

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.269 of 2020

Arising Out of PS. Case No.-69 Year-2017 Thana- DARBHANGA District- Darbhanga

PRINCE KHATTIK S/o Navin Khattik @ Navin Prasad R/o Mohalla-
Kathalbari, P.S.- L.N.M.U., District- Darbhanga

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

(In CRIMINAL APPEAL (DB) No. 269 of 2020)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 09-08-2023

Town P.S. Case No. 246 of 2017 gave rise to two trials i.e., POCSO G.R. Case No. 13 of 2017 and POCSO G.R. Case No. 13A of 2017. The accused persons put on trial in both the cases have been convicted and sentenced by the trial court by two separate judgments and orders passed on the same date. The said judgments and orders of the trial court have given rise to four appeals including the present one which arises out of POCSO G.R. Case NO. 13A of 2017. Today, we have delivered our common judgment in a batch of appeals i.e. Criminal Appeal(DB) No. 362 of 2020, Criminal Appeal (DB) No. 282 of 2020 and Criminal Appeal (DB) No. 369 of 2020, which arose



out of POCSO G.R. Case No. 13 of 2017 whereby the appellants therein have been acquitted by giving them benefit of doubt.

2. For the sake of clarity, we deem it appropriate to briefly narrate the prosecution's case and the facts which led to two separate trials arising out of the said Darbhanga Town P.S. Case No. 69 of 2017.

3. We have consciously refrained from disclosing the identity of the victim as also that of her parents in the present judgment and order.

4. The victim is the informant whose written report dated 26.04.2017, addressed to the Officer-in-charge of Town P.S. Darbhanga, is the basis for registration of the concerned Darbhanga Town P.S. Case No. 69 of 2017 for the offences punishable under Sections 376D of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act' in short) and Sections 67, 67(A) and 67(B) of the Information Technology Act, 2000. In her written report, the victim claimed her date of birth to be 19.04.2001 and a student of Class-10. She alleged that for nearly two years, she and the co-accused Akash Mahto were in love with each other and Akash Mahto had



established physical relationship with her on false assurance of marriage, in the house of the co-accused Krishna Mahaseth, situate near Naka-3 (a police out post). The appellant had also intentions to commit similar acts with her and during that course, one day, the appellant and co-accused Akash Mahto, took her to the house of co-accused Krishna Mahaseth where in a room, Akash Mahto established physical relationship with her whereafter he went upstairs on the roof of the house. Thereafter, the appellant entered into the room and assaulted her sexually and videographed her while she was nude. The appellant would threaten her that should she disclose the fact to anyone, he would make the video viral. In the meanwhile, one day accused Sawan Kumar was also called by Akash Mahto in the house of Krishna Mahaseth whereafter she was put in a room and was made to drink water whereafter she got intoxicated. All the four persons namely Krishna Mahaseth, Akash Mahto, Sawan Kumar and the appellant committed rape upon her one by one. When she regained consciousness, she found herself completely nude and the four persons inappropriately fiddling with her body. They had kept her in the room for three days and committed rape upon her.

5. The allegation to this effect does not refer to any



particular date, month or year. The cause of action for lodging of the FIR, according to the informant is an occurrence which had taken place on 24.04.2017, according to which the co-accused Akash Mahto had lifted the victim and had taken her to the house of co-accused Krishna Mahaseth and committed rape upon her, in his house. She alleged that she was kidnapped by the co-accused Akash Mahto when she was on her way to some place on 25.04.2017 at about 11:00 pm. After she managed to escape from the house of Krishna Mahaseth, upon noticing the police patrolling jeep she signalled them whereafter the policemen took her to her house. With these allegations she filed her written report.

6. Upon completion of investigation chargesheet was submitted against Krishna Mahaseth and Sawan Kumar for the offences punishable under Sections 376D of the Indian Penal Code, Sections 4 and 6 of the POCSO Act and Sections 67, 67(A) and 67(B) of the Information Technology Act, 2000, while keeping the investigation pending against two other co-accused persons namely, the appellant and Akash Mahto, whereafter cognizance was taken on 31.08.2017 for the offences punishable under section 376D of the Indian Penal Code, Sections 4 and 6 of the POCSO Act and Sections 67 of the



Information Technology Act, 2000.

