

**(2020) 08 DEL CK 0062**

**In the Delhi High Court**

**Case No :** Criminal Appeal No. 213 Of 2016, Criminal Miscellaneous (Bail) No. 2118 Of 2019, 6320 Of 2020

Udhav Kumar

APPELLANT

Vs

State (NCT Of Delhi)

RESPONDENT

**Date of Decision :** 11-08-2020

**Acts Referred:**

Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 6, 33(8)  
Indian Penal Code, 1860 — Section 376(2)(i)  
Code Of Criminal Procedure, 1973 — Section 161, 164

**Citation :** (2020) 08 DEL CK 0062

**Hon'ble Judges :** Vibhu Bakhru, J

**Bench :** Single Bench

**Advocate :** Ajay Garg, Kusum Dhalla

**Final Decision :** Allowed

## Judgement

Vibhu Bakhru, J

1. The appellant has filed the present appeal impugning a judgment dated 22.12.2015, whereby the appellant was convicted for committing an offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) read with Section 376(2)(i) of the Indian Penal Code, 1860 (IPC). The appellant also impugns an order dated 23.12.2015, whereby he was sentenced to serve rigorous imprisonment for a period of ten years alongwith imposition of fine of Rs. 5,000/- and in default of payment of fine, to serve simple imprisonment for a further period of one month. In addition, the learned Trial Court also awarded compensation of Rs. 2,00,000/- to the victim under Section 33(8) of the POCSO Act.
2. The appellant was prosecuted pursuant to registration of the FIR bearing no. 162/2013 with Police Station Jahangir Puri. The said FIR was

registered on the statement made by one of the victim's paternal aunt (bua). She is, hereafter, referred to as "the Complainant".

3. It is the prosecution's case that the marriage ceremony of one of the paternal aunts (bua) of the victim was being solemnized and celebrated on

20.05.2013 in a park at E-Block, Jahangir Puri. The victim who was aged about six years (hereafter "the victim") was also present inside the

tent, which had been put up for the said event. It was reported that a Disc Jockey (DJ) was also engaged. Music was being played loudly inside the

tent and some of the guests and family members were dancing. The victim, who was at the material time aged about six years, was also one of the

girls dancing to the music. The complainant reported that at about 12:30 a.m. (that is, 12:30 a.m. on 21.05.2013), the victim could not be found and,

therefore, they (her family members) started searching for her. While they were doing so, the victim appeared from behind the tent weeping bitterly.

The complainant, after consoling her (tasalli dekar), made inquiries as to the reason for her distress. The victim then informed the Complainant that

one of the persons who had come to attend the wedding had gagged her mouth and had taken her behind the tent. The Complainant stated that the

victim informed her that that man started fingering her (apni ungli se ched chaad karne laga) and then inserted his finger from where she urinates.

The victim complained that she felt pain and screamed and that person ran away from there. The Complainant stated that on hearing this, she

informed her brother "the victim's uncle who deposed as PW4" as to what the victim had told her and both of them (the Complainant and

the victim's uncle) brought the victim inside the tent to identify the person who had assaulted her. The victim is stated to have indicated towards

that person, who then attempted to exit the tent and flee from the spot. The Complainant stated that they raised an alarm and few unknown boys who

were standing on the internal roads of the residential colony (EE Road) caught hold of that person (the appellant) and when they told the boys

regarding the incident, the said boys began beating him. She stated that at about the same time, somebody informed the police and the police reached

the spot. The boys who had caught hold of the accused, ran away from the spot. She stated that thereafter, the victim was taken to BJRM Hospital,

Jahangir Puri under her supervision as well as that of W/Ct. Ram Bhateri. The victim was medically examined at BJRM Hospital.

4. A statement made by the Complainant to the aforesaid effect was recorded under Section 161 of the CrPC and on the basis of the same, the FIR in question was registered.

