# IN THE HIGH COURT OF JUDICATURE AT PATNA
## CRIMINAL APPEAL (SJ) No.3416 of 2025

Arising Out of PS. Case No.-171 Year-2018 Thana- MAHILA P.S. District- Patna

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... ... Appellant

Versus

1. The State of Bihar
2. Ashish Sinha S/O Suresh Kumar Sinha R/O Shiv Kutir, Road No.- 10B, Rajendra Nagar, P.S.- Kadamkuan, Dist.- Patna, Bihar

... ... Respondents

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**Appearance :**
For the Appellant/s : Mr. Abhinav Alok, Advocate
Mr. Priyajeet Pandey, Advocate
Ms. Megha, Advocate
For the State : Mr.Ramchandra Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**
**ORAL JUDGMENT**
**Date : 03-11-2025**

Heard both sides.

2. The present appeal is directed against the judgment dated 17.06.2025 passed by the learned Additional Sessions Judge – VI, Patna cum Special Judge, POCSO, Civil Court, Patna in Special (POCSO) Case No. 227 of 2018 arising out of Mahila P.S. Case No. 171 of 2018 registered under Sections 354 and 354-A of the IPC and Section 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act whereby and whereunder Respondent no. 2 has been acquitted by the Trial Court from the charges under Sections 354, 354-A of IPC and Section 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. As per prosecution case, informant/victim is said to have proceeded to purchase tooth brush from a nearby shop and her neighbor (respondent no. 2) approached the informant and took the informant to his house where respondent no. 2 showed her obscene video. When the same was protested by the informant, respondent no. 2 tried to restrain the informant but somehow she manged to left the house of respondent no. 2. Thereafter, respondent no. 2 threatened the victim that if she told anyone about the incident, he would kill the informant's father who is deaf and dumb person. Thereafter, informant came to her house and told her family member about the incident.

4. On the basis of information furnished by the informant, Mahila P.S. Case No. 171 of 2018 was instituted for the offences punishable under Section 354 and 354-A of the IPC and Section 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act. The police, after investigation, submitted charge-sheet against respondent no. 2 under Section 354 and 354-A of the IPC and Section 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act and, accordingly, cognizance was taken under the aforesaid sections. Thereafter, the case was committed to the Court of Sessions. Charges were framed against the respondent no. 2 to which he

pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of the respondent no. 2, the prosecution examined altogether four witnesses viz. PW-1 informant/victim herself, PW-2 sister of the victim, PW-3 mother of the victim and PW-4 business partner of the victim's mother, PW-5 brother of the victim and PW-6 Investigating officer.

6. The prosecution has also produced the following documentary evidence:-

Ext. P-1/P.W.1 :- The written application submitted by the informant to the concerned police station.

Ext. P-2/P.W.1 :- The signature of the informant-victim on her statement recorded under Section 164 of Cr.P.C.

The photocopy of the birth certificate of the victim has been marked as 'X' for identification.

Ext. P-3/P.W.6 :- The registration of the case based on the application submitted by the victim-cum-informant.

Ext. P-4/P.W.6 :- The formal First Information Report (F.I.R.).

Ext. P-5/P.W.6 :- The memo of arrest of the respondent no. 2.

Ext. P-6/P.W.6 :- The charge sheet submitted against

respondent no. 2.

7. The defence has not adduced any oral or documentary evidence.

8. Defence of the respondent no. 2 as gathered from the line of cross examination of prosecution witnesses as well as from statement under Section 313 of the Cr.P.C. is that of total denial.

9. Learned counsel for the appellant submits that the prosecution has supported initial version of prosecution story but the learned trial court has reached to the wrong conclusion and passed the judgment of acquittal. He further submits that victim herself has supported the occurrence as mentioned in initial version of prosecution story. He further submits that copy of age certificate has been given but investigating officer has not taken much effort to produce the certified copy of the document with regard to the age and due to latches of investigating officer some infirmities has been crept in the prosecution story and the whole prosecution story cannot be thrown away just because of faulty investigation. He further submits that appellant is minor on the date of occurrence. He further submits that statement of victim has not been examined and scrutinized by the learned trial court and the concerned court has reached to the wrong

conclusion. He further submits that initially, the prosecution has proved its case and now the burden has shifted upon other side to prove his innocence. In this way, the story of prosecution has been proved and the judgment of acquittal passed by the learned trial court is fit to be set aside.

