

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.401 of 2021

Arising Out of PS. Case No.-37 Year-2018 Thana- RAMPUR District- Gaya

Sanjay Kumar @ Bhondu S/o Late Shiv Prasad, resident of Geval Bigha, Akhda, Durgaa Mandap, P.S.- Rampur, Dist- Gaya.

... .. Appellant

Versus

1. The State of Bihar
2. Chhotu Rawani S/o Shivratan Ram, resident of Geval Bigha Akhara, P.S.- Rampur, District- Gaya.

... .. Respondents

Appearance :

For the Appellant : Mr.Rabindra Nath Tiwari, Advocate
For the Respondent-State: Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 23-08-2021

Being aggrieved by and dissatisfied with the order of sentence dated 2nd November, 2020 passed by the learned Special Judge, Exclusive POCSO Court-cum-Additional Sessions Judge-VI, Gaya (hereinafter referred to as 'the Trial Court') in POCSO Case No.17 of 2018, the appellant has preferred the present appeal under the proviso to Section 372 of the Code of Criminal Procedure (for short 'CrPC').

2. The appellant herein was the informant of Rampur P.S. Case No. 37 of 2018 registered on 06.02.2018 for the offences punishable under Sections 363, 364, 366A of the



Indian Penal Code (for short 'IPC') and 8 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act'). Later on, Sections 302, 376, 307 and 201 of the IPC and 4 of the POCSO Act were added to the First Information Report (for short 'FIR') during investigation after the dead body of the missing daughter of the informant was recovered.

3. After completing the investigation, Charge-Sheet No. 80 of 2018 dated 30.04.2018 was submitted by the investigating officer under Sections 363, 364, 302, 201, 376 and 307 of the IPC and 4 & 8 of the POCSO Act against respondent no.2 Chhotu Rawani.

4. Upon receiving the police report under Section 173(2) of the CrPC, the Trial Court took cognizance of the offences punishable under Sections 363, 364, 302, 201, 376 and 307 of the IPC and 6 of the POCSO Act on 10.05.2018 and summoned the respondent no. 2 to face trial.

5. Having complied with the statutory requirements of Section 207 of the CrPC, the Trial Court framed charges against respondent no.2 under Sections 363, 364, 366A, 376, 302, 201 and 307 of the IPC and 4 of the POCSO Act to which he pleaded not guilty and claimed to be tried.

6. After closure of the prosecution case, the



circumstances appearing in the evidence against the respondent no. 2 were explained to him and his statements were recorded under Section 313 of the CrPC.

7. Since the defence did not produce any evidence, the Trial Court heard the arguments advanced on behalf of the parties and, vide judgment dated 19th October, 2020 convicted the respondent no. 2 for the offences punishable under Sections 363, 364, 366, 307, 376, 302, 201 of the IPC and 4(2) of the POCSO Act.

8. After hearing the respondent no. 2 on the point of sentence, the Trial Court, vide order dated 2nd November, 2020 sentenced the respondent no. 2 for the respective offences in the following manner :-

Sl. No.	Offence under Section	Punishment awarded
1.	363 IPC	Rigorous imprisonment for a term of seven years and a fine of Rs.5000/- and in default of payment of fine to further undergo rigorous imprisonment for six months.
2.	364 IPC	Rigorous imprisonment for a term of ten years and a fine of Rs.5000/- and in default of payment of fine to further undergo imprisonment for six months.
3.	366 IPC	Rigorous imprisonment for a



		term of ten years and a fine of Rs.5000/- and in default of payment of fine to further undergo imprisonment for six months.
4.	307 IPC	Rigorous imprisonment for a term of ten years and a fine of Rs.5000/- and in default of payment of fine to further undergo imprisonment for six months.
5.	302 IPC	Imprisonment for life and a fine of Rs.10000/- and in default of payment of fine to further undergo imprisonment for six months.
6.	201 IPC	Rigorous imprisonment for a term of seven years and a fine of Rs.2000/- and in default of payment of fine to further undergo imprisonment for six months.
7.	4(2) of the POCSO Act	Imprisonment for life which shall mean imprisonment for the remainder of natural life of the accused and a fine of Rs.5000/- and in default of payment of fine to further undergo imprisonment for six months.

9. After awarding the sentence for the proved charges under various provisions of the IPC and the POCSO Act in the manner indicated hereinabove, the Trial Court directed



that all the sentences shall run concurrently and the period of detention already undergone by the convict shall be set off against the period of imprisonment.

10. The appellant, who is the father of the deceased girl, has filed the instant appeal challenging the order of sentence dated 2nd November, 2020 passed by the Trial Court seeking enhancement of sentence to death penalty.

11. We have heard Mr. Rabindra Nath Tiwari, learned counsel for the appellant.

12. Learned counsel for the appellant submitted that the daughter of the appellant, a minor girl, aged 8 years, was raped in car and when she started crying, she was strangled to death by the respondent no.2. He contended that after ravishing a minor girl and killing her, the respondent no. 2 dumped her body behind the residence of the District Magistrate. He contended that the offence committed by the respondent no. 2 was heinous and brutal. Aggravating circumstances outweighed the mitigating circumstances as a calculated and diabolical cruelty has been inflicted on an innocent girl. Hence, the Trial Court ought to have awarded death sentence to the respondent no. 2 for the offence punishable under Section 302 of the IPC. He argued that



punishment awarded to the respondent no. 2 by the Trial Court is not commensurate to the crime committed by him. He contended that it is a fit case for enhancement of sentence of life imprisonment to death penalty for respondent no.2.

13. Having heard the learned counsel for the appellant and perused the materials on record and the provisions prescribed under the CrPC for filing the appeal against the order of sentence, we are of the considered opinion that the instant appeal is thoroughly misconceived.

14. Chapter XXIX of the CrPC deals with 'Appeals'. Section 372 of the CrPC as it originally stood in Chapter XXIX reads as under :-

“No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force”.

15. By the Act 5 of 2009, with effect from 31.12.2009, a right to appeal has been conferred for the first time to the 'victim' by inserting a proviso to Section 372 of the CrPC.

16. The proviso inserted by the Act 5 of 2009 with effect from 31.12.2009 to Section 372 of the CrPC reads as under :-



“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

17. A reading of the proviso makes it clear that so far as the victim’s right to appeal is concerned, the same can be invoked only under the following circumstances:-

- (a) acquittal of the accused;
- (b) conviction of the accused for a lesser offence; or,
- (c) in case of imposition of inadequate compensation.

18. There is no provision under the CrPC for an appeal by the ‘victim’ against the order of an inadequate sentence.

19. Against an inadequate sentence, the only provision prescribed under Chapter XXIX is Section 377 which provides for filing appeal by the State Government for enhancement of sentence.

20. The appellant, herein, has preferred the



instant appeal under the proviso to Section 372 of the CrPC claiming himself to be a victim under Section 2(wa) of the CrPC.

21. It is reiterated that a victim has no right to maintain an appeal under the proviso to Section 372 of the CrPC on the ground of inadequate sentence.

22. For the reasons aforesaid, we do not find any merit in this appeal. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Arvind Srivastava, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.08.2021
Transmission Date	27.08.2021

