

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.206 of 2022

Arising Out of PS. Case No.-137 Year-2013 Thana- DUMRAO District- Buxar

Satyamanu Kumar Singh, male, aged about 36 years, Son of Late Surendra Bahadur Singh, Resident of Village – Hariji ka Hata, Dumraon, Police Station – Dumraon, District – Buxar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Bindhyachal Singh, Sr. Advocate
	:	Mr. Parijat Saurav, Advocate
	:	Mr. Vipin Kumar Singh, Advocate
For the Respondent	:	Ms. Shasi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE JUSTICE SMT. GUNNU ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
(Per: HONOURABLE JUSTICE SMT. GUNNU ANUPAMA CHAKRAVARTHY)

Date : 08-11-2023

This appeal has been filed against the judgment of conviction dated 07.02.2022 and order of sentence dated 09.02.2022 passed by the Additional District and Sessions Judge VI-cum- Special Judge, POCSO Act, Buxar in POCSO Case No. 18/2015 (which arose out of the case No. 137 of 2013 of Dumraon P.S), wherein the appellant has been convicted for the offences punishable under Section 376(2)(f), 377 of the Indian Penal Code, and under Section 4 of the POCSO Act as under:



<u>Criminal Appeal (DB) No. 206 of 2022</u>				
Appellant's Name	Convicted under Section	Sentence		
		Imprisonment	Fine(Rs.)	In default of fine
Satyamanu Kumar Singh	376(2)(f) of the I.P.C.	Imprisonment for life	1,00,000/-	S.I. for 1 year
	377 of the I.P.C.	R.I. for 10 years.	50,000/-	S.I. for 6 months
	4 of the POCSO Act	R.I. for 20 years	1,00,000/-	S.I. for 1 year

2. All the sentences have been directed to run concurrently.

3. We are not disclosing the name of the victim and the prosecution witnesses in this case as the matter pertains to POCSO Act as well as under Section 376 of the I.P.C.

4. We have heard Mr Bindhyachal Singh, Learned Senior counsel for the appellant the Learned Public Prosecutor for the State of Bihar.

5. The criminal law was into motion basing on the written application given by P.W.-7, who is the father of the victim girl. It was alleged in the written complaint that on 12.07.2013, at around 07:30 P.M., the appellant who lives next to the their house took his daughter/victim, aged about 7 years, to his house and raped her. The victim returned home crying and informed about the incident to her mother i.e. P.W.-1. Further, P.W.-1, called the informant i.e. P.W.-7, informed him about the incident who inturn



gave the written information to the Police/Incharge of the Police Station, Dumraon.

6. Basing on the said written application, a case was registered vide Crime No. 137 of 2013 dated 12.07.2013 for the alleged offence punishable under Section 376 of the I.P.C. During the course of the investigation, the victim was referred to medical examination on the same date in the mid-night. Later the 164 Cr.P.C. statement of the victim was recorded on 15.07.2013. Again, the victim was medically examined on 17.07.2013 by a team of doctors. The Police have also recorded the statements of the witnesses under Section 161 of Cr.P.C. and on completing the investigation laid charge-sheet against the appellant for the offence punishable under Section 376 and 377 of the I.P.C. The trial court took cognizance for the said offences on 26.07.2013 and later the case file was committed to the Court of sessions. The Sessions Court framed charges against the appellant for the offence punishable under Section 376(2)(f) and Section 377 of the I.P.C. on 31.10.2013. Further, the charge under Section 4 of the POCSO Act was added on 25.01.2016. The appellant pleaded not guilty for the charges and claimed to be tried.

7. During the pendency of trial, the appellant was granted the privilege bail order dated 28.01.2014 passed in Cr.



Misc. No. 853 of 2014. The appellant remained in custody from 12.07.2013 to 01.02.2014, thereafter, he was on bail. Further, the appellant surrendered on 14.12.2021 and again bail was granted on 31.01.2022 and was taken into custody on 07.02.2022 and since then he is in jail.

