

IN THE HIGH COURT AT CALCUTTA

Criminal Appellate Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA (DB) 70 of 2022

IA NO: CRAN/1/2022

Raja Ruidas..... Appellant

Versus

The State Of West Bengal

For the Appellant s : Mr. Sekhar Basu, Ld. Senior Adv.
: Mr. Sandipan Ganguly, Ld. Sr. Adv.
: Ms. Manaswita Mukherjee, Adv.

For the State : Mr. Nequive Ahamed, Ld. A.P.P.
: Mrs. Zareen N. Khan, Adv.
: Mr. Arup Sarkar, Adv.

Hearing Concluded On: May 04, 2023

Judgment On : July 18, 2023

Md. Shabbar Rashidi, J.

1. The appeal is directed against the judgment of conviction and order of sentence dated March 30, 2022

passed by learned 2nd Additional Sessions Judge cum Special Court under POCSO Act, in Sessions Trial No. 03 (02) of 2019 arising out of Special Case No. 10 of 2018.

- 2.** By the impugned judgment and order, the appellant was convicted for the offence punishable under Section 376 (2) (n) of the Indian Penal Code, 1860 and Section 6 of the Prevention of Children from Sexual Offences Act, 2012. He was sentenced to undergo rigorous imprisonment for ten (10) years with a fine of Rs.50,000/- (Rupees Fifty Thousand Only) and in default of payment of fine, he was sentenced to undergo simple imprisonment for a further period of one year for the offence punishable under Section 376 (2)(n) of the Indian Penal Code.
- 3.** The appellant was also sentenced to undergo rigorous imprisonment for ten (10) years with a fine of Rs.50,000/- and in default of payment of the fine, he was sentence to undergo simple imprisonment for a further period of two years for the offence punishable under

Section 6 of the Prevention of Children from Sexual Offences Act, 2012.

4. Both the sentences were directed to run concurrently.
5. The victim lodged a written complaint with the Bankura women police station to the effect that the appellant managed to collect the mobile number of the victim about a year ago and used to disturb her. He used to give love proposals to her. She was not agreeable at first, but later on she agreed to such proposal. She had a prolonged love affair with the appellant. The victim also stated that one day she was called by the appellant to his shop. She went there when she was taken to an empty room above his shoe store and was forcefully raped. He asked her not to disclose the incident to anyone. The appellant, thereafter, went on with repeated physical relations with the victim on the promise to marry her. He also threatened the victim to harm her if she disclosed the incident to anybody. The appellant had a forceful physical relation with the victim about one month prior

to lodging of the written complaint but thereafter, he kept no contact with the victim. She later came to know that the appellant had gone to his native place and married some other girl. Thereafter, the victim informed the incident to her parents.

- 6.** On the basis of such written complaint, Bankura Women Police Station Case No. 29 of 2018 dated June 22, 2018 under Sections 376 (2)(i)(n) of the Indian Penal Code and Section 4/6 of the Prevention of Children from Sexual Offences Act was started against the appellant.
- 7.** The police took up investigation and on completion thereof submitted charge sheet. Accordingly, on the basis of materials in the Case Diary, charges under Section 376 (2)(n) of the Indian Penal Code and Section 6 of the POCSO Act were framed against the appellant on February 12, 2019. The appellant pleaded not guilty and claimed to be tried.
- 8.** In order to prove the charges, the prosecution examined as many as 11 witnesses. In addition, prosecution relied upon documentary and material

evidences as well. On completion of the evidence of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure where he claimed innocence having committed no offence at all. He also alleged to have been falsely implicated in the case.

9. Learned advocate for the appellant submitted that the prosecution has failed to bring home the charges levelled against the appellant. It was contended that the prosecution has not been able to establish the allegations as set out in the First Information Report. Referring to the evidence of the prosecuterix, it was contended that there are contradictions in her statement with regard to the identification of the place of occurrence and for this reason the evidence of the victim is not at all believable.

10. Learned advocate for the appellant further submitted that PW1 had also alleged that she was assaulted by the appellant but no such case was made out at the time of adducing evidence.

11. It was also submitted that the prosecuterix never averred that she identified the place of occurrence to the

investigating officer; nevertheless, the investigating officer was able to draw up the sketch map of the place of occurrence. It was also not disclosed by him as to who identified him the exact place of occurrence.

