

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1362 of 2017

Arising Out of PS. Case No.-50 Year-2014 Thana- MAHILA P.S. District- Samastipur

.....

{Against the Judgment of acquittal dated 20.09.2017 passed by the Special Judge, POCSO Act, Samastipur, in Mahila P.S. Case No.50 of 2014}.

=====

Khusbu Kumari, Daughter of Late Ashok Mahto, Resident of Village- Bhore Jairam, P.S. Khanpur, District- Samastipur.

... .. Appellant.

Versus

1. The State of Bihar.
2. Amarjeet Prasad, Son of Sri Shashi Bhushan Prasad, Resident of Village- Dekari, P.O. Jahangirpur (Kothia), P.S. Khanpur, District- Samastipur.

... .. Respondents.

=====

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate.
For the State	:	Mr. Shivesh Chandra Mishra, A.P.P.
For the Respondent No.2:		Mr. Abhay Shankar Singh, Advocate.
		Mr. Amit Kumar Mishra, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 11-04-2018

Heard learned counsel for the appellant as well as learned counsel for the respondent no.2. Also heard learned Additional Public Prosecutor for the State.

2. The appellant has preferred this criminal appeal against the Judgment of acquittal dated 20.09.2017 passed by the Special Judge, POCSO Act, Samastipur, in Mahila P.S. Case No.50 of 2014 by which and whereunder he acquitted the



respondent no.2 of the charge framed against him for the offences punishable under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act.

3. It would appear from perusal of the Lower Court Record that the appellant lodged Mahila P.S. Case No.50 of 2014 on 01.12.2014 to this effect that in the year 2008, while she had gone to ease herself, the respondent no.2 committed rape on her on the point of dagger. She returned to her home and narrated the entire incident to her parents but when her parents went to make complain to the house of the respondent no.2, they were abused and driven away from there. However, she further claimed that the respondent no.2, on false promise of marriage with her, continued his sexual relation with her and when she became pregnant, the respondent no.2 provided her tablet causing her abortion. Subsequently, the respondent no.2 refused to solemnize his marriage.

4. The police, after investigation, submitted charge-sheet against the respondent no.2 and, subsequently, after cognizance, the respondent no.2 was put on trial. He stood charged for the offences punishable under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act.

5. In course of trial, the prosecution examined several



witnesses including the informant (appellant) and also got exhibited some documents.

6. The statement of the respondent no.2 was recorded under Section 313 of the Code of the Criminal Procedure in which the respondent no.2 pleaded his innocence.

7. However, after scrutinizing the evidences, available on the record, the learned trial court acquitted the respondent no.2 of the charge framed under Section 6 of the POCSO Act on the ground that the appellant lodged the case in the year 2014, whereas the occurrence of the present case is said to have taken place in the year 2008 and, therefore, the provisions of the POCSO Act are not applicable. The learned trial court also acquitted the respondent no.2 of the charge framed under Section 376 of the Indian Penal Code on the ground that the appellant was a consenting party and even after becoming major, she continued her relationship with the respondent no.2.

8. Learned counsel for the appellant submits that even if it is assumed to be true that the appellant was found aged about 20 years when she was medically examined after institution of the case, then also, in the year 2008, she was minor and consent of the minor is of no value but the learned trial court failed to take note of the aforesaid fact.



9. On the other hand, learned counsel for the respondent no.2 supported the impugned Judgment of acquittal, arguing that it has come in course of trial that the appellant was in physical relation with the respondent no.2 for near about six years and she lodged the case after six years of the so-called offence and, therefore, the learned trial court rightly acquitted the respondent no.2 giving benefit of doubt to him.

10. From perusal of the impugned Judgment as well as the materials, available on the record, we find that the victim/appellant was examined by the doctor on 01.12.2014 and the doctor found her age above 20 years and, therefore, it is obvious from the aforesaid fact that the victim/appellant was more than 20 years old on 01.12.2014. The appellant claimed that she was first raped by the respondent no.2 in the year 2008 but, admittedly, she lodged the present case in the year 2014, i.e., after six years of the so-called rape. Moreover, the finding of the doctor was that she was aged more than 20 years on 01.12.2014 and, therefore, it is obvious that even after having become major she continued her physical relation with the respondent no.2. Finding of the doctor in respect of the age of victim/appellant is not conclusive and there is nothing on the record to show that the victim/appellant was minor in the year



2008 and, therefore, it cannot definitely be said in the light of the finding of the doctor that the appellant was minor in the year 2008 and, therefore, in our view, the learned trial court rightly acquitted the respondent no.2 giving benefit of doubt to him.

11. Accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2018.
Transmission Date	18.04.2018.

