

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.816 of 2021**

Arising Out of PS. Case No.-41 Year-2017 Thana- AMNAUR District- Saran

BINDA RAI @ VINDA RAY Son of Chandradeo Rai Resident of Village-
Dhorlahi Narapur, P.S.- Amnaur, District- Saran at Chapra.

.. ... Appellant/s

Versus

1. The State of Bihar
2. Lalbabu Rai @ Tipu Rai Son of Ambika Rai Resident of Village- Dhorlahi Narapur, P.S.- Amnaur, District- Saran at Chapra.
3. Rupesh Rai Son of Late Saptan Rai Resident of Village- Dhorlahi Narapur, P.S.- Amnaur, District- Saran at Chapra.
4. Vivek Rai Son of Chandrashekhar Rai Resident of Village- Dhorlahi Narapur, P.S.- Amnaur, District- Saran at Chapra.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Radha Mohan Singh, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 15-11-2022

By a judgment and order dated 18.09.2021 passed by learned Exclusive Special Judge (POCSO) Saran at Chapra in Sessions Trial (POCSO) No. 27 of 2019, arising out of Amanur P.S. Case No 41 of 2017, respondents No. 2 to 4 have been acquitted of the charge of commission of offence punishable under Sections 302/34, 201/34, 376, 376D of the Indian Penal Code (hereinafter referred to "I.P.C." in short) and Sections 4 and 6 of



the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to “POCSO Act” in short), which is under challenge in the present appeal preferred by the informant/victim under Section 372 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short).

2. We have heard Radha Mohan Singh, learned counsel appearing on behalf of the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

3. It is considered apt to notice first the prosecution’s case, as disclosed in the *fardbeyan* of the informant, which is the basis for registration of F.I.R.. The appellant in his *fardbeyan* before the police on 11.03.2017 at 4:15 pm. alleged that on 10.03.2017 at about 7:00 pm., when he was feeding his cattle at his old house, he looked for her ten-year-old granddaughter but she was not found. Under the presumption that she might have gone to her mother in her new house, he did not enquire about her any further. He also thought that she might have gone to attend a feast at the house of one Radha Singh of Village Dhorlahi, nearly one kilometer away from his house. On the next day on 11.03.2017 at 5:00 am., he again searched for his granddaughter (the victim) at the new house but she was not found. He thereafter started searching for her but could not get any trace of her nor any clue. At about 1:45 pm., on 11.03.2017 the informant learnt from a



boy in the village that the victim had been killed and her dead body was lying in the agricultural field of a villager of village Dhorlahi near Apna Hotel. Based on the said information, the informant and his family members reached there and saw the dead body of the deceased lying. Her throat was found cut with a sharp cutting weapon. There were several knife blows on various parts of her body including abdomen. He suspected that someone might have committed rape upon her and killed her thereafter. Based on the said *fardbeyan*, the F.I.R. came to be registered for the offences punishable under Sections 302, 376, 201/34 of the I.P.C., and Section 3/4 of the POCSO Act. The police submitted its charge-sheet for the offences punishable under Sections 302, 376, 201/34 of the I.P.C., and Section 3/4 of the POCSO Act whereafter cognizance was taken. On 16.04.2019 charges were framed for commission of offences punishable under Sections 302/34, 376, 201/34 of the I.P.C., and Section 4 of the POCSO Act. Subsequently, on 09.04.2021 the charges were framed under Section 376D of the I.P.C., and Section 6 of the POCSO Act.

4. At the trial, altogether 8 witnesses were examined for the prosecution. The prosecution proved at the trial, signature of the informant (PW-3) on the *fardbeyan* (Exhibit-1), copy of the *fardbeyan* (Exhibit-2), formal F.I.R. (Exhibit-3), endorsement on *fardbeyan* (Exhibit- 3/1), postmortem report (Exhibit-4),



signatures of members of the medical board on the postmortem report (Exhibit-5), statement of the mother of the deceased (PW-1) recorded under Section 164 of the Cr.P.C., (Exhibit-6), death inquest report (Exhibit-7).

5. From the impugned judgment it appears that the gist of deposition of the mother of the victim (PW-1) is that at about 7:00 pm., on the fateful day she was preparing food in her new house when her ten-years-old daughter had gone to fetch water for her grandfather at her old house. One Ravindra Rai, a co-accused had come to his sister's house in the same village. The said Ravindra Rai had come to her house and asked for some food. After she told him that food was yet to be prepared, he had returned to his sister's house which was near her (PW-1) house. She further disclosed that she had served Ravindra Rai food and had noticed that he was carrying a big knife in his pocket which had fallen from his possession. When she wanted to know the reason as to why he was carrying the knife he had told her that he had some work. After Ravindra Rai had left the house and when the daughter (the deceased) of PW-1 was returning after giving water to her grandfather, the weather had become stormy. Thereafter, Ravindra Rai caught her daughter and took her to somewhere, whereafter, she did not return. Next morning, when she wanted her mother-in-law to wake up her daughter for going to



school, PW-1 was told by her mother-in-law that the deceased had not returned. Thereafter, she started searching for the deceased since 5:00 am.. About 2:00 pm., she found the dead body of her daughter lying in a wheat-field near the hotel. She found that her throat was cut. There were multiple injuries in her both the hands and both the thighs and her abdomen was torn. She also deposed that upon reaching the place where the dead body was lying, she had seen few condoms, liquor bottles, biscuits, kurkure, glasses and a jug lying near the dead body. When she started collecting those articles, respondent No. 2 pushed her, whereafter, she had become unconscious and she did not know where did those articles subsequently disappear. Her statement was recorded before the Magistrate under Section 164 of the Cr.P.C.. The accused Ravindra Rai was arrested from Lucknow, who confessed that he and other persons including respondents No. 2 to 4 had raped her daughter one by one and, thereafter, said Ravindra Rai, respondents No. 2 to 4 and Manoj Ram had killed her with the knife. He is also said to have confessed that the miscreants were wearing gloves in their hands at the time of occurrence.