12. Learned advocate for the appellant also submitted that the learned trial court did not take into account the evidence to the effect that at the relevant time the shop room of the appellant remained closed for two years on account of illness of his father which rendered the commission of the offence alleged improbable, at the place of occurrence proved by the prosecution.

13. The learned advocate for the appellant also highlighted the delay in lodging the First Information Report. It has been contended that the victim did not make any complaint for a considerable period and it was lodged only after the appellant got married. She did not lodge any complaint against the appellant even after May 5, 2018 when the appellant is alleged to have made the last physical relation with the victim and eloped. It is alleged that the conduct of the victim goes to show that

she lodged the case with a view to harass the appellant and is an outcome of an afterthought.

14. Referring to the evidence of the victim learned advocate for the appellant submits that there are material contradictions in the deposition of the victim vis-a-vis her statement recorded under Section 164 of the Code of Criminal Procedure, specially with reference to procurement of mobile number of the victim. The investigating officer did not seize the mobile phone of the victim or the appellant nor call detail recordings were procured to establish the allegation.

15. According to learned advocate for the appellant the testimony of the prosecuterix was not at all reliable, unimpeachable and of sterling quality. A conviction on the basis of such evidence cannot be sustained.

16. The learned advocate for the appellant also contended that the investigating officer failed and neglected to interrogate independent witnesses who could shed light on the events leading to alleged commission of the offence. Moreover, the independent witnesses

examined on behalf of the prosecution went hostile, nevertheless, the learned trial court went on to convict the appellant.

17. It was also contended that the medical evidence collected during investigation does not corroborate the case of the prosecution. The doctor did not find any injury on the private parts of the victim. The prosecuterix or her mother did not disclose the name of the appellant before the doctor as the perpetrator.

18. Learned advocate for the appellant also submitted that the learned trial court erred in convicting the appellant on the basis of the presumption envisaged under Section 29 and 30 of the Act of 2012. It was contended that in order to attract the presumptions, the prosecution was under obligation to prove the basic foundation facts leading to the commission of the offence by the appellant. It was only after the foundational facts were proved, the learned trial court could have proceeded on the basis of presumptions provided under Sections 29 and 30 of the POCSO Act. It was submitted further that

the prosecution had failed to prove the place of occurrence and there were material contradictions in the testimony of the prosecuterix vis-a-vis her statement recorded under Section 164 of the Code of Criminal Procedure. In support of such contention, learned advocate for the appellant has relied upon **2022 SCC Online Cal 255 (Ganesh Orang V. State of WB and Anr.)**, **2017 SCC Online Cal 5023 (Sahid Hossain Biswas V. State of West Bengal)**, **2020 SCC Oline Cal 522 (Sitaram Das V, State of West Bengal)**, **SCC 2021 Online Cal 2470 (Ranjit Rajbanshi V. State of West Bengal & ors.)** and **2020 SCC Online Cal 248 (Litan Sarkar V. State of West Bengal)**.

19. Learned advocate for the appellant also contended that the learned trial court ignored the evidence led on behalf of the defence that the alleged place of occurrence remained closed for two years on account of the illness of the father of the appellant as such there was no occasion for the victim to have visited the place of occurrence responding to the purported call by the appellant. It was

submitted that the prosecution having failed to prove the charges beyond reasonable doubts and the presumption attached to Section 29 and 30 of the Act were not applicable; the learned trial court was not justified in convicting the appellant. As such the impugned conviction and sentence is liable to be set aside.

20. As noted, the prosecution examined eleven witnesses to prove the charges. The victim herself deposed as PW1. She stated that she knew the appellant who had a shoe selling shop in her para. The appellant somehow collected her mobile number from someone and used to annoy her over phone since one year prior to the incident. The appellant used to give love proposals to the victim which she refused at first but ultimately, she agreed to such proposal.

21. PW1 also stated that one day the appellant called her to his shop room over mobile phone. She went there. The appellant took her into a room situated besides the shop room and expressed his desire to have physical relationship with PW1 and wanted such physical relation

forcefully. The victim tried to get out of the room but the appellant caught hold of her and thrown her on the bed and thereafter, he committed sexual intercourse upon PW1. She further stated that after committing sexual intercourse, the appellant assured the victim to marry her and also threatened her to do harm to her life if she told about the incident to anyone. Accordingly, PW1 did not disclose the incident of sexual intercourse to anyone.

