

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
(APPELLATE SIDE)**

Present:

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Smita Das De**

**CRA 281 of 2019
Maharaj Halder
Vs.
The State of West Bengal & Anr.**

For the Appellant : Mr. Rajat Sinha Roy,
: Mr. Surajit Basu

For the State : Mr. Subrata Karmakar, Ld. Amicus
Curiae,

Hearing Concluded on : **03/07/2026**
Judgment on : **08/07/2026**

Smita Das De, J.:-

1. The appellant/convict has challenged in the instant appeal a judgment and order of conviction dated 18th February, 2019, of the Additional District and Sessions 1st Court-cum-Special Judge under the POCSO Act, 2012, at Sealdah, 24 Parganas (South), in Special Case No. 52 of 2018, thereby convicting the appellant under Section 6 of the POCSO Act, 2012.

2. Before entering into the arguments by the parties on the merits and demerits of the impugned judgment, it is required that the FIR, evidence and other relevant materials on record be looked into.
3. The FIR has been lodged by one, Lakhmi Halder on 12th October 2018 being registered as Tala Police station Case No. 98 of 2018 dated 12.10.2018 under Section 4 and 6 of the POCSO Act, 2012 and 376 (n)(i) of the IPC. The FIR narrates the incident as follows:-
 - i) The complainant has stated therein that she along with the appellant / her husband and two daughters reside at the address 20/1/1, Belgachia Road, Kolkata 700037 within the jurisdiction of Tala Police Station. Her younger daughter/ victim is a 16 year old girl. The victim suddenly felt indisposed on 10th October, 2018 and had been brought to the R. G. Kar Hospital with complaints of severe stomach pain. On Doctor's advice she has been immediately admitted therein. After several medical examinations the victim has been found to be three months pregnant. The complainant has further stated that due to foetus developing in the fallopian tube she suffered profuse bleeding, which rendered her condition critical. The Doctor advised immediate termination of pregnancy. Accordingly, as per medical advice the abortion has been carried out and the patient has been shifted to the Intensive Care Unit. It has been further stated in the FIR, that after regaining consciousness,

the victim stated that, *“My father Maharaj Halder is responsible for this. He had physical relationship with me for past three-four months. On the day before last Mahalaya, he forcefully made physical relationship with me. My father told me that if I disclose this to any one he would kill me and my mother.”* The complainant has stated in the FIR, that her husband, i.e. the present appellant, is responsible for the incident and has sought his punishment.

4. Charges have been framed against the appellant on 12th December, 2018, under Section 4 and 6 of the POCSO Act, 2012 and 376(2) (i) of the IPC.
5. During the trial the prosecution examined 11 witnesses including the Investigating Officer. The appellant has been examined under Section 313 of CrPC and the Trial court has passed the judgment of conviction and an Order of sentence, which is impugned in the instant appeal.
6. From amongst the 11 witnesses cited by the prosecution, the PW11 is the Investigating Officer, PWs 5, 6, 7 and 8 are the Doctors, PWs 2 and 9 are the complainants mother of the victim and her elder sister respectively and close relatives of the victim PW4, Suman Singh being the son from the first wife of the present appellant and a close acquaintance of the family, PW10 is the friend of the elder sister of the victim, PW3 is a record keeper of the hospital and is a formal witness and finally PW1 is the victim girl herself.

