

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.268 of 2015**

Arising Out of PS.Case No. -82 Year- 2014 Thana -SALKHUA District- SAHARSA

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Ranveer Yadav, S/o Bindesh Yadav, resident of Maharas, Police Station-Salakhua
(Banama Itahari O.P.), District Saharsa.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Satish Kumar Singh-Advocate
Mr. Dinesh Maharaj-Advocate

For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 16-03-2018

Appellant Ranveer Yadav has been found guilty under Section 8 of the POCSO Act and sentenced to undergo R.I. for four years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for three months by the 1st Additional Sessions Judge-cum-Special Judge, POCSO, Saharsa in POCSO Act Case No.12 of 2014, arising out of Salakhua (Banama Itahari O.P.) P. S. Case No.82 of 2014.

2. Victim (PW-2) filed written report on 15.04.2014 alleging inter alia that while she was returning from Masani Bahiyar on about 14.04.2014 at about 4.00 p.m. having a bundle of grass over her head, appellant Ranveer Yadav pulled her scarf from behind as a result of which, she fell down. She got up and began to flee, but



Ranveer Yadav again caught hold her on chase and then, threw her on the ground, thrust scarf in her mouth and then, committed rape as a result of which, she became unconscious. Anyhow, she raised alarm attracting the persons present nearby including Babadai Devi (PW-3), Jogish Sada (not examined), Kamal Sada (not examined), Ajay Yadav (PW-6) and others seeing whom, Ranveer Yadav ran away. Then thereafter, she was taken to her house where after arrival of her parents, who have gone to perform menial work, she disclosed the event and then, came to police station where written report has been filed.

3. After registration of Salakhua (Banama Itahari O.P.) P. S. Case No.82 of 2014, investigation commenced and concluded by way of submission of chargesheet facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Nothing has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, learned Magistrate, who had recorded statement of the victim under Section 164 of the Cr.P.C., PW-2, victim herself, PW-3, Babadai Devi, PW-4, Kishun



Sada, PW-5, Dr. Bibha Rani, PW-6, Ajay Yadav and PW-7, Srikant Singh, the I.O. as well as had also exhibited as Exhibit-1, statement recorded under Section 164 of the Cr.P.C., Exhibit-2, signature of victim over written report, Exhibit-3, signature of victim over her statement recorded under Section 164 Cr.P.C., Exhibit-4, medical report, Exhibit-5, formal F.I.R. As disclosed, nothing has been adduced in defence.

6. Heard learned counsel for the appellant as well as learned Additional Public Prosecutor. After going through the record, it is apparent that it is a fit case wherein after setting aside the judgment impugned, the matter be remitted back to the learned lower Court for passing judgment afresh after hearing both the parties in accordance with law.

7. The basic infirmity, which is visualizing from the L.C. Record, is that the learned lower Court had acted in mechanical manner without appreciating the evidence of the relevant witnesses in its right perspective. As per Section 2 of the POCSO Act, the definition of child has been enumerated under Section 2 (d) of the Act identifying any person below the age of 18 years that means to say, the applicability of POCSO Act is permissible only in a case where victim happens to be aged upto 18 years, that means to say, below the age of 18 years. When the evidence of doctor (PW-5) has been gone



through, it is manifest that victim was subjected to examination by radiologist, who had submitted his report identifying the age of the victim to be in between 16-18 years. It is needless to say that the age having been ascertained by a radiologist is subject to variance of two years either side and during consideration of the same, the variance in the upper side is to be accepted that means to say, victim happens to be aged about 20 years that means to say, going out of purview of POCSO Act. In an alternative, the lower Court should have endeavoured to ascertain the age of the victim in accordance with the direction given by the Apex Court in ***Jarnail Singh vs. State of Haryana reported in 2013 CRI.L.J. 3976.*** From the judgment impugned, it is apparent that the learned lower Court had sailed with the finding in pre-determined manner without properly appreciating whether victim comes within the purview of child or not. In the case of ***Mahadeo v. State of Maharashtra*** and another reported in (2013) 14 SCC 637.

8. In ***State of M.P vs. Anoop Singh reported in (2015) 7 SCC 773***, it has been held:-

“11. In the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident. The prosecution in support of their case adduced two certificates, which were the birth certificate and the middle school certificate. The date of birth of the prosecutrix has been shown as 29.08.1987



in the Birth Certificate (Ext. P/5), while the date of birth is shown as 27.08.1987 in the Middle School Examination Certificate. There is a difference of just two days in the dates mentioned in the abovementioned Exhibits. The Trial Court has rightly observed that the birth certificate Ext. P/5 clearly shows that the registration regarding the birth was made on 30.10.1987 and keeping in view the fact that registration was made within 2 months of the birth, it could not be guessed that the prosecutrix was shown as under-aged in view of the possibility of the incident in question. We are of the view that the discrepancy of two days in the two documents adduced by the prosecution is immaterial and the High Court was wrong in presuming that the documents could not be relied upon in determining the age of the prosecutrix.

12. This Court in the case of Mahadeo S/o Kerba Maske Vs. State of Maharashtra and Anr., (2013) 14 SCC 637, has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under:

“Rule 12(3): In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(i) the matriculation or equivalent certificates, if available; and in the absence whereof;



(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

13. This Court further held in paragraph 12 of Mahadeo S/o Kerba Maske (supra) as under:

“Under rule 12(3)(b), it is specifically provided that only in the absence of alternative methods described under Rule 12(3)(a)(i) to (iii), the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of the



juvenile in our considered opinion, the same yardstick can be rightly followed by the courts for the purpose of the ascertaining the age of a victim as well.” (Emphasis supplied) This Court therefore relied on the certificates issued by the school in determining the age of the prosecutrix. In paragraph 13, this Court observed:

“In light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her V standard and in the school leaving certificate issued by the school under Exhibit 54, the date of birth has been clearly noted as 20.05.1990 and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20.05.1990. the reliance placed upon the said evidence by the Courts below to arrive at the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of occurrence was perfectly justified and we do not find any grounds to interfere with the same.”

That means to say, there happens to be flagrant violation of law at the end of lower Court, whose prime object would have been to see the applicability of the Act wherein it failed.

9. Consequent thereupon, the judgment suffers from inherent lacuna, whereupon, is set aside. Appeal is allowed. Matter is



remitted back to the learned lower Court to hear both the parties and pass judgment in accordance with law. Appellant is on bail, hence, his bail bond is hereby cancelled directing him to surrender before the learned lower Court within a fortnight, who will pass appropriate order in accordance with law, in case a prayer for bail is made on behalf of appellant, failing which the learned lower Court will be at liberty to proceed against the appellant in accordance with law. Office to transmit L.C. Record at once.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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