22. PW1 also stated that after such sexual intercourse, the appellant used to commit sexual intercourse upon her upon assurance to marry her, last of which was committed on May 22, 2018 in the said room situated over the shoproom. After that, the appellant stopped keeping relations with PW1. The victim later came to know that the appellant left for his native place and married another girl. Thereafter, PW1 reported the incident to her parents who visited the house of the appellant but they were driven out by the appellant and his parents.

23. Ultimately, PW1 accompanied by her parents and para people went to women police station and reported the matter to police. She tendered the written complaint in evidence which was marked as Exhibit 1. She also made a statement about the incident before learned Magistrate and tendered her statement recorded under Section 164 of the Code of Criminal Procedure (Exhibit 2). She was also medically examined where she narrated the incident to the doctor. PW1 was cross examined on behalf of the appellant at length.

24. The aunt of the victim was examined as PW2. She stated that the victim was the daughter of her sister. PW1 had a love affair with the appellant who had a shoe shop in the locality. She further stated that in course of love affair, the appellant committed rape upon the victim. She was reported about the incident by PW1 after the appellant married another girl. She identified the appellant in court.

25. The mother of the victim deposed as PW3. She stated that her daughter was a student of Class XI at the

time of her deposition. At the time of incident, she was aged about 16 years. She tendered the birth certificate of her the victim which was marked as Exhibit 3. She further stated that the appellant had a shoe selling shop in her locality. He had a love affair with the victim. He committed sexual intercourse upon her daughter upon an assurance to marry her. The appellant, however, married another girl and then her victim daughter disclosed the incident to her. Knowing about the incident, PW3 went to the house of appellant where he denied everything. She was driven out by the appellant and his mother.

26. PW3 also stated that the victim told her that she did not disclose the incident to her earlier as the appellant had threatened her if she disclosed the incident to anyone, he would not marry her. After returning from the house of the appellant, PW3 went to local police station with the victim and reported the incident. She narrated the incident before police as well as before learned Magistrate. Learned Magistrate recorded her statement

which was read over and explained to her and she signed on such statement. PW3 tendered her statement recorded under Section 164 of the Code of Criminal Procedure and signatures thereon which were marked as Exhibit 4 series. She also stated that the victim was medically examined. She identified the appellant in court.

27. One cousin sister of the victim was examined as PW4. She stated that the victim was a student of her school and used to go to school and tuition with her. She further stated that the victim told her that she had a love affair with the appellant who used to take her here and there by his motorbike. She was also reported that the appellant used to call the victim at his shoproom and forcibly commit sexual intercourse upon the victim. PW4 was also requested by the victim not to tell anyone about the matter. She was interrogated by the police in connection with the case. She identified the appellant in court.

28. A neighbour of the victim was examined as PW5. She stated that she knew the victim and her parents. She

however did not know anything about the incident. She identified the appellant in court. PW5 was declared hostile by the prosecution and in her cross-examination on behalf of the prosecution, she denied having made any statement before police. The defence declined to cross-examine the witness.

29. The medical officer who examined the victim deposed as PW6. He stated that on June 29, 2018, he examined the victim in presence of her mother being identified by a lady constable of police. Upon such examination he found the hymen of the victim ruptured with no history of bleeding. He further stated that the victim stated before him about a history of physical relationship about a month prior to the date of examination. PW5 tendered the report prepared under his pen and signature which was marked as Exhibit 5. In his cross-examination, PW5 stated that the victim or her mother never disclosed at the time of examination, the name of the person with whom the victim had physical relation.

30. The father of the victim deposed as PW7. He stated that the victim was aged about 17 years studying in class XI. At the time of incident she was studying in class X. PW7 also stated that the appellant had a love affair with the victim. He used to follow the victim on her way to school. The appellant committed sexual intercourse upon the victim after calling her to his shop room upon an assurance to marry her. He also stated that he was reported about the incident by the victim and her mother. The victim lodged a police complaint against the appellant. He identified the appellant in court.

31. Another neighbour of the victim's family was examined as PW8. She stated in her deposition that she knew the victim and the appellant. The appellant had a shoe selling shop in her locality. She however stated that she did not know anything as to what happened to the victim. She identified the appellant in court. This witness was also declared hostile and in her cross-examination on behalf of the prosecution, she denied having made any statement before the police.

32. The Judicial Magistrate who recorded the statement of the victim and her mother under Section 164 of the Code of Criminal Procedure, deposed as PW9. She testified the recording of the statement given by the victim and her mother in terms of the provisions of Section 164 of the Code of Criminal Procedure which was duly read over and explained to the departments.