7. The victim girl, and her elder sister with the complainant mother (PWs 1, 9 and 2 respectively) have supported the prosecution case in their depositions.
8. On 2nd January, 2018, the victim deposed that her father has sexually assaulted over the preceding previous three months. She has been hospitalized on account of abdominal complications and upon examination found to be pregnant. She further deposed that she has already narrated the incident to the Magistrate who recorded her statement under 164 CrPC, and also to the Doctor who has been treating her. The victim identified her statement recorded by the Magistrate, doctor as well as the appellant, who has been present in the Doc. The complainant / PW2 corroborated the evidence of the victim / PW1 and stated in her examination in chief that the victim has disclosed the appellant's involvement in the said incident. The victim's elder sister / PW9 have deposed that she came to know about the incident two days after Mahalaya during the night. She stated that she learnt from the Doctor that her sister has been suffering from ECTOPSI pregnancy with clotted blood in her abdomen. She further stated that she has been informed by her sister that the appellant has been responsible for the same. The PW9 is the scribe of the FIR and has deposed that she drafted it at the instance of her mother.
9. Two other witnesses have been cited by the prosecution, as independent witnesses namely, PWs 4 and 10. Amongst them Suman Singh / PW4 is

the son from the first wife of the present appellant. He has not disclosed the said fact in his evidence. He deposed that upon reaching the hospital he came to learn about the victim's pregnancy of which he did not have any prior knowledge. He further deposed that he has been informed by the victim's sister. Similarly PW10 has stated in her evidence that she reached the hospital after being informed by PW9 about the victim's pregnancy.

10. Upon examining the evidence of the medical witnesses i.e. PWs 5, 6, 7 and 8, the following facts have emerged. PW5 has examined the victim on 26th October, 2018 and upon examination she opined that there has been evidence of ruptured hymen, which is suggestive of sexual intercourse in the past. Evidence of recent pregnancy has also been noted. She further noted, a partly healed surgical scar on the lower and anterior abdominal wall, indicating intervention 7 – 10 days prior. The Doctor also recorded the history given by the victim, namely repeated sexual abuse by her father /the present appellant over the past few months and her sudden illness on 8th October 2018 which resulted in unconsciousness and necessitated immediate hospitalization. The findings recorded in the medical examination report as an exhibit in the case are quoted below:-

“1. abdomen flabby, linea ligra (faint) detected, a partly healing surgical scar of 5 and ½ length 9 stich marks placed 4 inches below umbilicus, 3.5 inches to the right of anterior mid line of the right side and 2 inches on the left side, 3 inches below the right anterior superior iliac spine (right end) and similarly left end; scar

is transparently placed over the lower part of the anterior abdominal wall mildly pigmented at places. No. 2. General examination--- No. 1 labia majora darkened slightly flattened, no injuries presence, No. 2. labia minora thickened, darkened, mildly protruding to labia majora on full abduction of the thighs. No injuries presence. No. 3 hymen – faibriated, an old heal tear at 3 O’ Clock position. No. 4 vagina one finger loosly moving in all direction, Mildly blood stained serous discharged. No injuries detected.”

- 11.** On 12th October 2018 the PW6 examined the victim and it has been noted by the Doctor with regard to the history of the alleged commission of rape by the present appellant. The element of commission of rape found by the Doctor is quoted below:-

“1. Labia Majora pigmented, no injury, nipple black – hymen ruptured --- old ruptured. Per vaginal examination I found no active bleeding.”

- 12.** PW7 has deposed that he has been present at the time of examination of the victim by PW6 on 13th October 2018 and witnessed the entire process including the preparation of the reports which he signed. PW8 has examined the appellant and prepared the Potency Report, which has accordingly been exhibited during the trial. The finding of PW8 has been that the appellant is potent and capable of performing sexual intercourse. However, in cross examination he stated that the sperm count of the person has not been determined during the examination.

- 13.** On the basis of the evidence, the trial Court held that the guilt of the appellant has been proved beyond reasonable doubt. Accordingly, the

appellant has been convicted and sentenced vide the impugned judgment dated 18th February 2019.

14. Mr. Rajat Sinha Roy, the Learned Counsel appearing for the appellant has argued that the entire prosecution case has been fabricated to unjustifiably implicate the appellant. He contends that the prosecution materials are unfounded and baseless. It is further submitted that the deposition of PW4 regarding regular visits to the victim's house constitutes a material fact that raises doubt about the credibility of the case. Furthermore, a conviction cannot rest solely on the evidence of the victim and her mother.

