

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3793 of 2021**

Arising Out of PS. Case No.-152 Year-2014 Thana- BIHAR District- Nalanda

VISHAL KUMAR @ MONU, Son of Ajit Kumar Sinha R/o Mohalla-Garhpar, P.S.- Bihar, District- Nalanda.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Anil Kumar No.1, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT**

Date : 28-07-2022

The present appeal arises out of judgment of conviction and order of sentence dated 06.04.2021 passed by learned Additional Sessions Judge-VI-cum- Special Judge, POCSO Court, Nalanda at Bihar Sharif in Bihar P.S. Case No. 152 of 2014, G.R. No. 968/2014 whereby the sole appellant has been convicted under Section 354 of the Indian Penal Code and Section 8 of POCSO Act. In view of Section 42 of Protection of Children from Sexual Offences Act, 2012, the Learned Trial Court has awarded the sentence to the appellant only under Section 8 of the POCSO Act, 2012 wherein he has been sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs. 10,000/- and in default of payment of fine, he was further sentenced to undergo three months of simple imprisonment.



2. The case of prosecution, according to the informant, is that on 25.03.2014 around 5.30 a.m. in the morning, her daughter (victim) aged about 14 and a half years went outside the house for tuition. When she did not return till noon at 12 p.m., then the informant informed her husband regarding the same whereafter they started searching for the victim. In the meantime, informant got the knowledge that accused Vishal Kumar @ Monu had kidnapped her minor daughter. After receiving this information, the informant along with her husband went to home of accused where the parents and sister of accused threatened and abused the informant. The informant has further claimed that she believes that the accused persons including the appellant had abducted her minor daughter for the purpose of marriage by alluring her. Therefore, the present case has been filed by the informant.

3. The police after recording the fardbeyan of the informant registered a case for the offences punishable under sections 363 and 366A of the Indian Penal Code against the present appellant vide Bihar P.S. Case No. 152 of 2014. The police after investigation submitted charge-sheet against the appellant under sections 366A, 376 and 120B of the Indian Penal Code. The Learned Trial Court framed charges under Section 366A and 376



of the Indian Penal Code and Section 4 and 8 of Protection of Children from Sexual Offences Act, 2012.

4. The prosecution, in support of its case, has examined seven (07) prosecution witnesses namely P.W.-1 Munna Paswan, P.W.-2 Ashok Kumar, father of the victim, P.W.-3 Mira Devi (informant of the case), P.W.-4 Kamla Devi, P.W.- Dr. Kumkum Kumari (doctor who examined the victim), P.W.-6 Sanjay Kumar (I.O. of the case) and P.W.-7 is the victim of the case. Out of these witnesses, P.W.-1, P.W.-2, P.W.-3 and P.W.-4 have turned hostile. The prosecution, in support of its case has also submitted four material exhibits viz. Ext.1 fardbeyan of the informant, Ext.-2 medical report with signatures of the members of the Board, Ext.-3 the statement of the victim under Section 164 Cr.P.C. with her signature and Ext.-4 signature of victim on medical report. After conclusion of trial, the statement of the appellant has been recorded under Section 313 of Cr.P.C. in which the appellant pleaded not guilty and claimed to be tried. The Trial Court convicted the appellant for the offences in the manner as stated in paragraph No. 1.

5. Heard learned counsel for the appellant and learned APP for the State.



6. It is submitted by learned counsel for the appellant that the appellant has falsely been implicated in the case. It has been further submitted that the impugned judgment of conviction and order of sentence passed by the Trial Court is bad in law as well as on facts for the reasons that, there has been material contradiction in deposition of victim with respect to the offence and as such, the statement of victim cannot be relied upon. It has been further submitted that the victim in her deposition has stated that her statement under section 164 Cr.P.C. was recorded at the instance and under the influence of police. Further, there is no corroborative medical evidence to prove that the victim was subjected to physical assault as mentioned by her in deposition before the learned Trial Court. It has further been submitted by learned counsel for the appellant that the prosecution has not been able to prove the manner of occurrence, place of occurrence and time of occurrence. Therefore, the prosecution has not been able to prove the charges beyond shadow of reasonable doubt and the appellant is entitled for acquittal.