10. Learned APP appearing for the State submits that the crux of the case depends upon the age determination of victim in order to constitute the offence under POCSO Act. In the present case, the investigating officer has admitted that he has produced only photo copy of the age regarding document and no effort was taken to prove the age under mandatory requirement of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as J.J. Act). He further submits that no documentary proof, as required under the mandatory provision, has been produced to prove the age of the victim. He further submits that the learned trial court has given finding that all the witnesses are hearsay witnesses, except victim. He further submits that the statement of victim are full of infirmities. Statement of victim as adduced in the court are not consistent with the statement stated in initial version of the story of prosecution. In this way, the victim cannot be put in the category of sterling witness and the version

of investigation officer is full of infirmities. In this way, the prosecution case has not been fully proved and the court has recorded the finding of acquittal on the basis of material available on record. He further submits that unless and until the finding recorded by the concerned court is perverse, no interference is required.

11. Based on the scrutiny of evidence adduced at the trial, I find substance in submission made on behalf of the appellant that the prosecution failed to prove, beyond all reasonable doubts, the fact that the victim was minor as on the date of occurrence. The Hon'ble Supreme Court has held in case of ***Jarnail Singh v. State of Haryana*** reported in ***(2013) 7 SCC 263*** that "though Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 have been framed under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as Act 2000) is applicable to determine the age of child in conflict with law, the aforesaid provision should be the basis for determination of age even of a child who is a victim of crime. The Court remarked that there was hardly any difference insofar as the issue of minority was concerned, between a child in conflict with law, and a child who is a victim of crime. Paragraph 22 and 23 of the said decision in

case of ***Jarnail Singh (supra)*** can be usefully referred to for clarity:-

> *"22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the 2007 Rules"). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:*
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> ***"12. Procedure to be followed in determination of age-*** *(1) in every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.*
>
> *(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.*
>
> *(3) In every case concerning a child or juvenile in conflict with law, the age*

*determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—*

*(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;*

*(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*

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

*(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,*

*and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii)*

*or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.*

*(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.*

*(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.*

*(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."*

*23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by*

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

12. The date of occurrence in the present case is 09.11.2018. It is pertinent to note that Act of 2007 has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, ('The Act of 2015' for short). Section 94 of the Act of 2015 lays down the procedure for determining juvenility. Relevant part of sub-section (2) of Section 94, which provides substantially similar procedure as was prescribed under 2007 Rules, reads as under:-

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

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

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

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

13. In the present case, the victim was claimed by prosecution that she was minor and the learned trial court has recorded the finding that the birth certificate was not proved. The investigating officer has also received the photocopy and verified it online and did not annexed any verification report.

14. In the light of the aforesaid discussion made above, the age of victim must conclusively proved through school record or through medical evidence but in the present case the medical evidence regarding age or any documentary proof has not been proved and the learned trial court has recorded the finding that the prosecution has failed to prove its case on the said ground.

15. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned trial court is perverse and *prima facie* illegal. Once the

Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Surajpal Singh & Ors. Versus The State*** reported in ***1952 SCR 193***, paragraph 13 of which reads as under:

> "..the High court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."

16. In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

> "The trial Court has the advantage of

> watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."

17. The learned trial court has recorded that alleged incident is said to have occurred on 09.11.2018 while FIR was registered on 13.11.2018 at Mahila Police Station, Patna. On the said point, P.W. 3 (mother of the victim) and P.W. 4 (a family friend) claimed to have confronted the accused on the same day but no cogent or convincing explanation has been provided for the said delay. The investigating officer (P.W. 3) has also admitted during the course of cross-examination that she conducted no inquiry regarding the reason of delay. In this way, reason of delay has not been properly explained by the prosecution which questions the authenticity of the FIR.