15. The Learned Counsel for the appellant refers to the FIR to submit that the victim has stated to have been hospitalized and operated on 10th October 2018 while FIR has been lodged on 12th October 2018. The mother, PW1 has not deposed on this fact in her evidence. Though according to him she should have deposed on the said issue which thereby amounts to deliberate suppression of the relevant and material facts in evidence by the said witness, which raises serious doubts as to the truthfulness of her testimony. It is further submitted that the delayed lodging of the FIR suggests an afterthought and tutored version on the part of the complainant. He also pointed out that during the cross-examination of the said witness it has been revealed that since the witness is an illiterate person, the FIR could not have been written by them. In defense, it has been submitted that the admission of the

witness regarding their close acquaintance with and the regular visit by PW4 / Suman Singh to the house of the victim, raises substantial doubt regarding the alleged involvement of the present appellant in the offence and is only indicative of his innocence. It is submitted that since the evidence provided by the victim and her mother is not trustworthy, a judgment of conviction and sentence cannot be sustained solely on the basis of the same. He has therefore, pressed for setting aside the impugned judgment and order and for the release of the appellant on a finding of not being guilty of the offence alleged.

16. The State is represented by Mr. Subrata Karmakar, the Learned AMICUS, CURIAE. According to the State the evidence of PW2 and in particular, that of the victim, is unimpeachable in nature. According to the State on the basis of the evidence of atleast these two witnesses, the conviction and the sentence of the present appellant are fully substantiated. Additionally the Potency report of the appellant as well as the Medical evidence lends strong support to the prosecution case. It is submitted that any discrepancies, being minor in nature, would not disprove the case established on record through evidence beyond reasonable doubt. Hence, it has been submitted that the impugned judgment calls for no interference by this court and the instant appeal may be dismissed for the reasons as stated above.

17. In this context it is pertinent to observe that the law is now well settled that corroboration, by its nature is only a rule of prudence and

not a statutory requirement. For an offence of aggravated penetrative sexual assault does not depend upon the number of witnesses examined by the prosecution. The testimony of a solitary witness, including that of the victim herself, if found wholly reliable, trustworthy and of sterling quality, is sufficient to sustain a conviction without any independent corroboration. It is equally settled that where the testimony of such a witness suffers from inherent improbabilities, material inconsistencies, unreasonable conduct or circumstances raising reasonable doubt regarding its truthfulness, the court would be justified in seeking assurance from other evidence and in absence thereof extend the benefit of doubt to the accused. Thus, in the present case if the evidence of the victim stood unimpeached, unshaken, and of Stirling quality the conviction of the appellant could have been sustained solely on the strength thereof.

18. The legal position governing appreciation of the testimony of a prosecutrix is now well settled. In ***State of Punjab versus Gurmit Singh*** reported in **(1996) 2 SCC 384**, the Supreme Court held that the testimony of a victim of sexual assault stands on a footing higher than that of an injured witness and ordinarily does not require corroboration. However, the Court simultaneously emphasized that such testimony must inspire confidence and must be free from circumstances giving rise to doubt regarding its truthfulness. Thus, while corroboration is not a rule of law, credibility remains the indispensable foundation of

conviction. The aforesaid principle has been further explained in ***Narender Kumar versus State (NCT of Delhi)*** reported in **(2012) 7 SCC 171**, wherein it has been held that though conviction may rest upon the sole testimony of the prosecutrix, such testimony must be of such quality that the Court can safely place implicit reliance thereon. The Court further held that where the evidence suffers from infirmities or creates suspicion regarding its veracity, the Court would be justified in seeking corroboration before recording a conviction.