5. The prosecution led evidence to the effect that on 21.05.2013, a call was received at about 02:15 a.m. reporting that a wrong act had been

committed against a girl child. Pursuant to the said call, a DD Entry, DD No. 8A, was entered by Constable Vikas Kumar. He testified as PW17. He

deposed that he prepared a true copy of the said DD Entry and handed it over to one Ct. Sunil who alongwith the W/Ct. Ram Bhateri reached the

spot. He also testified that the concerned SHO was also informed about the said incident. SI Vinod (who testified as PW12) deposed that on

21.05.2013, he was posted at PS Jahangir and was on emergency duty. He received telephonic instructions from the duty officer and in compliance

with the same, reached the spot (EE 2408, Jahangir Puri). He testified that a mob had collected at the spot and upon inquiry, it was revealed that the

victim (a girl child aged about six years) had been sexually assaulted behind the tent, by a person. The said tent had been put up for the marriage of

one of the victim's paternal aunts (Bua). He further testified that the victim had identified the accused (appellant) as the assailant. According to

him, the accused had tried to escape from the tent but was caught by some boys (the identities of whom are unknown) on the EE Road and they had

beaten him. PW12 also testified that the accused (appellant herein) had been apprehended by the father of the victim, who testified as PW3, and her

father's younger brother (Chacha), who testified as PW4. PW12 stated that he handed the custody of the accused to Ct. Sunil and him alongwith

the victim, the Complainant and W/Ct. Ram Bhateri (who testified as PW8) went to BJRM Hospital for medical examination of the victim. The

accused whose custody had been handed over to Ct. Sunil, also accompanied them. He stated that thereafter, he made a call to the duty officer to

send a lady IO. W/SI Kamal Duggal was sent at BJRM Hospital and she relieved him at the said hospital. Thereafter, his statement was recorded by

her at the Police Station.

6. W/Ct. Ram Bhateri testified as PW8 and Ct. Sunil testified as PW14. Their testimonies are consistent with the testimony of PW12. PW8 testified

that on 21.05.2013, at about 02:15 a.m., a call was received from an unknown

caller who was calling from EE Block, Jahangir Puri. The caller reported that a man had committed a wrong act with a girl. She stated that the duty officer made the DD Entry and sent her alongwith Ct. Sunil to the place of occurrence, where they met SI Vinod. She also affirmed that several persons had gathered at the spot. The accused and the victim were also present and Ct. Sunil took custody of the accused. She stated that thereafter, she alongwith the victim, the Complainant (the paternal aunt, Bua, of the victim) went to BJRM Hospital for the medical examination of the victim. She testified that the victim was examined under her supervision and that of the Complainant. She stated that thereafter, she collected the MLC and exhibits from the concerned doctor and handed them to the IO. The IO seized the same and prepared a seizure memo (exhibited as Ex.PW8/A). She also identified her signatures on the said seizure memo. She further affirmed that the IO recorded the statement of the Complainant and on the basis of the same, a rukka was prepared and was handed over to her for registration of an FIR. She testified that she got the FIR registered and after registration of the FIR, she went to the spot alongwith the copy of the same and handed over the rukka to the IO. Thereafter, Inspector Kamal Duggal (IO) recorded her statement.

7. Inspector Kamal Duggal testified as PW16 that on 21.05.2013 (the date of the incident), she was posted at PS Swarup Nagar. She stated that she had received a call from the Duty Officer of PS Jahangir Puri with respect to a case of sexual assault against a girl. She stated that she reached BJRM Hospital, Jahangir Puri, where she was briefed by SI Vinod regarding the complaint. At the material time, WCt. Ram Bhateri was getting the victim medically examined and Ct. Sunil, was getting the accused medically examined. She relieved SI Vinod from the investigation as he was on emergency duty. She stated that after the medical examination of the victim, WCt. Ram Bhateri handed over the sexual assault kit along with sample seals to her and she seized the same. Thereafter, she recorded the statement of the Complainant (Ex.PW9/A). She prepared a rukka and handed over the same to WCt. Ram Bhateri for registration of the case and thereafter, she proceeded to the spot (the wedding venue) along with the victim as well as the Complainant. She testified that she prepared a site plan at the instance of the victim and the same was exhibited as Ex.PW16/B. In the

meanwhile, WCt. Ram Bhateri also came to the spot along with the copy of the FIR and the original rukka. PW16 testified that she recorded the

statement of WCt. Ram Bhateri and then handed over the custody of the victim over to the Complainant. Thereafter, she came back to the police

station and someone from an NGO came to the police station and counseled the victim. The accused was also brought to the police station by Ct.

Sunil and the victim identified the accused at the police station. Thereafter, the accused/appellant was arrested and was personally searched. His

disclosure statement was also recorded and the same was exhibited as PW14/B.

