

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.896 of 2018

Arising Out of PS. Case No.-319 Year-2013 Thana- BIDUPUR District- Vaishali

Arvind Rai @ Gope Jee Son of Late Abhilakh Rai @ Late Avlakh Rai,
Resident of Village- Khapura, P.S.- Biddupur, District- Vaishali.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant : Ms. Bela Singh, Advocate
Mr. Rajeev Ranjan, Advocate
For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

and
HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 16-09-2022

This appeal has been preferred against the judgment of conviction dated 17.05.2018 and order of sentence dated 24.05.2018 passed by the learned Additional District & Sessions Judge-I, Vaishali at Hajipur in Bidupur P.S. Case No. 319 of 2013.

2. By the impugned judgment and order, the appellant has been convicted and sentenced as under:-

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
376D of the Indian Penal Code	20 years R.I.	50,000/-	-
4 of the Protection of	For life	50,000/-	-



Children from Sexual Offences Act, 2012 (POCSO Act, for brevity)			
6 of the POCSO Act	For life	50,000/-	-
10 of the POCSO Act	7 years R.I.	25,000/-	-

3. Heard Ms. Bela Singh with Mr. Rajeev Ranjan, learned counsel appearing on behalf of the sole appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

4. For the purpose of concealing the identity of the minor victims, in the present judgment, their names have been referred to as V-1 (P.W.-3) and V-2 (P.W.-4). Another minor girl who was also present with V-1 and V-2, who had managed to escape the incident, has been examined at the trial as P.W.-5 and accordingly, she has been referred to as V-3 in the present judgment.

5. V-1 (P.W.-3) is the informant on whose *fardbeyan* the First Information Report (F.I.R., for brevity) i.e. Bidupur P.S. case No. 319 of 2013 was registered levelling commission of offences punishable under Section 376 of the Indian Penal Code (I.P.C., for brevity) and Sections 4 and 6 of the Protection Of Children from Sexual Offences Act (POCSO Act, for brevity).

6. The prosecution's case as unfolded in the F.I.R. is that on 22.09.2013, the informant V-1 (P.W.-3) aged about 16 years,



V-2 (P.W.-4) aged about 15 years and V-3 (P.W.-5) aged about 14 years had gone to a nearby Kharika Bandh (Dam) for fetching firewood. When they were collecting firewood, in the evening at 5:30 pm, (i) this appellant, (ii) Rahul Kumar, (iii) Bikram Rai and other two unknown persons suddenly arrived and tried to catch hold of them with improper motive. V-3 (P.W.-5) succeeded to escape, whereas, V-1 and V-2 were caught hold of by them. Thereafter they raped V-1 and V-2 and fled away towards the nearby brick kiln. V-1 and V-2 disclosed the occurrence to their family members after they returned their respective homes, whereafter the informant came to the police station in the same night at 11:05 pm with her parents. Her *fardbeyan* was recorded by a police office. Father of V-1 (P.W.-2) and mother of V-1 (P.W.-6) put their signature/R.T.I. on the *fardbeyan* of V-1 which was reduced to writing by the Sub-Inspector of Police, Nirbhay Kumar (P.W-11).

7. Upon completion of investigation, the Investigating Officer submitted charge-sheet against the appellant for commission of offence punishable under Section 376G of the I.P.C., 27 of the Arms Act and Sections 4 and 6 of the POCSO Act while keeping pending the investigation against other accused persons. Based on the police report so submitted, upon



completion of investigation, the Special Court under the POCSO Act took cognizance of the offences by an order dated 11.11.2014. On 10.03.2015, based on the materials on record, the charges for commission of the offences punishable under Section 376D, 27 of the Arms Act and Sections 4, 6, 8 and 10 of the POCSO Act were framed. As the appellant pleaded not guilty, he was put on trial.

8. At the trial, altogether 13 prosecution witnesses were examined including the Dr. Brajesh Kumar Singh (P.W.-2), a Radiologist and Dr. Anjani Kumar (P.W.-9), a Dental Surgeon who had examined V-1 and V-2 on 27.09.2013 for the purpose of determination of their age. P.W.-9, Dental Surgeon determined the age of V-1 between 14-15 years and that of V-2 between 13-14 years. Dr. Brajesh Kumar Singh (P.W.-2), the Radiologist opined that age of V-1 was between 16-18 years and that of V-2 was 14-16 years. They proved their respective reports prepared upon examination of V-1 and V-2 for the purpose of determination of their age. The report of the Dental Surgeon in respect of V-2 has been marked as Exhibit-3/1 whereas that of Radiologist in respect of V-2 has been marked as Exhibit-6/1. The Dental Surgeon's report in respect of V-1 has been exhibited as Exhibit-3 and that of Radiologist has been



exhibited as Exhibit-6. The lady medical officer, Dr. Renu Singh, who was posted at Sadar Hospital, Hajipur had examined V-1 and V-2 on 23.09.2013, on a requisition made by Officer-in-charge of Bidupur Police Station, deposed at the trial as P.W.-10. She proved at the trial following injuries found on V-1 and V-2 upon medical examination:-