6. The father of the deceased was examined as PW-2, who was in Haryana as on the date of occurrence. Upon getting information of the occurrence, he had returned to his home on 11.03.2017. He deposed that the entire occurrence was narrated to



him by his wife (PW-1). He supported the prosecution's case that Ravindra Rai had confessed in his presence before the police that he along with respondents No. 2 to 4 and one Dipan Rai had ravished and killed the deceased.

7. PW.3, the informant of the case and the grandfather of the deceased supported the prosecution's case, as disclosed in the First Information Report. He testified the presence of a *kurkure* packet, medicine packet, gloves and mugs lying near the dead body. He also deposed that Ravindra Rai had confessed before the police that six accused persons including the private respondents *herein* had raped his granddaughter (the deceased) one by one and killed her. He identified respondents No. 2 to 4, present in the dock, during the course of trial. He denied the suggestion that the police had recorded his statement to the effect that prior to the incident Pramodh Sharma and Vinay Sharma had committed such type of occurrence with minor girls, and that he had full confidence that they must have raped and killed his minor granddaughter. He also denied the suggestion that Pramodh Sharma and Vinay Sharma had committed such kind of misdeeds earlier with minor girls, but in order to protect the family reputation, he had not disclosed the information to the police. He admitted that he had deposed against Pramod Sharma and Vinay Sharma in POCSO Case No. 12/2017 arising out of the same F.I.R.



but had not deposed in the said separate trial that Ravindra Rai was arrested, who had confessed his guilt in his presence and in the presence of daughter-in-law that respondents No. 2 to 4 and others had committed the occurrence. He also admitted in his deposition that the respondents No. 2 to 4 were his *gotiyas* (agnates).

8. The Investigating Officer (PW-4), in his deposition, *interalia*, stated that the information about the occurrence was not given by the informant but based on rumors he had gone to the place of occurrence. He agreed to the suggestion on behalf of the defence that the informant had disclosed to him that in the past Pramod Sharma and Vinay Sharma had committed similar kinds of offences with minor girls and had told the Investigating Officer that they might have killed his granddaughter. He also deposed that the witnesses had not named respondents No. 2 to 4 as perpetrators of the crime. He had also deposed that the police had not seized any article from the place of occurrence.

9. The second Investigating Officer (PW-5) admitted in her deposition that during the course of the investigation she had not collected any evidence against respondents No. 3 and 4.

10. The third Investigating Officer (PW-6) deposed, *interalia*, that during the course of investigation he did not find any evidence against respondents No. 3 and 4.



11. The fourth Investigating Officer (PW-7) deposed that on deeper inquiry the informant had disclosed that respondent No. 2 had assisted the miscreants in the commission of the crime and got implicated innocent persons with a view to save his brother-in-law Ravindra Rai. He admitted that he had not recorded statement of any other witnesses except the informant and that he did not inspect the place of occurrence.

12. PW-9 (the Doctor) opined that the cause of death was haemorrhage and shock due to multiple injuries caused by sharp and pointed weapon.

13. Mr. Radha Mohan Singh, learned counsel appearing on behalf of the appellant has submitted that despite there being overwhelming evidence to support the charge against respondents No. 2 to 4 of commission of the offences punishable under Sections 302/34, 201/34, 376, 376D of the I.P.C., and Sections 4 and 6 of the POCSO Act, the trial court, without duly appreciating the evidence on record has recorded acquittal, which is patently erroneous. He argues that in view of the statutory presumption under Section 29 of the POCSO Act, respondents No. 2 to 4 were required to prove that they were innocent. He has submitted that considering the brutal manner in which a minor girl was raped and killed and keeping in mind the cogent evidence adduced at the trial pointing towards the guilt of the private



respondents, the trial court ought not to have acquitted them. He has further submitted that the charge against respondents No. 2 to 4 stood proved beyond all reasonable doubts and, therefore, the impugned judgment of acquittal is unsustainable and requires interference by this Court.

14. We have carefully perused the impugned judgment and order of the trial court. It is not the submission of learned counsel for the appellant that the evidences adduced at the trial have not been correctly described in the impugned judgment of the trial court. This Court is, therefore, examining the correctness of the opinion formed by the learned trial court while acquitting respondents No. 2 to 4 of the aforesaid charges, based on the evidence as referred in the impugned judgment of the trial court. We find that in the present case, respondents No. 2 to 4 were put to trial based on the confessional statement said to have been made by co-accused Ravindra Rai. There is absolutely no material worth evidence adduced at the trial to connect respondents No. 2 to 4 with the alleged occurrence except the confessional statement made under Section 161 of the Cr.P.C. by Ravindra Rai before the police. The said confessional statement did not lead to recovery of any incriminating material. Such confessional statement made before the police has no evidenciary value.

15. In our opinion, thus, the view which has been



taken by the trial court is a reasonably possible view, which does not require interference by this Court.

16. We do not find any merit in this appeal, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
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