8. Dr Neeraj Chaudhary, Medical Officer, BJRM Hospital, Jahangir Puri testified as PW5. She affirmed that on 21.05.2013, the victim was brought to

the Causality Department with an alleged history of sexual assault and was examined by Doctor Rahul Arya. Doctor Rahul Arya had left the services

at the hospital, however, she was familiar with his handwriting. The victim was referred to the Gynecological Department and was further examined.

PW5 also exhibited the MLC, which was marked as PW5/A.

9. Doctor Smita Pathak, Senior Resident, BJRM Hospital testified as PW6. She affirmed that the victim was referred to the Gynecological

Department by Doctor Rahul Arya and on her examination, her hymen was found torn and labia majora was inflamed. She also confirmed that the

MLC (Ex PW5/A) bore her signatures.

#### Reasons and Conclusion

10. The prosecution's case is, essentially, founded on (a) the statement made by the victim; (b) her MLC; (c) the testimony of the Complainant

(PW9); and (d) the testimony of the victim's uncle (PW4).

11. Insofar as the sexual assault is concerned, the prosecution's case is supported by the victim's MLC (Ex. PW 5/A). Ex.PW5/A establishes

that the victim was brought to the hospital at 03:00 am on 21.05.2013. She had informed the concerned doctor that some unknown person had

inserted his fingers in her underpants for approximately 2-3 minutes and closed her mouth and the same was recorded. Her PV examination

indicated extremely tender plus labia majora inflamed hymen torn (a small tear admit only tip). The MLC also records that the victim had an

abrasion of 4cm x 0.1 cm on her right side cheek.

12. In view of the MLC, there can be no doubt that the victim was sexually assaulted.

13. The main questions to be addressed are whether there is any doubt as to how the incident had occurred and more importantly whether the identification of the appellant as the assailant is reliable.

14. At the outset, it is necessary to observe that there are certain doubts as to how the police was called to the spot. PW8 testified that on 21.05.2013,

a call was received at about 02:15 am from an unknown caller who was calling from EE Block, Jahangir Puri, reporting that "a man committed

wrong act with a little girl". She stated that the Duty Officer had made the DD Entry and sent her along with Ct. Sunil to the place of occurrence.

15. PW9 (the Complainant) testified that her niece (victim) went missing and at about 12:30 am, they started searching for her. At that stage, they

saw her coming from behind the tent. She was crying bitterly and on enquiring, she narrated that one person inside the tent had inserted a finger in her

private part. According to PW9, the victim pointed to the accused (appellant) who was inside the tent at the time. She stated that he tried to escape

but was apprehended by some boys who were standing on the road and they beat him. She testified that someone called the police and the police

arrived at the spot and the accused was handed over to the police. It is apparent that the timelines do not reconcile because the police could not have

arrived at the spot before 02:30 am, as they had received the call at about 2.15 a.m. However, even if the testimony of PW8 (WCt. Ram Bhateri) is

accepted, it indicates that she along with Ct. Sunil had reached the spot (the wedding venue) at 02:20 am and had remained there for about 7-8

minutes. There is no evidence on record as to who had called the police. The number from which the telephone call had been received is also not

recorded. Thus, whilst according to the Complainant, the accused was apprehended at around 12.30 a.m. and beaten by some boys and the police had

arrived at the spot; according to the PW8, the police had received the call at about 2.15 am. Further, there is no explanation as to what had transpired

between 12:30 am and 02:20 am. Neither the Complainant nor any of the immediate family members of the victim (her uncle, aunt or father) had

made any call to the police.

16. Although, the above aspect does raise doubts, the same may not be relevant

considering the nature of the offence and the medical evidence.

However, it is clear that neither Ct. Ram Bhateri nor Ct. Sunil conducted any investigation at the spot. Ct. Ram Bhateri stated that they had remained

at the spot only for seven to eight minutes and thereafter, took the victim for her medical examination. Ct. Sunil, who testified as PW14, stated that SI

Vinod was already present at the spot. SI Vinod testified as PW12. He stated that he reached the spot on instructions of the Duty Officer and there

was a mob at the spot. He testified that the victim had identified the appellant and he had been caught by some boys when he tried to flee from the

spot. It is obvious that SI Vinod merely narrated what was possibly told to him by the Complainant (PW9), the victim's uncle (PW4) and/or her

father (PW3). This is clear because he stated that when he reached at the spot, the accused was already apprehended by the father and the uncle of

the victim. The unknown boys who had initially apprehended and beaten the accused (appellant), had run away from the spot. He does not testify that

the victim had identified the accused in his presence. He stated that he handed over the custody of the accused to Ct. Sunil and they proceeded to

BJRM Hospital. At that stage, SI Vinod did not record statement of any of the persons who were present at the spot. He also did not make a site plan

which would lend clarity as to where and how the incident had happened. Clearly, SI Vinod did not undertake any investigation and merely proceeded

on what was informed by possibly the relatives of the victim (PW8, PW4 and PW3).