“V1:-

On vaginal examination:-

Bruise on vaginal introitus superficial mid line perinial.

Vaginal orifice enter one finger- anus intact.

Vaginal swab sent to pathological examination.

According to pathological report, non-motile spermatozoa and R.B.C. cell were found.

In my opinion sexual intercourse committed and she was raped.

This report is in my pen and signature marked as Ext 3/2.

V2:-

On the same day I examined V-2 (name, parentage and address concealed, victim being minor) the following injuries:-

On external examination, no external injuries were found.

On internal examination superficial, midline fresh perinial white discharge found, vaginal orifice admits one finger.

Discharge sent for pathological examination. According to report non motile spermatozoa and R.B.C. cell found.

My opinion:- she was raped”

9. It is noteworthy that during the investigation, statements of V-1, V-2 and V-3 were recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C. for brevity) before



the learned Judicial Magistrate, Vaishali on 24.05.2013, wherein they had supported the allegations made in the *fardbeyan*. The learned Judicial Magistrate, Vaishali, Mr. Rajeev Ranjan Singh, who had recorded the statements of V-1, V-2 and V-3, deposed for the prosecution as P.W.-13 and proved the statements of V-1, V-2 and V-3 recorded under Section 164 of the Code of Criminal Procedure ('Cr.P.C.' for short) before the Trial Court which came to be marked as Exhibit 7, 7/1 and 7/2.

10. One of the charge-sheet witnesses, namely, Jagdish Rai came to be declared hostile by the Trial Court at the instance of the prosecution. V-1, P.W.-3 supported at the trial the accusation made by her in her *fardbeyan* as has been noted hereinabove. She proved her signature put on her *fardbeyan* which was reduced to writing by the police officer. She deposed that V-2 was first raped and thereafter she was raped by miscreants including this appellant.

11. V-2 (P.W.-4) in her deposition while supporting the narration of the prosecution's case in the F.I.R., has corroborated the statement of V-1 during her cross-examination to the effect that she (V-2) was raped first. V-3 who had managed to escape from the place of occurrence, in her evidence, while supporting the prosecution's case of commission of rape on V-1 and V-2,



deposed that co-accused Surendra Rai was carrying a pistol and he had attempted to catch her also but she had managed to escape. She further deposed that immediately after escaping, she had concealed herself in a nearby bush and had noticed that V-1 and V-2 were being sexually assaulted. She reached the house of one Rajdeo Rai to whom she had disclosed the occurrence. In her cross-examination, she deposed that from the house of Rajdeo Rai, she had gone to her house. It has emerged from the deposition of witnesses that the said Rajdeo Rai has subsequently been killed and, thus, though he was named as a charge-sheet witness, he could not be examined.

12. P.W.-2 is father of V-1. He deposed *inter alia* that when V-1 disclosed the facts about the occurrence, he had gone to the police station, whereafter *fardbeyan* of V-1 was recorded. The Salwaar of V-1 and V-2 were seized and a seizure list was prepared which was signed by the Sub-Inspector, Tara Devi (P.W.-7) and said Rajdeo Rai. During the cross-examination, he deposed that the Kharika Bandhh was about one kilometer from his house and that his daughter had gone there to fetch firewood twice before the fateful day.

13. Mother of V-1 has been examined as P.W.-6. She deposed that V-3 had escaped to the house of Rajdeo Rai,



whereafter co-accused Surendra Rai had gone to the house of Rajdeo Rai for taking V-3 out of the house. The occurrence was narrated to her (P.W.-6) by V-1 and V-2, she deposed in her cross-examination.

