

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.710 of 2015

Arising Out of PS.Case No. -124 Year- 2015 Thana -ARA NAWADA District- BHOJPUR

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1. Shankar Kumar Bhagat S/o late Raghunath Bhagat R/o Village- Jahagirpur,
Sonepur, P.S. Sonepur, District Saran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Aditya Narayan Singh-1

For the Respondent/s : Mr. Anhay Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 05-12-2017

The appellant, Shankar Kumar Bhagat, has been convicted under Sections 354 (A) of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 and has been sentenced to undergo R.I. for five years, to pay a fine of Rs. 50,000/- and in default of payment of fine, to further suffer R.I. for six months for the offence under Section 8 of the POCSO Act (no sentence having been provided for the offence under Section 354(A)(i) of the Indian Penal Code) by judgment and order dated 22nd of September, 2015 passed by the learned 1st Additional Sessions Judge, Bhojpur at Ara in connection with Ara Nawada P.S. Case No. 124/2015 instituted for the offences under Sections 354(A)(i) of the Indian Penal Code and Section 8 of the POCSO Act, 2012.



Pragya Chaubey (P.W. 5) had lodged the F.I.R. on 04.04.2015 alleging that her daughter had been subjected to sexual misdemeanor by the appellant when she had visited his house for playing with the appellant's daughter. It has been alleged in the F.I.R. that the daughter of the appellant left for market along with her mother and taking advantage of there being no one at home, the appellant misbehaved with the daughter of the informant.

Be it noted that the daughter of the informant, at the relevant time, was seven years of the age. She had narrated about the occurrence to her mother (P.W. 5) on the next day. On the basis of the aforesaid F.I.R., lodged by P.W. 5, Ara Nawada P.S. Case No. 124/2015 dated 04.04.2015 was instituted for the offences under Sections 354/354(A)(I) of the Indian Penal Code and Section 9(M) and X of the POCSO Act, 2012. The police after investigation submitted charge-sheet, whereupon cognizance was taken and the case was tried by the learned Sessions Judge. The trial court, after examining six witnesses on behalf of the prosecution and three witnesses on behalf of the defence, though convicted the appellant under Sections 354(A) of the Indian Penal Code and Section 8 of the POCSO Act, 2012, but sentenced the appellant only under Section 8 of the POCSO Act.

Pragya Chaubey, P.W.5, has fully supported the



prosecution version and has stated that the appellant had caught hold of the hands of the victim and had moved his fingers over her private parts. Despite the victim making entreaties for leaving her, the appellant never paid heed to the aforesaid and continued to do so. The victim could come out from the house of the appellant only after the return of the daughter of the appellant. With respect to the way in which the matter was reported to her, P.W. 5 has stated that when the victim was found weeping, reason was asked from her and then she narrated about the occurrence to her mother.

Ratnesh Chaubey, P.W. 2, who is the uncle of the victim has also supported the prosecution version and has stated that when he came back home, P.W. 5 informed him about the occurrence. He had accompanied P.W. 5 to the police station for lodging the F.I.R.

Similar deposition has been given by Kamla Devi, P.W. 3, who is grand-mother of the victim. Kanak Chaubey, P.W. 4, who is another uncle of the victim has also supported the prosecution version.

The I.O. of this case, Kumari Anchala, P.W.6, had found out that the house of the appellant is situated near the house of the informant and the victim. She had recorded the statement of the witnesses during the course of investigation.

The appellant has tried to prove his innocence through the mouth of three defence witnesses, viz. Mritunjay Kumar, Ranjit



Kumar and Sanjit Kumar Singh @ Pintu Singh, who have been examined as D.Ws. 1, 2 and 3 respectively. All the aforesaid witnesses have tried to explain that on the day and time of the occurrence, when they went to the house of the appellant, the door was found to be locked. They were informed that the appellant had gone to market along with his wife and daughter. This is the consistent defence taken by the appellant before the trial court that he too had proceeded to the market along with his daughter Sri Priya and his wife. In that event, it was argued, the victim was not alone in her house at any point of time.

The trial court, after going through the evidence of the witnesses, found that there was no reason to disbelieve the statement of P.W. 5 and other witnesses. In fact, the victim herself has been examined as P.W.1. Though, she is a person of tender age, but on vior-dire, she answered the questions in such a manner that it gave an impression that her cognitive faculties were well pronounced and that she understood the nature and quality of the statement which she made before the trial court. She has specifically narrated about the manner in which she was subjected to sexual misdemeanor. Considering the aforesaid facts, the trial court convicted the appellant under Sections 354 A Indian Penal Code and Section 8 of the POCSO Act, but chose to sentence him under Section 8 of the POCSO Act



only. The appellant, therefore, was directed to suffer rigorous imprisonment for five years, to pay a fine of Rs. 50,000/- and in default to payment fine, to further suffer R.I. for six months. Considering the facts that the maximum sentence under Section 354A of the Indian Penal Code is three years, the trial court was of the view that no useful purpose would be served in separately sentencing the appellant under Section 354 of the Indian Penal Code.

Learned counsel appearing for the appellant, though initially argued that neither the date, time or the place of occurrence could be established, but later, limited his arguments to the question of sentence only. It has been submitted that the appellant has lost his job because of this case and has to provide sustenance to his daughter who is of the same age as that of the victim, and his wife. It has further been stated that with the present conviction, he has already been stigmatized in the society and no useful purpose would be served in maintaining and upholding the sentence which has been imposed upon him.

Taking the totality of the circumstances and the nature of the accusation levelled against the appellant, this Court is of the view that the sentence imposed upon the appellant is slightly on the harsher side. As such, while upholding and affirming the judgment of conviction passed by the trial court, the sentence imposed upon him is



reduced to a period of three years and six months rigorous imprisonment. The appellant shall but be required to pay the fine of Rs. 50,000/- and in default of payment of fine, he shall undergo rigorous imprisonment for a further period of six months. The period which the appellant has undergone in custody shall be set off against the substantive sentence of three years and six months.

The appeal stands partially allowed to the extent that the sentence has been modified to the extent indicated above.

A copy of the judgment be sent to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
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