7. The learned APP for the State submits that the victim P.W.-7 in her examination-in-chief at paragraph No. 7 has deposed that she identified the accused and he was the one who did wrong thing with her. The accused has also physically assaulted her and



touched her body. It is further submitted by the counsel for the State that the same has been supported by the statement of victim recorded under section 164 Cr.P.C. Therefore, the learned Trial Court has rightly arrived at the conclusion of convicting the appellant and there is no need for any interference by this Court.

8. Having heard learned counsel for the parties and considering the materials available on record, following issues arise for consideration in this case:-

(i) Whether the deposition of the victim read as a whole is truthful and inspire confidence and can be relied upon?

(ii) Whether the ocular evidence is inconsistent with the medical evidence insofar as injury sustained by the victim is concerned?

(iii) Whether the statement of the victim recorded under section 164 of Cr.P.C. could be relied upon?

(iv) Whether the prosecution has been able to establish the place of occurrence, the manner of occurrence, the date and time of occurrence beyond all reasonable doubt?

(v) Whether in facts of the present case the onus will shift on the appellant to prove his innocence?

9. Now, advertng to the first issue, the statement of the victim in her deposition is in two parts. The first part of her



statement in examination-in-chief as stated in paragraph No. 2 of the said deposition is the categorical denial of any occurrence of offence. She categorically stated that she had gone to Delhi along with appellant to her material uncle's home. She also stated that nothing has happened with her either at Delhi or at Biharsharif. She has further stated in the said paragraph that nothing has happened with her in train. The second part of her examination-in-chief is in paragraph No. 7 of the said deposition wherein she stated that she knew Monu who had done wrong things with her and has physically assaulted her and also touched her body. After having gone through the statements made in both the paragraphs, it is clear that the deposition of the victim with respect to the occurrence of offence cannot be read in isolation and has to be read as a whole. When the deposition is read together, there arises material contradiction with respect to the occurrence of offence and, therefore, it does not inspire confidence of the Court to be relied upon. The Hon'ble Supreme Court in ***Santosh Prasad v State of Bihar (2020) 3 SCC 443***, observed that:-

“Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions... Therefore, we find that the solitary version of the prosecutrix PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no



scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.”

Therefore, in view of the material contradiction, the evidence of the victim does not appear to be truthful and cannot be relied upon.

10. Coming to the second issue, from perusal of the record it transpires that the victim in her statement made in deposition at paragraph 7 stated that she was physically assaulted by the appellant but the prosecution has not brought any evidence on record as material exhibit in order to prove the physical assault sustained by victim. Further, from the medical report (Ext.-2), it could be seen that there were no injury on private parts of the victim. Therefore, the statement of victim with regard to physical assault sustained by her cannot be relied upon as the same stands uncorroborated by the medical evidence.

11. Adverting to the third issue, the victim, in her cross-examination, has categorically stated that she gave statement before the Court at the instance and under the influence of police and, therefore, the statement recorded under Section 164 Cr.P.C. cannot be relied upon as the same has not been given out of her own will.



12. Now, advertent to the fourth issue, there is nothing, in the deposition of the victim as stated in paragraph No. 7 of her examination-in-chief, which could establish the place where the victim was subjected to sexual assault or physical assault or the place where the wrong thing was done to her by the appellant. Further, from the deposition of victim the manner of occurrence of offence could not be proved and the deposition does not state anything regarding the date and time of occurrence of offence. Therefore, the prosecution has not been able to prove and discharge the burden beyond all reasonable doubt.

13. Now advertent to the fifth issue, the prosecution has been unable to establish the *prima facie* case as the deposition of the victim is not able to establish the place of occurrence, manner of occurrence, time and date of occurrence. Furthermore, there has been material contradiction in the deposition of victim which she stated in her examination-in-chief before the learned trial court. Therefore, the onus to prove his innocence will not shift upon the appellant due to failure of the prosecution to establish the *prima facie* case against the appellant.

14. In view of the findings arrived at after the issue formulated above, this Court is of the considered opinion that, the present appeal filed by the appellant deserves to be allowed.



Accordingly, the appeal is allowed and the judgment of conviction and order of sentence dated 06.04.2021 passed by learned Additional Sessions Judge-VI-cum- Special Judge, POCSO Court, Nalanda at Bihar Sharif in Bihar P.S. Case No. 152 of 2014, G.R. No. 968/2014, is set aside. The appellant is acquitted of charges levelled against him. The appellant shall be set at liberty forthwith if his detention is not needed in respect to any other case. Interlocutory application(s), if any, pending, stands disposed of accordingly.

(Sudhir Singh, J)

Pankaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