17. The statement of the victim was also not recorded by any of the IOs. Inspector Kamal Duggal (PW 16) testified that on 21.05.2013, she was

posted at PS Swarup Nagar and had after receiving the call from the Duty Officer of PS Jahangir Puri proceeded to BJRM Hospital where she was

briefed by SI Vinod in respect of the complaint. At that material time, Ct. Sunil was getting the accused medically examined while Ct. Ram Bhateri

was with the victim, who was being medically examined. Inspector Kamal Duggal (PW16) testified that Ct. Ram Bhateri handed over the sexual

assault kit along with the samples to her. She thereafter recorded the statement of the complainant and prepared the rukka. The same was handed

over to W.Ct. Ram Bhateri for registration of the FIR.

18. It is important to note that PW16 also testified that thereafter, she came

back to the spot along with the victim and prepared the site plan at her instance. The said site plan is exhibited as Ex.PW16/B. There are serious doubts as to the testimony of PW16 regarding preparation of the site plan.

First of all, the site plan merely indicates a rough location of the park where the incident had occurred and a spot at the corner of the said park is

marked as 'A', which is allegedly the spot where the incident had occurred. The site plan also mentions the park as the park where wedding

tent had been put up (park jahan shaadi ka tent tha). This reference to a tent in the past tense clearly indicates that at the time when the site plan

was prepared, the tent was not existing on the park. The site plan also does not indicate the portion of the park which was covered by the tent. In his

cross examination, PW3 had confirmed that the entire park was covered with the tent (pandaal) and only about 4-5 feet space was left on its side.

PW4 testified that the entire park was covered by the tent and only space for trees was left. He stated that there was no gap between the boundary

of the tent and the boundary wall of the park except the space required for passing through. He stated that he could not indicate the measurement of

the said space. He also testified that there were two gates in the tent, one was the main gate for the guests to come in and the other was for the use

of halwais etc. Curiously, the site plan neither indicates any pandal nor the location of the two exits. In fact, by the time the site plan was prepared,

there was no tent/pandal at the site as is evident from the site plan. Clearly, if the site plan had been prepared at the time when it is stated to have

been prepared, that is, on return of the victim from BJRM Hospital in the early hours of 21.05.2013, the pandal would still be standing at the spot and

the same would have been mentioned in the site plan. It is in evidence that the bidai ceremony took place at 8.00 am.

19. This Court has no clarity as to the spot from where the accused had picked up the victim; what was the location of the gate from where he exited;

or which was the spot where he had taken her. Investigation in this regard would have been vital to ascertain whether the victim was, in fact, picked

up by the accused from inside the tent. The celebrations were being held at the material time and approximately 100 persons were present inside the

tent. It is difficult to readily assume that the appellant would have gagged the mouth of the victim from inside the tent and then taken her out without

anyone noticing the same. This is not to say that the same is not possible. However, it would have been essential for the prosecution to at least

establish on the basis of some cogent evidence as to the spot from where the victim was picked up, location of the exit to the tent and the spot where

the alleged assault was committed.

20. The FIR in question was registered on a statement made by the victim's paternal aunt (bua), who also deposed as PW-9. She stated that her

niece (victim), who was aged six years, was dancing with other girls at the wedding and about 12:30 AM, she could not be found and they started

searching for her. When they were doing so, she came from behind the tent and was weeping bitterly. She stated that she comforted her and on

inquiring from her, she informed that one man had gagged her and had taken her behind the tent. He had, thereafter, inserted a finger from where she

urinated. She stated that she felt pain and screamed and on hearing her scream, the said man ran away from there. The Complainant stated that on

hearing this, she narrated the entire incident to the victim's paternal uncle (chacha) and both of them then took the victim inside the tent for

identifying the assailant. She stated that the victim indicated towards the said man in the tent and he fled. They raised an alarm and some boys, who

were standing on the road, caught hold of him. She stated that after they narrated the incident, the boys started beating the said man. She stated that in

the meanwhile, somebody phoned the police and police officials arrived at the spot. She testified that they narrated the entire incident to the police and

the police officials took her and the victim to the BJRM Hospital, where the victim was examined medically. The said statement is exhibited as

Ex.PW-9/A. The reading of the testimony of PW-16 (IO) indicates that the said statement was recorded at the hospital (BJRM Hospital) since she

stated that after recording of the statement she had prepared a rukka and, thereafter, had gone to the spot along with the victim and the Complainant.