19. The doctrine of a "sterling witness" has been authoritatively formulated in ***Rai Sandeep @ Deepu versus State (NCT of Delhi)*** reported in **(2012) 8 SCC 21**. The Supreme Court held that a sterling witness is one whose version is of such quality that it remains consistent throughout, withstands cross-examination, accords with surrounding circumstances and can be accepted without hesitation. Such testimony should be natural, probable and free from embellishment. Tested on the touchstone of the said doctrine, the evidence of PW.1 in the present case does not satisfy the characteristics of a sterling witness. The prolonged silence of the victim, the emergence of the accusation only after detection of pregnancy and the absence of any contemporaneous disclosure create circumstances rendering the testimony susceptible to doubt and therefore incapable of being accepted without careful scrutiny. Upon a careful scrutiny of the evidence on record, this Court finds several

circumstances which prevent the testimony of the victim and her mother from attaining the status of wholly reliable evidence.

20. The prosecution case proceeds on the allegation that the appellant, being the father of the victim, has repeatedly subjected her to sexual intercourse for a period of approximately three months. Significantly, during the entire period of such alleged repeated acts, the victim admittedly did not disclose the matter to any person whatsoever. She did not disclose the same to her mother, who has been residing in the same household; she did not disclose the same to her elder sister; nor did she disclose the same to any relative, friend or neighbour. More importantly, even when she became seriously ill and suffered severe abdominal complications requiring urgent hospitalization, no allegation against the appellant surfaced. It is only after the medical examination at the hospital revealed that the victim has been pregnant that the allegation implicating the appellant came to be disclosed.

21. The chronology of events assumes considerable importance. The FIR itself records that on 10th October 2018 the victim has been admitted to the hospital with severe abdominal pain. Medical examinations revealed pregnancy. The pregnancy has been found to be ectopic in nature, requiring immediate medical intervention. The pregnancy has been terminated vide surgical procedure following which immediate medical attention has been provided.

22. The abortion proceedings and subsequent statements reveal that the allegations against the appellant has been disclosed only after the event. Consequently, the FIR has been registered on 12th October 2018. Thus, the accusation against the appellant emerged only after the pregnancy has been medically detected and the abortion has been taken place. Such chronology constitutes a relevant circumstance in assessing the credibility of the prosecution version.

23. This Court is conscious of the settled principle that delay in disclosure of sexual offences is not necessarily fatal and cannot be viewed with the same rigidity as in ordinary criminal cases. Victims may remain silent due to fear, trauma, shame or coercion. Nevertheless, where prolonged silence is sought to be explained on the ground of threat or intimidation, the explanation must appear reasonably probable in the backdrop of the proved facts and circumstances. In ***State of Himachal Pradesh versus Sanjay Kumar*** reported in ***(2017) 2 SCC 51*** and several earlier decisions, it has been recognised that victims often remain silent due to fear, shame, social stigma or psychological trauma. However, the principle does not imply that every delayed disclosure must automatically be accepted irrespective of surrounding circumstances. The Court must still examine whether the explanation for silence appears probable in the factual backdrop of the particular case.

24. In the considered view of this court having regard to the totality of the circumstances, the conduct of the victim appears unnatural and

inconsistent with normal human behaviour. She remained silent during the entire period of the alleged repeated acts, during her illness, during her admission to hospital and even when examined by the Medical Professional. The accusation surfaced only after medical examination revealed pregnancy and after the abortion procedure has already been performed. Such conduct does not appear consistent with the ordinary course of human behaviour and therefore constitutes a relevant circumstance affecting the weight to be attached to her testimony. The conduct attributed to the victim, viewed in the totality of the circumstances, appears unnatural and casts serious shadow upon the reliability of the prosecution version.

25. The testimony PW1 is not a “sterling quality”. There has been complete silence during the alleged repeated acts denying illness, hospitalisation and medical examination. The accusation emerged only after the pregnancy has been detected and abortion performed. In the present case no DNA, Forensic evidence connects the appellant to the pregnancy. Potency alone is not a proof of commission. Suspicion cannot replace proof of and that the benefit of doubt must be granted.

