Aga (supra) wherein a brightline*

test was laid down in the form of the 'Rule or Principle of Foundational Facts'.

171. *This 'Rule or Principle of Foundational Facts' simpliciter lays down that before the statutory presumption of culpable mental state could be validly invoked, the prosecution must first establish certain foundational facts. These foundational facts typically involve or correspond to proving those facts or elements that cogently establish the actusreus required for the offence alleged by the prosecution. It is only after such foundational facts have been proved beyond a reasonable doubt that the prosecution may take recourse of the statutory presumption provided by the legislature. The rationale behind the same is two-fold.* ***First****, in the absence of any actusreus there is no possible way to ascertain the corresponding mensrea that is required to be established. This is because it is the actusreus which demarcates or delineates the mensrea which is to be looked for and established. Without an actusreus of any form there arises no question of establishing and consequently presuming the mensrea, in view of the fundamental principle of criminal jurisprudence, that no one should be punished for their thoughts or intention alone unless accompanied by some form of act.* ***Secondly****, and more importantly it ensures that the statutory presumption does not overreach or take the place of proof of guilt under the guise of 'presumption of culpable mental state'.*

172. *It would be too much to shift the entire onus onto the accused and to then ask him to prove a negative fact. Thus, any statutory presumption would operate only after the prosecution first lays the foundational facts necessary for the offences that have been alleged beyond a reasonable doubt. This is because a negative cannot be proved in the initial threshold, in order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first. Thus, in law it is trite that the initial burden always lies on the prosecution. This why, the establishment of foundational facts by the prosecution is a prerequisite for triggering the statutory presumption for shifting the onus on the accused to prove the contrary. It is a delicate balance struck between the practical need for such presumption in law and the cardinal principles of criminal jurisprudence to ensure that the presumption does not cross or transgress the fine line that demarcates presumption of 'culpable mental state' from the 'presumption of guilt' itself.*

173. *Since a negative cannot be proved, an accused cannot be asked to disprove his guilt even before the foundational allegations with supporting material thereof are placed and duly established by the prosecution before the court. Unless the prosecution is able to prove foundational facts in the context of the allegations made against the accused under any specific provision of the POCSO as the case may be, the statutory presumption of culpable mental state under Section 30 of the POCSO will not come into the picture.*

174. *Even if the prosecution establishes such foundational facts and the presumption is raised against the accused, he can rebut the same either by discrediting prosecution's case as improbable or absurd or the accused could lead evidence to prove his defence, in order to rebut the presumption, however the said presumption under Section 30 of the POCSO will be said to have been rebutted only where the accused by*

way of his defence establishes a fact contrary to the presumption and proves the same beyond a reasonable doubt."

28. In our considered view the prosecution before the learned Trial Court has miserably failed to discharge its burden to establish some foundational facts to draw an adverse presumption under Section 29 of the POCSO Act and thus we are constrained to hold that before the learned Trial Court the prosecution has miserably failed to bring home the charge as against the appellant herein.

29. We are conscious that in connection with the crime as involved in the instant appeal the victim was subjected to medico legal examination after eight months of the alleged incident which is why the doctor found no external injury and/or significant injury on the person of the victim since such injury/injuries might have healed up with the passage of time and thus while disposing the instant appeal we made no observation with regard to the commission of the crime upon the victim. We only say that before the learned Trial Court the prosecution could not bring sufficient and cogent evidence to substantiate that the present appellant was involved in the alleged crime in respect of which he faced the trial.

30. As a result, the instant appeal succeeds.

31. Consequently, the impugned judgement dated 10.01.2022 as passed by the learned Trial Court in Special Case No. 24 of 2020/ Special Trial No. 09 of 2021 and the order of sentence dated

11.01.2022 as passed against the appellant Shyam Chand Halder is set aside.

32. The appellant Shyam Chand Halder is thus found not guilty in connection with Special Case No. 24 of 2020/ Special Trial No. 09 of 2021 as disposed of by the learned Additional Sessions Judge-cum-Judge, Special Court (POCSO Act), Andaman and Nicobar Islands, Port Blair.

33. The appellant Shyam Chand Halder be set at liberty at once, if not wanted in connection with any other case.

34. Registry is directed to forward a copy of this judgement to the Superintendent of the Correctional Home where the present appellant is detained for doing his needful in accordance with this judgement.

35. Trial Court Record be returned along with a copy of this judgement.

36. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on priority basis on compliance of all legal formalities.

I agree.

(RAJASEKHAR MANTHA, J.) **(PARTHA SARATHI SEN, J.)**