33. The investigating officer deposed as PW 10. She stated that on June 22, 2018 she received the written complaint from the victim and started a specific case under Section 376 (2) (i) (n) of the Indian Penal Code, 1860 and Section 4/6 of the Protection of Children from Sexual Offences Act, 2012. She proved her endorsement of receipt in the written complaint (Exhibit 1/2) and the Formal First Information Report (Exhibit 6).

34. PW 10 also stated that she took up the investigation of the case and in course of investigation, she examined the victim and the available witnesses under Section 161 of the Code of Criminal Procedure. She also arranged for medical examination of the victim. She visited the place

of occurrence and prepared rough sketch map with index of the place of occurrence (Exhibit 7). PW10 arrested the appellant, arranged for recording the statement of the victim and her mother under Section 164 of the Code of Criminal Procedure. She also seized the birth certificate of the victim under a seizure list (Exhibit 8) and sent the vaginal Swab of the victim for chemical examination.

35. On completion of the investigation, she submitted charge sheet against the appellant under Section 376 (2) (i) (n) of the Indian Penal Code and Section 4/6 of the Protection of Children from Sexual Offences Act, 2012. PW10 also stated that she PW5 had stated before her that there was love affair between the appellant and the victim and that she came to know that the appellant committed sexual intercourse upon the victim on the assurance to marry her. PW10 also stated that PW8 stated before her that she came to know from the mother of the victim that the appellant called the victim to a room and committed sexual intercourse upon her on the pretext of love affair. PW10 also stated that PW8 made a

statement to the effect that the appellant sexual intercourse upon the victim on several occasions. PW10 was cross examined on behalf of the appellant at length.

36. The medical officer who examined the appellant was examined as PW 11. He stated that on June 27, 2018 he examined the appellant in connection with the specific case being identified by one lady sub- inspector of the women police station. He further stated that on such examination he found the appellant to be capable of performing sexual intercourse. PW 11 tendered the report prepared under his pen and signature in evidence which was marked as Exhibit 9.

37. On conclusion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure where he denied the allegations and pleaded his innocence. In such examination, the appellant proposed to adduce defence witness.

38. The appellant himself deposed as DW 1. He stated in his the position that he had submitted certain

documents relating to the treatment of his father. The aforesaid documents were admitted in evidence and marked as exhibit A series. He also proved photocopies of certain medical documents duly countersigned by the authorities which were marked as exhibit B series.

39. The appellant has been convicted for the offence punishable under Section 376 (2)(i)(n) of the Indian Penal Code and Section 6 of the Prevention of Children from Sexual Offences Act. It is the allegation against the appellant that the appellant had developed a love affair with the victim and taking advantage of such relationship, he called upon the victim to his shoproom, took her to a lonely room and committed sexual intercourse upon the victim on a promise to marry her. He is also alleged to have had repeated sexual intercourse on such promise and threatened the victim that if she disclosed the relationship to any one he would not marry her. The victim kept the sexual relationship with the appellant clandestine until the appellant broke up with the victim and actually married some other lady.

40. The evidence on record goes to show that at the time of incident, the victim was studying in Class X and was aged about 16 years. The parents of the victim PW3 and PW7 have stated that the victim was studying in Class X at the relevant time and was aged 16 years. Besides, the birth certificate of the victim was seized by the police, which was marked as Exhibit 3. Such birth certificate shows that the victim was born on January 16, 2002 which seems to be consistent with the statement of the aforesaid witnesses. One of the cousin sisters of the victim PW4 has also testified that at the material point of time, the victim was a student of her school and both of them used to go to school as well as for tuition together. Therefore, the testimony of the aforesaid witnesses together with Exhibit 3 goes to establish that at the time of incident, the victim was aged about 16 years and was a child as contemplated under Section 2 (1)(d) of the Act of 2012.

41. The appellant is alleged to have had repeated sexual intercourse upon the victim taking advantage of a love

affair between the victim and the appellant and that too, on a promise to marry.

42. The victim PW1 in her deposition stated that the appellant used to disturb the victim over phone. He used to give love proposals to her for a considerable period. She ultimately, succumbed to such proposal and a love affair was developed between them. The existence of a love affair between the appellant and the victim has been testified by PW2, PW3, PW4 and PW7. PW4 has stated that the appellant had a love affair with the victim and he used to take her here and there by his motorbike. In his examination the appellant denied the allegations but in spite of adducing defence witness, the appellant did not specifically deny his affair with the victim.