14. P.W.-7, mother of V-2 also supported the prosecution's case that V-1, V-2 and V-3 had gone to Kharika Bandh for fetching firewood and further that whereas the V-1 and V-2 were raped, V-3 had managed to escape to the house of Rajdeo Rai. She also deposed that the accused persons had arrived at the house of Rajdeo Rai, abused him but Rajdeo Rai did not hand over V-3 to them. Later, the said Rajdeo Rai was killed by the accused persons, she deposed. She further deposed that V-1 and V-2 were waiting when they had come to the house and disclosed about the occurrence. Thereafter, she had gone to the police station.

15. Mother of V-3 has been examined as P.W.-8, who also supported the prosecution's case as was revealed to her by V-3.

16. Investigating Officer has been examined as P.W.-11 who proved the seizure list of Salwaar which V-1 and V-2 were wearing when the occurrence had taken place and has been exhibited as Exhibit-4. The said seizure list bears the signature of Rajdeo Rai in respect of whom evidence has come that he



was subsequently killed. He proved the F.I.R. (Exhibit-5). He also deposed that during the course of investigation, he had recorded statements of prosecutions witnesses including Rajdeo Rai and had inspected the place of occurrence. He further deposed that the clothes of V-1 and V-2 which were seized were sent to Forensic Science Laboratory, Patna for its examination. During cross-examination, he deposed that the statement of V-1 was recorded in the night of 11:05 p.m.. In his cross-examination, he denied recovery of cartridge from near the house of Rajdeo Singh and added that no trace of firing was detected by him.

17. Based on appreciation of evidence adduced at the trial by the prosecution, the Trial Court found that the same were credible, dependable, specific, cogent, ample and concrete testimonies to establish the charges under Sections 376D of the I.P.C. and Sections 4, 6 and 10 of the POCSO Act beyond all reasonable doubts and convicted the appellant accordingly of the said charges by the impugned judgment and imposed the sentences for the proved offences by the impugned order of the sentence.

18. Ms. Bela Singh, learned counsel appearing on behalf of the appellant assailing the impugned judgment and order of



the trial court has contended that the prosecution failed to establish its case beyond all reasonable doubts. She has contended that no credence ought to have been given to the evidence of P.W.-3 for the reason that she has deposed before the Court that the *fardbeyan* was prepared at the police station whereas from the F.I.R. it would be evident that her *fardbeyan* is said to have been recorded by the Sub-Inspector of police on 22.09.2013 at Khajbati and not in the police station. She contends that the said evidence of P.W.-3 shakes the entire foundation of the prosecution's case. She has further submitted that P.W.-2, father of V-1 (P.W.-3) deposed in her evidence that the clothes of V-1 and V-2 were handed over to the police. She has submitted that, though, there is evidence on record that the clothes of V-1 and V-2 were sent for FSL examination, but no report from FSL has been proved as evidence. She further contends that the manner of occurrence as disclosed by the prosecution witnesses in their respective depositions appears to be highly improbable. The victims i.e. V-1 and V-2 have deposed in their evidence that there were houses of persons between the place of occurrence and their respective houses, but they did not disclose to anyone about the occurrence having taken place with them, on their way back to their houses from



the place of occurrence. It is her submission that, though, P.W.-8 in her deposition has mentioned that V-3 was chased by co-accused Satendra Rai, who had opened fire near the house of Rajdeo Rai (since deceased), but no cartridge was recovered from/near the house of the said Rajdeo Rai. Pointing out towards the contradictions in the evidence of witnesses she has drawn our attention to the deposition of V-2 (P.W.-4) to the effect that, for the first time, she had gone to fetch firewood from the dam whereas her mother (P.W.-7) in her deposition has stated that she (V-2) had gone there more than once. She further contends that these are material contradiction(s) which have not been duly taken into account by the trial court while recording conviction. She further contends that, though, prosecution failed to establish its case beyond all reasonable doubts, the trial court upon improper appreciation of the evidence on record, has recorded conviction by the impugned judgment of the trial court. She has submitted that the trial court has imposed fine of Rs. 50,000/- for the offence punishable under Section 376D of the I.P.C., Rs. 50,000/- for the offence punishable under Section 4 of the POCSO Act, Rs. 50,000/- for the offence punishable under Section 6 of the POCSO Act and Rs. 25,000/- for the offence punishable under Section 10 of the POCSO Act, in



addition to the sentence of imprisonment for the said offences. She argues that this Court may consider reducing the amount of fine as the amount of fine imposed by the trial court is apparently excessive.