However, this is not consistent with the testimony of PW-9 (the complainant). In her cross-examination, she had stated that her statement was

recorded by the police at her home at 8:00 AM and on the previous night, her statement was recorded at the police station. The Complainant had

testified that she had gone to the police station at about 2:00-2:30 AM and had remained in the police station for about half an hour to one hour and

they had, thereafter, proceeded to the hospital for the medical examination of the victim. This is not the prosecution's case and is inconsistent with

the testimony of either PW-8 (WCt. Ram Bhateri) or PW-12 (SI Vinod). The Complainant (PW-9) had also deposed that the program (wedding

reception) was concluded at 12:30 midnight and the police might have come after 1:30 AM. She stated that she was at her home at that point of time

and was called from there. She further stated that, thereafter, they (victim, her father and some neighbours) had gone to the PS (police station).

21. The victim's statement was not recorded by the police. Her statement was recorded the next day at about 12:30 PM, under Section

164 of the CrPC. In her statement under Section 164 of the CrPC, the victim had stated that she was present at her aunt's wedding and from the

wedding, one man, whose name she is not aware of, had caught hold of her and had gagged her (muh band karke) and taken her behind the tent and

had inserted his finger from where she urinates. She stated that she raised an alarm and somebody, whose name she does not know, came to the spot

and saw them. The assailant got scared and left her (usko dekhkar woh aadmi ghabra gaya aur mujhe chod diya). She stated that she ran to her

paternal uncle (chacha) and narrated the incident to him. Thereafter, she went home and narrated the incident to her paternal aunt (bua). She stated

that when she told her chacha about the incident, he and her father caught hold of the assailant, who was running (chacha aur papa ne us aadmi ko

bhagtey hua pakda). She stated that thereafter, they took that man to the police station and the police caught him there.

22. It is relevant to note that in her statement under Section 164 of the CrPC, the victim had unequivocally stated that someone, whose name she did

not know, had seen her and the assailant and on being seen, he got scared and ran away. According to her, her father and her uncle had caught hold

of the assailant while he was fleeing and thereafter, they had gone to the police station. It is material to note that she did not state that she was

brought to the tent where she had identified the accused (appellant).

23. The victim's statement under Section 164 of the CrPC is also inconsistent with her testimony before the court. In her statement before the

court, she stated that one man had gagged her mouth and had taken her behind the tent and there he inserted his one finger into her urinating part. She

had raised an alarm and on hearing her, her uncle came and saved her. It is material to note that even in her statement before the court she did not state that she had identified the assailant and had pointed him out to her uncle or her aunt. On the contrary, her statement unequivocally states that she was saved by her uncle when he heard her alarm. In her cross-examination, she stated that she was not able to notice the face of the man when he gagged her and took her behind the tent. She stated that no other person in the marriage ceremony had noticed when the said person had taken her behind the tent. She further stated that the man who had assaulted her behind the tent had run away from there when her uncle came. She also stated that no other person came at that time and her paternal aunt (bua â?" the Complainant) was not present at the tent but was at her house. She then stated that after she was saved by her uncle, she was taken to her buaâ??s house where she narrated the incident to her bua, who resides in the same house.

24. Thus, if the statement of the victim is to be accepted, it would mean that she was saved by her uncle, who had arrived at the spot on hearing her alarm and the assailant had run away from the spot. If her statement under Section 164 of the CrPC is to be accepted, it would mean that the assailant had released her on an unknown person seeing them and had run away. However, none of her statements can be accepted. First of all, because they are inconsistent and secondly, they run contrary to the testimony of the Complainant as well as her uncle (chacha). As noticed above, neither of the statements indicates that she was asked to identify her assailant and she had done so.