8. In order to prove the case against the appellant beyond the reasonable doubt, the prosecution has examined thirteen witnesses i.e. P.W. 1-mother of the victim, P.W. 2-paternal aunt of the victim, P.W. 3-maternal grandmother of the victim, P.W. 4 - aunt of the victim, P.Ws. 5 and 6 panch witnesses, P.W. 7 - father of the victim, P.W. 8 victim herself, P.W. 9 - grandfather of the victim, P.Ws. 10 and 11 - the doctors, P.W. 12 - Investigating Officer and P.W. 13 - judicial officer.

9. In addition to the oral evidence of the prosecution's witness, the prosecution also brought on record documentary evidence i.e., Exhibits 1 to 15 viz. Exhibit 1 - signature of Ravindra Singh on seizure list, Exhibit – 1/1 - sign. of Upendra Rai on seizure list, Exhibit 2 - written petition of informant, Exhibit 1/2 signature of victim on the statement under Section 164 of Cr.P.C., Exhibit 3 - medical report of victim dated 13.07.2013, Exhibit 4 - endorsement of doctor on the petition of police for constitution of medical board, Exhibit 5 - medical report



of victim dated 17.07.2013, Exhibit 6 – endorsement of doctor on the petition of police for constitution of medical board dated 17.07.2013, Exhibit 7 - medical report of accused, Exhibit 1/3 - Signature of accused on the medical report, Exhibit 8 - seizure list, Exhibit 9 and 9/2 - request letter for medical examination of victim. Exhibit 10 - request letter for recording statement under section 164 Cr.P.C., Exhibit 11 - formal FIR, Exhibit 1/4 - signature of Ld. CJM on the request letter for 164 Cr.P.C., Exhibit 12 endorsement of Ld. J.M. 1st Class on the request letter for 164 Cr.P.C., Exhibit 13 - statement under section 164 Cr.P.C., Exhibit 14 - F.S.L. report and Exhibit 15 - F.S.L. Report.

10. The accused/appellant was examined under Section 313 of Cr.P.C., where he denied the incriminating evidence of the prosecution and reported no defence evidence. Considering the entire material on record, the trial court was pleased to convict the appellant for the offences punishable under section 376(2)(f), 377 of I.P.C. and under Section 4 of the POCSO Act.

11. It is specific contention of the Learned counsel for the appellant that the victim (P.W.-2) and the father of the victim (P.W.-7) did not support the case of prosecution and inspite of it the trial court has convicted the appellant, basing on the statement of the victim recorded under Section 164 of the



Cr.P.C. It is further contended that the prosecution case is not supported by medical evidence and the evidence of prosecution witnesses are contradicting with each other. Further, Learned counsel for the appellant contended that P.Ws.-7 and 9 are the father and grandfather of the victim, who specifically stated that other witnesses were not present on the date of offence and, therefore, the presence of other witnesses itself is doubtful and the conviction under Section 4 of the POCSO Act and for offences punishable under Section 376(2)(f) and 377 of the I.P.C. are erroneous and perverse and, therefore, prayed to set aside the judgment and sentence of the trial court.

12. In order to support his contention, the Learned counsel for the appellant has relied on a judgment of the Hon'ble Apex Court reported in **(2013) 14 SCC 266** in case of **R. Shaji vs. State of Kerala**, in which Hon'ble lordship has held that:

“26. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 CrPC can be used only for the purpose of contradiction and statements under Section 164 CrPC can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 CrPC, he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under



Section 164 CrPC. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.