26. Another circumstance which considerably affects the credibility of the prosecution case is the evidence of PW.2, the complainant and mother of the victim. The FIR gives a detailed account of the hospitalization of the victim, the discovery of pregnancy, the medical complications arising therefrom and the abortion which has been carried

out before the FIR has been lodged. Surprisingly, while deposing before the Court, PW.2 did not disclose the material facts relating to the hospitalization and abortion of the victim prior to the lodging of the FIR. Such omission pertains not to a peripheral aspect but to the very genesis of the prosecution case. The law is well settled that omissions touching the core of the prosecution case constitute material omissions affecting the credibility of the witness. Suppression of a material circumstance by a key witness renders the testimony vulnerable and prevents the Court from treating such evidence as wholly trustworthy. In this regard, reference may be made to the principle laid down by the Supreme Court in ***State of Rajasthan versus Kalki*** reported in ***(1981) 2 SCC 752***, where a distinction has been drawn between minor discrepancies arising from errors of observation and material omissions affecting the substratum of the prosecution case. Where an omission touches the genesis of the occurrence or the very foundation of the prosecution story, it ceases to be a mere discrepancy and assumes substantial significance. The omission of PW.2 regarding the hospitalization and abortion prior to lodging of the FIR pertains directly to the genesis of the prosecution case and therefore materially affects her credibility.

- 27.** The evidence of the remaining witnesses also does not provide independent corroboration of the prosecution case. PW.9, the elder sister of the victim, admittedly derived knowledge regarding the alleged involvement of the appellant from the victim herself. PW.10 similarly

came to know about the incident through PW.9. PW.4 also possesses no direct knowledge regarding the alleged acts and merely came to know of the pregnancy after reaching the hospital. Thus, the evidence of these witnesses is substantially hearsay in nature and cannot constitute substantive proof of the alleged offence. The settled rule of evidence is that hearsay evidence is ordinarily inadmissible to prove the truth of the facts asserted and carries little probative value unless it falls within recognised exceptions. The rule against hearsay constitutes one of the fundamental principles of the law of evidence. The rationale underlying the rule is that the person who originally made the statement is not subjected to oath, cross-examination or judicial scrutiny. Consequently, hearsay evidence ordinarily carries limited evidentiary value and cannot substitute direct evidence of the occurrence. The evidence of these witnesses, therefore, furnishes no independent assurance regarding the truthfulness of the accusation. Consequently, the testimony of these witnesses does not materially strengthen the prosecution case.

- 28.** The medical evidence adduced through PWs.5, 6, 7 and 8 establishes certain medical facts beyond doubt. It establishes that the victim had conceived, the pregnancy is abnormal and ectopic in nature, consequently, surgical intervention became necessary and there has been signs indicative of prior sexual intercourse. Thus, the medical evidence clearly proves the factum of pregnancy and prior sexual activity. However, it is equally settled that medical evidence can corroborate the

occurrence of sexual intercourse but ordinarily cannot identify the perpetrator thereof. None of the doctors had any personal knowledge regarding the identity of the person responsible for the pregnancy.

29. The case history recorded by the doctors implicating the appellant has been based exclusively upon the statements allegedly made by the victim. Such history recorded in medical documents is not substantive evidence of the truth of its contents. The doctor merely records what is narrated by the patient. If the source narration itself is doubtful, the repetition of that narration in medical records cannot elevate it into proof of the fact asserted. Therefore, while the medical evidence establishes pregnancy, it does not independently establish the culpability of the appellant.

30. It is further noteworthy that no scientific evidence has been produced to connect the appellant with the pregnancy. No DNA profiling or comparable forensic examination has been brought on record. The potency report merely indicates that the appellant has been capable of sexual intercourse. Potency is merely evidence of capability and not evidence of commission. Such evidence does not advance the prosecution case in any significant manner.

