

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Appeal (SJ) No.586 of 2016

Arising Out of PS.Case No. -209 Year- 2014 Thana -PIRBAHOR District- PATNA

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1. Chandan Kumar Singh @ Chandan Kumar, Son of Sri Suresh Prasad Singh  
Resident of Village - Turkaul, P.S. - Parasbigaha, District - Jehanabad at present  
residing at Mohalla - Makhaniagli, Opposite B.N. College, P.S. - Pirbahore, District  
- Patna.

.... .... Appellant/s

Versus

1. The State of Bihar.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sanjay Kumar Singh

For the Respondent/s : Mr. Zeyaul Hoda, APP-69

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**ORAL JUDGMENT**

**Date: 12-01-2018**

Heard Mr. S.R.P. Bakshi, learned senior Advocate for  
the appellant and Mr. Binod Bihari Singh, learned Advocate for the  
State.

2. The appellant, Chandan Kumar Singh @ Chandan  
Kumar, has been convicted under Sections 376, 354 (A) of the Indian  
Penal Code and Section 4 of the Protection of Children from Sexual  
Offences Act, 2012 by judgment dated 27.06.2016 passed by the  
learned 1<sup>st</sup> Additional Sessions Judge, Patna in connection with  
Special (POCSO) Case No. 38/2014, arising out of Pirbahore P.S.  
Case No. 209/2014 and by order dated 30.06.2016, he has been  
sentenced to undergo R.I. for seven years, to pay a fine of Rs. 5,000/-



and in default of payment of fine, to further suffer simple imprisonment for three months for the offence under Section 4 of the POCSO Act; and R.I. for two years for the offence under Section 354A of the Indian Penal Code. The sentences awarded to the appellant have been directed to be run concurrently.

3. Be it noted that considering the provision of Section 42 of the POCSO Act, 2012, no sentence has been imposed on the appellant under Section 376 of the Indian Penal Code.

4. The prosecution case is based on the written report filed by the mother of the victim, viz. Rina Devi, who has been examined as P.W. 1 in the case. Rina Devi (P.W. 1) has stated on 13.07.2014 that the appellant is a co-tenant in the same house, in which she resides with her family. It has been alleged that her daughter, Anjali Kumari (P.W. 3), and son, Raushan Kumar (P.W. 2), were enticed away by the appellant on the pretext of giving them chocolates. The son of the informant, viz. Raushan Kumar (P.W. 2), was made to sit in a room, whereas the victim/daughter of the informant, aged about seven years, was taken by the appellant in the bathroom. It has further been alleged that the appellant started licking the genitalia of the victim girl and also subjected the victim to oral sex. Thereafter, the appellant is said to have sent the son and daughter of the informant to their room. On coming home, the victim/daughter



of the informant as well as her son disclosed every fact to her. Hearing the aforesaid disconcerting narration, the informant accosted the appellant, but the appellant is said to have run away.

5. On the basis of the aforesaid written report by P.W. 1, Pirbahore P.S. Case No. 209/2014 dated 13.07.2014 was instituted for investigation under Section 354A of the Indian Penal Code and Section 12 of the POCSO Act, 2012.

6. After investigation, charge-sheet was submitted against the appellant under Section 376 of the Indian Penal Code. However, cognizance was taken under Sections 376, 354A of the Indian Penal Code and Section 4 of the POCSO Act, 2012. The charges were also framed under the aforesaid sections.

7. The trial court after examining four witnesses on behalf of the prosecution, viz. Rina Devi (P.W. 1), Raushan Kumar (P.W. 2), Anjali Kumari (P.W. 3) and the I.O. of the case, convicted the appellant and sentenced him as aforesaid.

8. In order to appreciate the prosecution version, it would be absolutely necessary to go through the deposition of P.W. 3, viz. the victim herself. P.W. 3 (victim) has categorically stated before the trial court that the appellant had told her that if she accompanied him, he would give her chocolates. Both the brother and sister were taken to the room of the appellant and the brother of the victim was



made to sit in the T.V. room. Thereafter, it has been specifically alleged that the appellant, after undressing himself, put his genitals in her mouth and also had been licking her genitalia, despite her having protested and having said that it was giving her a lot of pain.

9. From the deposition of P.W. 3, it becomes very clear that she was making a statement after realizing the nature and quality of her statement. In fact, before her deposition was recorded, the learned trial court, as part of *vioire-dire*, tested her cognitive faculties by putting her to certain questions and recorded her depositions only after being satisfied that she was in a position to understand the nature and quality of her statement.