18. Material discrepancies are also noted by the learned trial court in its findings. The learned trial court has recorded in para 20 (b) of the judgment of acquittal that material discrepancies are evident in the testimonies of P.W. 1, P.W. 3 and P.W. 5. P.W. 1 did not mention regarding the accused urinating in bathroom which P.W. 3 subsequently alleged. The

alleged display of pornographic video was first introduced during the examination-in-chief by P.W. 1 but the said statement did not find any place in earlier statements recorded under Section 161 or 164 of Cr.P.C. No recovery of mobile phone, alleged video, chocolates or toothbrush has been made. The investigating officer has specifically admitted that these critical items were not seized nor was any attempt made to trace them. These contradictions substantially impair the credibility of the testimonies. The learned trial court has recorded that except P.W. 1 all the prosecution witnesses are hearsay witnesses. The concerned court has also recorded that deposition of P.W. 3 and P.W. 5 is based on what P.W. 1 has allegedly narrated to them. P.W. 4 has stated that he was informed by mother. The investigating officer has also confirmed that no independent eyewitness saw the alleged incident. The investigating officer has failed to examine the shopkeeper from Krishna Store. The learned trial court has recorded that defence has successfully brought on record through P.W.3, P.W.4 and P.W.5 that there was an ongoing dispute or rivalry between the victim's family and the sister-in-law of the accused. Investigating officer has admitted that no inquiry was conducted to rule out this possibility.

19. In the light of the facts and circumstances of the case, learned trial court has recorded the finding that the respondent no. 2 is not guilty of commission of offence under Sections 354, 354-A of the IPC and Sections 8 and 12 of the POCSO Act.

20. I am dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions.

21. In the case of ***H.D. Sundara and Others vs. State of Karnataka*** reported in ***(2023) 9 SCC 581***, Hon'ble Supreme Court, in paragraph 8, has held as follows :

> *"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591 rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized as follows:*
>
> *"8.1. The acquittal of the accused further strengthens the presumption of innocence;*

*2. The appellate court, while hearing an appeal against acquittal, is entitled to the oral and documentary evidence;*

*8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*

*8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and 8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."*

22. In **Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415, Hon'ble Supreme Court** after referring to several authorities has held as follows:

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon

which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

( Emphasis Supplied)

23. In **Murugesan Vs. State, (2012) 10 SCC 383,**

**Hon’ble Supreme Court** has held as follows:

“ 18. Before proceeding any further it will be useful to recall the broad principles of law governing the power of the High Court under Section 378 CrPC, while hearing an appeal

against an order of acquittal passed by a trial Judge.

19. An early but exhaustive consideration of the law in this regard is to be found in the decision of Sheo Swarup v. King Emperor [(1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] wherein it was held that the power of the High Court extends to a review of the entire evidence on the basis of which the order of acquittal had been passed by the trial court and thereafter to reach the necessary conclusion as to whether order of acquittal is required to be maintained or not. In the opinion of the Privy Council no limitation on the exercise of power of the High Court in this regard has been imposed by the Code though certain principles are required to be kept in mind by the High Court while exercising jurisdiction in an appeal against an order of acquittal…….

20. The principles of law laid down by the Privy Council in Sheo Swarup(supra) have been consistently followed by this Court in a series of subsequent pronouncements …….

21. A concise statement of the law on the issue that had emerged after over half a century of evolution since Sheo Swarup ( Supra) is to be found in para 42 of the Report in **Chandrappa v. State of Karnataka [(2007) 4 SCC 415** …….

32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in contra23. Having dealt with the principles of law that ought to be kept in mind while

considering an appeal against an order of acquittal passed by the trial court, we may now proceed to examine the reasons recorded by the trial court for acquitting the accused in the present case and those that prevailed with the High Court in reversing the said conclusion and in convicting and sentencing the appellant-accused.