31. The jurisprudential foundation of criminal law requires the prosecution to establish its case beyond reasonable doubt. The presumption of innocence continues throughout the trial and remains available to the accused unless displaced by cogent, reliable and

convincing evidence. Suspicion, however grave, cannot substitute proof. In ***Kali Ram versus State of Himachal Pradesh*** reported in **(1973) 2 SCC 808**, the Supreme Court described the presumption of innocence as a golden thread running through the web of criminal jurisprudence. The Court held that if two views are reasonably possible on the evidence, the one favourable to the accused must necessarily be adopted. Similarly, in ***Sharad Birdhichand Sarda versus State of Maharashtra*** reported in **(1984) 4 SCC 116**, the Supreme Court reiterated that suspicion, however grave, cannot take the place of proof and that every incriminating circumstance must be established with certainty before a conviction can be recorded. Equally, moral conviction cannot replace legal proof. The Court must distinguish between proof that the victim has been pregnant and proof that the appellant has been responsible for the pregnancy. While the former stands established by medical evidence, the latter remains dependent entirely upon the credibility of the victim's subsequent accusation.

- 32.** The motive and conduct of victim create a probable alternate hypothesis and contribute to reasonable doubt. There is evidence on record of discord between the appellant and the second wife. It is also in evidence that the appellant has been paying the first wife from the funds generated from the hotel run outside the KMC office. This financial dispute and domestic discord furnishes a probable motive for false implication and cannot be ignored in assessing the belated allegation.

- 33.** The record further indicates visit and intimacy between the victim and her step brother. Further the age of the victim, stated to be 15-16 years indicates a level of maturity.
- 34.** This circumstance is relevant while assessing whether the victim has been in a position to resist or to inform her mother and sister of alleged acts, by her father or to exercise independent volition in her association including with Suman Singh. The cumulative effect of the circumstances does not accord with the prosecution version of continuous coercion without any disclosure.
- 35.** The cumulative effect of the circumstances discussed above, namely, the complete absence of any prior disclosure by the victim; the emergence of the accusation only after detection of pregnancy and abortion; the material omission by PW.2 regarding hospitalization and abortion prior to lodging of the FIR; the largely hearsay nature of the evidence of supporting witnesses; the absence of independent corroborative evidence; the absence of scientific evidence linking the appellant to the pregnancy; and the inability of the medical evidence to identify the perpetrator, creates substantial and reasonable doubt regarding the prosecution case. In criminal jurisprudence, whenever two views are reasonably possible from the evidence on record, the view favourable to the accused must prevail. The evidence of the victim and PW.2, when tested on the anvil of the principles governing appreciation of testimony of key witnesses, does not inspire the degree of confidence

required for sustaining a conviction under a penal statute carrying severe consequences. Their testimony cannot be classified as wholly reliable or of sterling quality so as to exclude every reasonable hypothesis consistent with innocence. The evidence of the victim and her mother does not attain the standard of complete reliability contemplated in ***Gurmit Singh (supra), Narender Kumar (supra) and Rai Sandeep (supra)***. The material omissions, unexplained conduct, delayed disclosure, hearsay nature of supporting evidence and absence of scientific corroboration collectively generate reasonable doubt regarding the prosecution case.

36. Applying the aforesaid principles, this Court finds that while the prosecution has successfully established that the victim has been pregnant and has undergone abortion, it has failed to establish beyond reasonable doubt that the appellant has been responsible for such pregnancy. Consequently, this Court is of the considered opinion that the prosecution has failed to establish the guilt of the appellant beyond all reasonable doubt. The appellant is therefore entitled to the benefit of doubt.

37. The appeal accordingly succeeds. The judgment of conviction and order of sentence impugned dated 18th February, 2019, are set aside. The appellant is acquitted of all the charges levelled against him. He shall be released forthwith from custody, if his detention is not required

in connection with any other case. The bail bonds, if any, shall stand discharged.

38. Let the TCR along with a copy of this judgment be returned back to the trial Court for necessary action.

39. All parties shall act on the server copy of this order downloaded from the official website of this Court.

I Agree.

(Rajasekhar Mantha, J.)

(Smita Das De, J.)