10. Similarly, P.W. 2, Raushan Kumar, who is the brother of the victim, has in his examination-in-chief stated that on the alleged date and time of the occurrence, he and his sister (victim) had gone to the house of the appellant, where he was made to sit in a room and his sister was taken to the bathroom. The sister of P.W.2, thereafter come out of the bathroom weeping. Both the brother and sister came back home and told their mother about what had happened. During cross examination, P.W. 2 has clearly stated that he along with his mother and sister lived in the house of one Manoj Yadav and the appellant also was a co-tenant in his house, who lived with his wife. He has also testified to the fact that the appellant and



his family members were on friendly terms with the family of P.W. 2.

11. The mother of the victim (P.W.1) has supported the prosecution version and has narrated what she had stated in her written report. She has deposed before the trial court that the appellant lived on rent in the first floor of the house, in which she was residing with her children. She learnt about the occurrence through the mouth of P.Ws. 2 and 3, who came back home and narrated about the occurrence. She has stated the age of her son and daughter to be 9 and 7 years respectively. So far as the act of the appellant is concerned, whatever was communicated to her by P.W. 3 (victim), she has reproduced the same.

12. Md. Sarfaraz Imam is the I.O. of this case, who has been examined as P.W. 4. At the relevant time, it has been stated by P.W. 4 that he was posted at Pirbahore Police Station as a Sub-inspector and had received a written application by P.W. 1. The Officer In-charge of the Pirbahore Police Station had given the charge of the investigation to him. He has proved the written application and the writing of the Officer In-charge, viz. Nishat Ahmad, (Ext.-2). He has also proved the formal F.I.R. (Ext.-3). Though, P.W. 4 has stated that he had inspected the place of occurrence and had examined the victim and other witnesses, but he did not record the statement of the persons living in the boundary of the house. He has also not



investigated as to how many people were living in the house, where the prosecutrix and her family members resided.

13. Thus, on appreciation of the evidence, it becomes very clear that the appellant had taken the victim (P.W. 3) to his quarters and had subjected her to sexual misdemeanor, making him liable for being punished for the offences under Sections 376, 354A of the Indian Penal Code and Section 4 of the POCSO Act, 2012.

14. Mr. S.R.P. Bakshi, learned sr. Advocate appearing for the appellant has argued that from a bare look at the written report, it would appear that P.W. 1 had not written the same and the written report had been scribed by somebody else. This is evident from looking at the signature of P.W. 1 at the foot of the written complaint. He, therefore, submits that in the absence of the proof of the fact as to who had scribed the written report, the same cannot be taken into account for convicting the appellant. The other limb of argument of Mr. Bakshi is that all the three witnesses, viz. P.Ws. 1, 2 and 3, have, in a parrot-like statement, supported the initial prosecution version and therefore, it gives an impression that P.Ws. 2 and 3, who at the relevant time were persons of tender age and were capable of being tutored were impressed upon to make such statements before the investigating agency as well as before the trial court.

15. Lastly, it has been argued that the defence of the



appellant has not at all been adverted to. The consistent defence of the appellant, it has been argued, had been that the prosecutrix (P.W. 1) had taken Rs. 30,000/- from the appellant on loan and when the appellant insisted for the return of the amount, the present case was filed.

16. From the records as well as the judgment impugned, it appears that similar arguments were raised before the trial court, but to no avail. The trial court has rejected all the aforesaid arguments and justifiably and rightly so.

17. After going through the evidence, I find that P.Ws. 2 and 3 have made correct disclosure and there is nothing on record to suggest or to come to the opinion that P.W. 2 or P.W. 3, because of their tender age, were not in a position to understand the nature and quality of the statements made by them. The fact that the depositions of the witnesses are similar in nature is an indication of the witnesses making correct statements before the trial court, without any departure from the prosecution case. The similarity in the nature of the statement of the witnesses cannot be held against the aforesaid witnesses.

18. Merely because P.W. 1 has not disclosed as to who had scribed/written the written report, which is the basis of the prosecution case, the whole case cannot be doubted.



19. The defence of the appellant of having given money to the prosecutrix (P.W. 1) on loan and the case having been lodged after the insistence of the appellant for returning the loan amount is not acceptable. No material has been brought on record or indicated by the appellant to rely upon such a defence.

20. I have gone through the statement made by the appellant under Section 313 of the Cr.P.C. Every incriminating circumstance against the appellant has been put to him and it cannot be countenanced that certain materials were withheld from him when his statement was being recorded under Section 313 of the Cr.P.C.

21. No cogent ground has been suggested by the learned counsel for the appellant to differ with the findings of the trial court.

22. As such, the judgment and order dated 27.06.2016 and 30.06.2016 of the appellant is sustained and upheld.

23. The appeal is, accordingly, dismissed.

**(Ashutosh Kumar, J)**

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