43. PW1, the victim further stated that the appellant used to run a shoe selling shop in the locality and on one day she was called upon by the appellant. She went to the shop room of the appellant. The appellant took her to a vacant room situated over the shop room and committed sexual intercourse upon her. In fact,

according to the prosecution case, the appellant used to have repeated sexual intercourse upon the victim since they developed the love affair between them the last of such intercourse was done on May 22, 2018. The evidence of the medical officer PW6 together with the medical report Exhibit 5 shows that the hymen of the victim was found ruptured with no history of bleeding, indicating thereby, that the victim was habituated to sexual intercourse.

44. The prosecution has come up with a specific allegation that taking advantage of his love affair with the victim, the appellant committed sexual intercourse upon the appellant upon a promise to marry her. The prosecution witnesses have deposed that the appellant had a prolonged love affair with the victim. In fact, PW4 had actually witnessed a part of such relationship while she stated that the appellant used to roam here and there with the victim on his motorbike. The victim herself deposed to the effect that she had a relationship with the appellant and continuance of such relationship, she was

called upon by the appellant to his shop room where the appellant committed sexual intercourse upon her on promise to marry her. He even threatened her not to disclose such facts to anyone else the appellant would not marry her. Accordingly, she did not disclose the fact of repeated sexual intercourse to any one until the appellant married some other lady. Later, the matter was disclosed by the victim to her parents and relatives when she came to know that the appellant has married some other lady. There appear some plausible explanation for not disclosing about the sexual relations before the parents and relatives of the victim.

45. It is after such disclosure, that the parents of the victim visited the residence of the appellant and after being driven out there from, a police complaint was lodged. There appears no delay in making the complaint.

46. It is trite law that there may be numerous reasons for rupture of hymen of a lady and it does not conclusively proves rape. But at the time same, the prosecution has been able to establish the foundational

facts of the appellant being in love relationship with the victim which occasioned him being in a position to commit sexual assault upon the victim cannot be ignored.

47. At the same time, we do agree with the views of the learned trial court that in our society, a lady especially a minor girl would feel shy in publicly disclosing a sexual assault upon her in order to avoid a future social stigma.

48. In that view of the facts, the presumption enshrined in Section 29 of the Act of 2012 would surely come into play. The foundational facts having been proved by the prosecution, it was incumbent upon the appellant to establish the allegations were false and as to why he was chosen from amongst the people in the town, to be falsely implicated for the offence complained of. We are afraid; the appellant has failed to discharge his onus.

49. In **Ganesh Orang (Supra)**, the Hon'ble Coordinate Bench noted material contradictions in the statement of the prosecuterix with regard to the date, time and manner of occurrence, and was pleased to hold that,

21. In order to attract the statutory presumption under Section 29 of the POCSO Act the factual foundations with regard to the ingredients of the offence under Section 6 of the said Act require to be established in the first place. In the present case, nothing has been placed on record on behalf of the prosecution to show that the victim was a minor at the time of occurrence. In her deposition PW 1 has not stated the age of the victim though the same is disclosed in the FIR. It is trite law that the FIR is not substantive evidence and may at its best to use to corroborate or contradict the maker. The only piece of evidence which is relied upon by the prosecution with regard to age of the victim is that she is a student. However, neither birth certificate nor the school records endorsing the age of the victim has been proved in the present case. No ossification test was also conducted with regard to the age of the victim in order to establish that she is a minor. If it is presumed that the victim was a minor, the inherent weakness and/or patent contradictions in the prosecution case itself render the statutory presumption inapplicable. In Sahid Hossain Biswas v. State of West Bengal¹ interpreting the aforesaid presumption, this Court held as follows:

“..... in a prosecution under the POCSO Act an accused is to prove ‘the contrary’, that is, he has to prove that he has not committed the offence and he is innocent. It is trite law that negative cannot be proved [see Sait Tarajee Khimchand v. Yelamarti Satyam, (1972) 4 SCC 562]. In order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first. It is, therefore, an essential prerequisite that

the foundational facts of the prosecution case must be established by leading evidence before the aforesaid statutory presumption is triggered in to shift the onus on the accused to prove the contrary.