29. During the investigation, the police officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 CrPC. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced. (Vide Mamand v. Emperor [(1946) 59 LW 138 : AIR 1946 PC 45] , Bhuboni Sahu v. R. [(1948-49) 76 IA 147 : AIR 1949 PC 257] , Ram Charan v. State of U.P. [AIR 1968 SC 1270 : 1968 Cri LJ 1473] and Dhanabal v. State of T.N. [(1980) 2 SCC 84 : 1980 SCC (Cri) 340 : AIR 1980 SC 628])”

13. On the other hand, Learned Additional Public Prosecutor for the State of Bihar contended that there is no error and irregularities in judgment of conviction and order of sentence passed by the Sessions Court and specifically contended that 164 statement of the victim clearly disclose that the accused has committed rape on the victim, therefore, prayed to confirm the judgment.

14. We have perused the judgment of the Trial Court and also the record, given a thoughtful consideration of the rival submissions of both the parties.

15. The point for determination in this appeal is that whether the prosecution was able to prove the guilt of the accused for the offences punishable under sections 376(2)(f) and



377 of the I.P.C. and under section 4 of POCSO and whether the trial court has rightly convicted the appellant for the said offences.

16. In order to reappreciate the evidence, the first and the foremost aspect which requires to be addressed by this Court is that whether the medical evidence supports oral evidence of the prosecution witnesses.

17. As stated (supra), the informant is the father of the victim girl who was examined as P.W.-7. P.W.-1 is the mother of the victim. It is testified by the P.W.-1 that the victim was subjected to anal rape on 12.07.2013 at 06:00 P.M. But in the cross-examination P.W.-1 admitted that she informed the inspector that she saw blood oozing out of the genitals of the victim. Further, the evidence of the P.W.-1 clearly disclose that the accused took the victim into his house, removed her pant and raped her from behind and the victim came home limping her leg. She further testified that she removed off the pant of victim, and noticed blood and semen on it. In the cross-examination, it is specifically admitted by the P.W.-1 that there was no blood on the victim's leg and also admitted that she stated to the Inspector that when she removed the pant of the victim, she saw blood coming out of genitals of the victim and later, the victim went to the Police Station with the same pant/underwear.



18. P.Ws. 2 and 3 are the parental aunt and grandmother of the victim respectively. P.W.-2 testified that on 12.07.2013 between 06:30 PM to 07:00 P.M., she saw the victim crying and coming out of the house of the accused. Further, when she questioned as to what has happened, the victim did not inform her anything but she followed the victim up to her house, where the victim informed about the incident to P.W.-1. She also testified that P.W.-1 removed the pant of the victim, then she noticed blood stains and sperms present in the genitals of the victim girl.

19. P.W.-3 who is the grandmother of the victim also testified about observing the blood and semen on the panty/pant of the victim, on the date of occurrence and considerable swelling on the anus of the victim girl. The evidence of P.W.-3 only disclose about the accused calling the victim to his house and later coming to know about the incident through P.Ws.- 1 and 2.

20. P.W.-4 is the aunt of the victim. His evidence disclose that he noticed women shouting and weeping at the house of P.W.-1 on the date of incident and he also noticed on the private parts of the victim, smeared with blood semen and the back of the victim being scratched and swollen.



21. P.W. 5 and 6 are the panch witnesses to the seizure list dated 12.07.2013. The seizure is with respect to the bed-sheet which was found in the house of the accused. They both turned hostile and did not support the case of the prosecution.

22. As stated (supra), P.W. 7 is the father of the victim. His evidence disclose that he was not present at the time of incident and came to know about this incident through his wife. He further testified that the written application was written by his sister, on which he signed which is Exhibit – P2. In the cross examination it is specifically admitted by P.W. 7 that he had not spoken with his daughter, after the alleged incident.

23. P.W. 8 is the victim girl. The Sessions Judge has initially asked simple questions to the victim in order to ascertain capability of the witness for giving rational answers and after getting satisfied that the witness was capable of understanding and answering he proceeded with recording of the evidence. But P.W. 8 did not state anything about the incident, therefore, she was declared as hostile.

24. P.W. 9 is the grandfather of the victim and he did not support the case of prosecution and was declared as hostile. But, his evidence disclose that on the date of incident he was at



Ranchi along with his wife and other daughters. Therefore, the presence of P.W. 2 and 3 at the scene of offence is highly doubtful.