19. Learned Additional Public Prosecutor representing the State, on the other hand, has submitted that there is no legal infirmity in the impugned finding of conviction recorded by the trial court of offences punishable under Section 376D of the I.P.C. and Sections 4, 6 and 10 of the POCSO Act. He has submitted that as the prosecution witnesses have consistently supported the prosecution's case in their deposition at the trial which is duly corroborated by medical evidence and, therefore, the finding of conviction does not require any interference by this Court. The statements of V-1, V-2 and V-3 do not suffer from any embellishment nor there is material contradiction(s) in their evidence. He has contended that since the prosecution witnesses have proved the minority of V-1 and V-2 and the factum of rape committed on them by the appellant and others, the appellant's conviction is wholly justified.

20. We have carefully perused the impugned judgment and order of the trial court, the oral evidence of the prosecution witnesses and other documentary evidence proved



at the trial. We are of the considered view that minority of V-1 and V-2 has been duly proved at the trial by the Dental Surgeon (P.W.-9) and the Radiologist (P.W.-12), who have found the age of V-1 and V-2 to be below 18 years as has been noted hereinabove. The Doctor (P.W.-10), who had examined V-1 and V-2 has proved commission of sexual assault on V-1 and V-2. V-1 and V-2 have clearly deposed in their evidences that they were sexually assaulted by the appellant and his accomplices. Their deposition in support of the prosecution's case of sexual assault is corroborated by the medical evidence. We have also perused the statements of V-1 and V-2 recorded under Section 164 of the Cr.P.C. which have been exhibited as Exhibits 2 and 2/1. The said statement was recorded on 24.09.2013 by the learned Judicial Magistrate First Class, Vaishali, Hajipur. The statement of V-3 was also recorded under Section 164 of the Cr.P.C. before the same Magistrate. The statements of the victims recorded under Section 164 of the Cr.P.C., which was consistent with the prosecution's case disclosed in the *fardbeyan*, have been proved by the learned Magistrate (P.W.-13). In the Court's opinion, the prosecution has been able to prove the charge of commission of offence punishable under Section 376D of the I.P.C. and Sections 4, 6 and 10 of the



POCSO Act based on the evidence adduced at the trial. We do not find any reason why the consistent evidences of V-1 and V-2 corroborated by medical evidence should be disbelieved. Their evidences do not appear to be suffering from any embellishment or material contradiction(s) based on which the appellant could be given benefit of doubt, in our considered view.

21. Further there is no material on record for this Court to consider false implication of the appellant. No evidence of animosity or ill-will was pleaded by the appellant at the trial in his statement recorded under Section 313 of the Cr.P.C.. As has been noted above, learned counsel for the appellant has pointed out that P.W.-3 has deposed in her evidence that she had gone to the police station with the parents of V-2 and V-3, whereafter, her statement was recorded at the police station, but the *fardbeyan* discloses that her *fardbeyan* was recorded Khajbati and not at the police station. On perusal of the *fardbeyan* we notice that *fardbeyan* of the V-1 (P.W.-3) was recorded at Khajbati. P.W.-3. P.W.-3 in her deposition has stated that she, her parents and others had gone to the police station and disclosed about the occurrence. She has not stated that her *fardbeyan* was recorded at the police station itself. In the Court's



opinion, *fardbeyan* of V-1 was rightly recorded by the police officer at the residence of V-1 considering the nature of the offence, adhering to the statutory requirement under Section 24(1) of the POCSO Act. The I.O. (P.W-11), in his deposition has specifically mentioned that *fardbeyan* of V-1 (the informant) was recorded at 11:05 p.m. at her residence, which is corroborated by the contents of the *fardbeyan*. There is no evidence to the effect that *fardbeyan* of V-1 was recorded at the police station. Section 24(1) of the POCSO Act mandates that the statement of the child shall be recorded at the residence of the child or at a place where he/she usually resides or at the place of his/her choice. We, therefore, do not find any substance in the submission made on behalf of the appellant that the *fardebyan* of V-1 was, in fact, recorded at the police station. In any view of the matter, no prejudice has been shown to have been caused to the appellant on this count.

22. In such view of the matter, considering the discussions as noted above, we do not find any legal infirmity in the finding of conviction recorded by the trial court. The quantum of fine imposed by the trial court, in the wake of the nature of the proved offences do not appear to be excessive requiring this court's interference. The sentences imposed by the



trial court are commensurate with proved charges of commission of the offences.

23. We, therefore, do not find any merit in this appeal.

This appeal is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Khatim Reza, J: I agree.

(Khatim Reza, J)

K.K.RAO/-

AFR/NAFR	NAFR
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