Once the foundation of the prosecution case is laid by leading legally admissible evidence, it becomes incumbent on the accused to establish from the evidence on record that he has not committed the offence or to show from the circumstances of a particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favour. The accused may achieve such an end by leading defence evidence or by discrediting prosecution witnesses through effective cross-examination or by exposing the patent absurdities or inherent infirmities in their version by an analysis of the special features of the case. However, the aforesaid statutory presumption cannot be read to mean that the prosecution version is to be treated as gospel truth in every case. The presumption does not take away the essential duty of the Court to analyse the evidence on record in the light of the special features of a particular case eg. patent absurdities or inherent infirmities in the prosecution version or existence of entrenched enmity between the accused and the victim giving rise to an irresistible inference of falsehood in the prosecution case while determining whether the accused has discharged his onus and established his innocence in the given facts of a case. To hold otherwise, would compel the Court to mechanically accept mere ipse dixit of the prosecution and give a stamp of judicial approval to every prosecution, however,

patently absurd or inherently improbable it may be.”

22. As discussed earlier, evidence of the minor suffers from patent contradictions with regard to her earlier statement to the magistrate vis-a-vis the time and place of occurrence as well as other inherent weaknesses. Glaring lacunae in the prosecution case undermines the credibility of the factual foundations which require to be prima facie established to attract the statutory presumption. When the primary facts relating to time, place and circumstances constituting the offence are not prima facie established due to patent contradictions or inherent improbabilities, such lacunae cannot be cured by resorting to statutory presumptions in law.

23. Hence, I am of the opinion in the light of the contradictory and inconsistent versions with regard to the allegation of rape levelled against the appellant, the factual foundations of the prosecution case has not been laid on the basis of preponderance of probabilities so as to attract the statutory presumption and the appellant is therefore entitled to an order of acquittal.

- 50.** In the instant case, however, no such inconsistency or contradiction was noted in the testimony of PW1. Her age was established with the help of Birth Certificate. The prosecuterix consistently stated that the appellant was in a relationship with the victim for a considerable period and taking advantage of such relationship, the appellant

committed the offence, repeatedly, over a period. The prolonged relationship between the appellant with the victim was corroborated by at least by PW4, the cousin sister of the victim. Coupled with the factum of relationship, on medical examination, the hymen of the victim was found to be ruptured with no sign of bleeding. Prolonged sexual activity may be a cause of rupture of hymen. In that view of the facts, in the given set of facts it would not be proper to say that foundational facts to rope in the presumptions under Section 29 and 30 of the Act of 2012, were not established.

51. In the case of **Sahid Hossain Biswas (Supra)** the allegation against the accused was of forceful intercourse on a solitary occasions resulting in bleeding injuries whereas, such injuries could not be found on medical examination of the victim. In the facts of the case at hand, the sexual violation of the victim was not confined to single occasion. It was also not forceful rather consensual on apparently, false promise to marry spread over a period of time. The medical evidence also conforms

to such proposition having regard to the relationship between the appellant and the victim. In the given facts, a prudent man cannot draw an inference of innocence of the appellant.

52. In the case of **Sitaram Das (Supra)** inconsistencies were found in the version of the prosecuterix rendering the applicability of the presumptions attached to Section 29 & 30 of the POCSO Act doubtful. However, in the facts of the present case the proscuterix, with the help of her own testimony as well as that of her parents, aunt and cousin sister was consistent in bringing home that the appellant enjoyed prolonged love affair with the victim which occasioned the commission of the offence by the appellant followed by the medical evidence.

53. The case of **Ranjit Rajbanshi (Supra)** and **Litan Sarkar (Supra)** also, noted that there were notable discrepancies in the testimony of the prosecution witnesses to establish the chain of events leading to the alleged offence that could have brought in the presumption under Section 29 of the Act of 2012.

54. However, in the case at hand, the prosecution sufficiently established the prolonged love affair between the appellant and the victim who was a minor which provided the opportunity to the appellant to commit the offence which was duly corroborated by medical evidence. As such, considering the evidence on record it cannot be said that foundational facts were not proved to attract the presumptions under Section 29 of the POCSO Act.

55. Therefore, on the basis of the discussions made hereinbefore, we find no reason to interfere with the impugned judgment of conviction and order of sentence. The same are hereby affirmed.

56. Accordingly, the appeal being **CRA (DB) 70 of 2022** is hereby dismissed.

57. In view of the disposal of the appeal, no interlocutory application survives. Consequently, connected applications, if any, shall stand dismissed.

58. Trial Court records along with a copy of this judgment and order be sent/transmitted, at once, to the learned Trial Court for necessary action.

59. Period of detention already undergone by the appellants shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.

60. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

61. I agree.

[DEBANGSU BASAK, J.]