25. P.W. 10 is the doctor who examined the witnesses twice within a gap of three days from the date of occurrence. Initially she examined the victim (P.W. 8) on 12.07.2013 at mid-night. She did not find any injury on the vulva and vaginal wall of the victim. It is stated by the P.W.- 10 Vagina of P.W. 8 did not admit tip of the finger. However, P.W.-10 determined the age of the victim as between seven to eight (7-8) years as per the radiological findings and opined that rape has not been committed on the victim. It is pertinent to mention that P.W. 8 turned hostile. However, the medical evidence also did not support the case of prosecution in any manner.

26. Further the victim was medically re-examined after three days i.e. after recording of Section 164 of Cr.P.C. statement of the victim girl/P.W.-8. P.W. 10 examined the anus of the victim and opined that there was no injury or scratch mark found on the anus of the victim girl and further there is no sign of anal penetration.

27. As per the evidence of P.W. 1 there is an anal rape but as far as the evidence of P.W. 2 and 3 is concerned it is a rape



of genitals/vagina. The evidence of P.W. 1 is inconsistent with the evidence of P.W. 2 and 3.

28. On the other hand, the evidence of P.W. 4 is contradicting with the medical evidence as he specifically stated that the back of the victim was scratched and the anus of the victim was swollen.

29. Further, P.W. 11, the doctor examined the accused on 13.07.2013. On examination, he found that accused was mentally and physically normal and also testified that no injury was present on the body of the accused and he is capable of doing sexual act.

30. Though, accused is capable of doing sexual act, that itself cannot prove the guilt for the charged offences. In the absence of the substantive oral evidence corroborated with medical evidence, it can be construed that the appellant shall be presumed to be innocent of the charged offences. The decision relied upon by the Learned counsel for the appellant squarely applies to the facts of the case. The statement of victim recorded under Section 164 of the Cr.P.C. can be used for corroboration or contradiction, but cannot be a sole basis for conviction.

31. P.W. 12 is the Investigating Officer and P.W. 13 is the Judicial Officer, who recorded the 164 Cr.P.C. statement of the victim.



32. On perusal of the entire evidence, it is evident that there are no eye witnesses to the incident. The victim herself has turned hostile and did not support the case of the prosecution. Furthermore, the presence of the other witnesses is doubtful. P.W. 7 the father of the victim himself stated that he did not speak with the victim after the alleged incident. Furthermore, the medical evidence is not corroborated with the oral evidence, therefore, benefit of doubt has to be extended to the appellant. Therefore, we are of the considered view that the prosecution has miserably failed to prove that the accused have committed sexual assault/rape on the victim girl either on her genitals or of anal penetration on the victim who was aged below 7 years. Further, the medical evidence do not reveal about the unnatural offence in order to attract the punishment under Section 377 of the I.P.C.

33. There is no iota of evidence on record to prove that the appellant has committed the offences punishable under section 376(2)(f) or 377 of the I.P.C.

34. Further, the appellant's conviction for the offence punishable under Section 4 of POCSO Act applying Section 29 thereof also cannot be sustained. Further, the finding of the trial court that the accused committed rape on the victim solely relying upon the 164 statement cannot be sustained. Therefore, the



conviction of the appellant for the offence punishable under Section 376(2)(f), Section 377 of I.P.C. and under Section 4 of POCSO Act are not sustainable and the judgment and conviction and the order of sentence dated 07.02.2022 and 09.02.2022 respectively are hereby set aside. The record reveals that the appellant is in jail since 07.02.2022, hence, shall be released from the jail forthwith, if not required in any other case.

35. The appellant stands discharged of the liabilities of the bail bonds and sureties, if any.

(Chakradhari Sharan Singh, J)

(Gunnu Anupama Chakravarthy,J)

Shanu/Amit

AFR/NAFR	AFR
CAV DATE	N/A
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