33. The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English Dictionary in the following terms:
“erroneous.— wrong; incorrect.
wrong.—(1) not correct or true, mistaken.
(2) unjust, dishonest, or immoral.
possible.—(1) capable of existing, happening, or being achieved.
(2) that may exist or happen, but that is not certain or probable.”

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.
35. A consideration on the basis on which the learned trial court had founded its order of acquittal in the present case clearly reflects a possible view. There may, however, be disagreement on the correctness of the same. But

> that is not the test. So long as the view taken is not impossible to be arrived at and reasons therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 CrPC was not called for.”
>
> (Emphasis Supplied)

24. In **Hakeem Khan Vs. State of M.P., (2017) 5 SCC 719 , Hon’ble Supreme Court** has held as follows:

> “ 9 [Ed. : Para 9 corrected vide Official Corrigendum No. F.3/Ed.B.J./29/2017 dated 13-7-2017.] . Having heard the learned counsel for the parties, we are of the view that the trial court's judgment is more than just a possible view for arriving at the conclusion of acquittal, and that it would not be safe to convict seventeen persons accused of the crime of murder i.e. under Section 302 read with Section 149 of the Penal Code….”
>
> (Emphasis Supplied)

25. In **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561,** Hon’ble Supreme Court, after referring to relevant precedents, has observed as follows:

> “39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the **following principles:**
>
> (a) That the judgment of acquittal suffers from patent perversity;
>
> (b) That the same is based on a misreading/omission to consider material evidence on record;
>
> (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on

record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

(Emphasis Supplied)

26. It is the cardinal principle of criminal law that the accused is presumed to be innocent unless proved guilty. In the present case, the concerned court has already acquitted respondent no. 2. In this way, double presumption is presumed in favour of the respondent no. 2.

27. The Hon'ble Supreme Court in the catena of judgment has held that if there are two views possible on a particular finding, the view taken by the learned trial court who has recorded the finding should be possible view by the appellate court.

28. In the present case, the prosecution has produced six witnesses and the learned trial court has recorded that the material discrepancies are evident in the testimonies of P.W. 1, P.W. 3 and P.W. 5. The alleged display of pornographic video was first introduced during the examination-in-chief before the Court by P.W. 1 and not found in earlier statements recorded under Section 161 or 164 of Cr.P.C. No recovery of mobile phone, alleged video, chocolates, or toothbrush has been

made. Investigating Officer (P.W. 6) admitted that these critical items were not seized nor was any attempt made to trace them. It has also been recorded that all the prosecution witnesses except P.W. 1 are hearsay witnesses and Investigating Officer has confirmed that no independent eye witnesses saw the alleged incident. There is considerable delay in lodging the FIR which questions authenticity of the FIR and the delay has not been explained. Unless and until, the *prima facie* case is made out, the burden never shifts to other side. Initially, the prosecution has failed to prove its case as the mandatory requirement of age has not been determined under the statutory provisions and the evidence adduced by the victim herself is contradictory with the earlier statement. In this way, the burden never shifts to the other side. The finding of the learned trial court while recording the judgment of acquittal is no way derogation of settled principle of law.

29. Thus, in the opinion of this Court, the trial Court has taken a plausible view based on the evidence available on the record. The prosecution has failed to prove the case beyond the shadow of reasonable doubt. The view taken by the trial Court cannot be held to be bad or perverse. Under such circumstances, no case for interference with the impugned

judgment is made out.

30. In the result, the present criminal appeal preferred against the judgment of acquittal dated 17.06.2025 passed by the learned Additional Sessions Judge – VI, Patna cum Special Judge, POCSO, Civil Court, Patna in Special (POCSO) Case No. 227 of 2018 arising out of Mahila P.S. Case No. 171 of 2018 is dismissed at the admission stage itself.

**(Alok Kumar Pandey, J)**

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| **AFR/NAFR** | AFR |
| **CAV DATE** | NA |
| **Uploading Date** | 08.11.2025 |
| **Transmission Date** | 08.11.2025 |