25. The testimony of PW9 (the Complainant) is also not consistent with the other material on record. She testified that her niece (victim) was dancing with the other girls but went missing. She stated that at about 12:30 am, they decided to search her and saw her coming from behind the tent. The victim was crying bitterly and looked scared. PW9 stated that upon inquiring from the victim as to what had happened, the victim told her that one person inside the tent had inserted his finger in her private part and thereafter, she pointed to the accused who was present inside the tent. She testified that the accused then tried to escape from the tent and many persons who were present at the marriage chased him and some boys who

were standing on the road caught hold of the accused and beat him. Someone called the police and the police arrived at the spot and the accused was handed over to the police.

26. In her cross-examination, she stated that she was not present at the marriage function and was at her home, which was situated on the rear lane of the park. She stated that the marriage program concluded at about 12:30 am. She accepted the suggestion that the victim had narrated the incident to her at her house. This was in variance to her earlier statement that the victim had narrated the incident to her, when she had entered in the tent and had pointed out her assailant. However, in her cross examination, PW9 clarified that the victim had told her about the incident at the corner of the park as well. PW9 also testified that somebody had called the police who arrived sometime after 01:30 am and at the material time, she was at home and was called from her house. Then, she stated that they all went to the Police Station and remained there for half to one hour. This is consistent with the victim's statement that they had gone to the Police Station and had handed over the assailant to the police but this is not the prosecution's case and is at variance with the testimony of the police official witnesses.

27. It is also important to note that PW9 deposed that the victim had narrated the incident only to her and not to any other family member. But she further clarified that while she was narrating the incident, her brother was also present and had heard the same. She stated that she had consoled the child and had tried to make her sleep. The prosecution's case "which is also supported by the statement made by the Complainant" is that the victim had narrated the incident to the Complainant inside the tent and had identified the assailant, is not supported by the victim's statement.

She states in unambiguous terms that the assailant had run away when her uncle had come to the spot. She states that she had narrated the incident first to her uncle and at that time her Bua was not present inside the tent but was at her house. She states that after her uncle had saved her, she was taken to her Bua's house. It is material to state that the prosecution's case is founded on the statement that the victim had narrated the incident to the Complainant in the tent and had identified her assailant who was present inside the pandaal. However, neither the statement made by the victim under Section 164 of the CrPC nor her testimony supports this case.

28. The victim's uncle (Chacha) is yet another material witness and was identified as PW4. He testified that on the date of the incident at about 12:30 am, his niece came running inside the tent and appeared perturbed. However, he stated that she had come along with his sister (the Complainant). The victim had pointed out towards a boy who was present in the tent and he had attempted to flee from the tent. He testified that they raised an alarm and the public apprehended the boy (accused). In his cross-examination, he stated that the victim had not told him about the incident personally. He stated that the victim had narrated the incident to his sister (the Complainant) and then they had started looking around and at that time the victim had pointed towards the accused.

29. It is necessary to bear in mind that there is no reason why the Complainant or other members of the family would want to implicate the appellant.

It is, thus, obvious that after the victim had reported the incident (either to the Complainant or her uncle) and effort was made by the Complainant and the victim's uncle to trace out the assailant and in that process, they had zeroed in on the appellant.

30. If it is accepted that the appellant is the offender, it would mean that he had lifted the victim from inside the tent; gagged her mouth; taken her outside and committed the offence. He was spotted by some person and had released the victim. He had not run away as stated by the victim but had returned to the tent to carry-on socializing. However, improbable it may seem, it would have to be accepted if the evidence led in this regard was consistent. But even the statements of the victim that form the basis of the prosecution's case, do not support this version.

31. The victim is a six years old child. It was late at night (12.30 am) and one would imagine much after the victim's bed-time on a normal day.

There was a wedding banquet with the attendant festivities. Clearly, the victim would be exhausted with the events of the day. In such circumstances, it would be unsafe to rely on her statements without corroboration. But in this case even her statements are not consistent in all material aspects and thus her statements could not be relied upon, without corroborative evidence.

32. In addition she had admitted that she had not seen the face of her assailant when he had allegedly gagged her mouth and taken her out of the tent.

Coupled with the above is the lack of any meaningful investigation, as discussed above.

33. In the circumstances, although there is, undeniably, grave suspicion that the appellant is guilty of the offence; but this court is unable to accept that

the same is established beyond reasonable doubt.

34. The appeal is, accordingly, allowed. The appellant is acquitted and directed to be released if not wanted in any other case.

35. The pending applications are also disposed of.