7. Charges were framed against accused Sawan Kumar, and Krishna Mahaseth on 05.03.2018 for the offences punishable under Section 376D of the Indian Penal Code, Section 6 of the POCSO Act and Section 67 of the Information Technology Act, 2000. It is noteworthy that a supplementary chargesheet was submitted by the police against the co-accused Akash Mahto on 30.11.2017, for commission of offences punishable under Section 376D of the Indian Penal Code, Sections 4 and 6 of the POCSO Act and Section 67, 67(A) and 67(B) of the Information Technology Act, 2000 against accused persons whereupon cognizance was taken of the aforesaid offences. Subsequently, on 27.02.2018, charges were framed against Akash Mahto also for commission of the offences punishable under Section 376(D) of the Indian Penal Code, Section 6 of the POCSO Act and Section 67 of the Information Technology Act, 2000. From the records, it transpires that the trial court by an order dated 17.03.2018, amalgamated the trial being faced by Sawan Kumar, Krishna Mahaseth and Akash Mahto. This is how the three appellants namely Akash Mahto, Krishna Mahaseth and Sawan Kumar were put on trial on the charge for commission of the offences punishable under Section



376D of the Indian Penal Code, Sections 4 and 6 of the POCSO Act and Section 67 of the Information Technology Act, 2000, since, they had denied the charges and claimed to be tried.

8. It is also worthwhile mentioning that chargesheet was subsequently submitted against this appellant by the police on 30.05.2019 for the offences punishable under Section 376(D) of the Indian Penal Code, Sections 4 and 6 of the POCSO Act and Section 67, 67(A) and 67(B) of the Information Technology Act, 2000, whereupon, cognizance was taken and charges were framed against them by an order dated 06.08.2019. The appellant was made to face trial in POCSO G.R. Case No. 13A of 2017.

9. Akash Mahto, Sawan Kumar and Krishna Mahaseth have been convicted by the trial Court in POCSO G.R. Case No. 13 of 2017 whereas the appellant has been convicted in separate trial i.e. POCSO G.R. Case No. 13A of 2017 by separate judgment of the same date. This is the background in which all the four appeals which arise out of the same Darbhanga Sadar P.S. Case No. 69 of 2017, have been heard together.

10. The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the



judgment of conviction dated 07.01.2020 and order of sentence dated 20.01.2020 passed by the learned 1st Additional Sessions Judge cum Special Judge (POCSO Act), Darbhanga in POCSO G.R. Case No. 13A of 2017 arising out of FIR no. 69 of 2017, whereby and whereunder the appellant has been convicted and sentenced as under :-

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 376D of the IPC	Rigorous Imprisonment for 20 years	1,00,000/-	RI for 2 years
Section 6 of the POCSO Act	Rigorous Imprisonment for 10 years	1,00,000/-	RI for 2 years

11. At the trial, eight witnesses came to be examined including the investigating officer Neelam Kumari (PW-4), Subash Chandra Mandal (PW-6) and Yogendra Manjhi (PW-8), the victim deposed at the trial as PW-1 whereas her father as PW-3 and mother as PW-2. It is worthwhile mentioning that a classmate of the victim Tulsi Kumari was examined as PW-5 at the trial. She has been declared hostile at the instance of the prosecution in view of her deposition that the victim had told her that she had falsely implicated Akash Kumar Mahto and the present appellants. She also disclosed that she had implicated



this appellant falsely because his father used to unnecessarily interfere with her domestic issues.

12. At the trial, the prosecution brought on record following documentary evidences.

Exhibit-1	Signature of informant (PW-1) on the written report
Exhibit-2	Signature of victim (PW-1) on the statement recorded under section 164 of Cr.P.C.
Exhibit-3	Signature of Mr.Z (PW-3) on the written report.
Exhibit-4	Signature of Mr. Z(PW-3) on the seizure list.
Exhibit-4/1	Signature of Manoj Kumar on the seizure list.
Exhibit-5	Signature of Mr. Z(PW-3) on the seizure list.
Exhibit-5/1	Signature of Manoj Kumar on the seizure list.
Exhibit-6	Endorsement made by the S.H.O. Town P.S. on the written report of the informant
Exhibit-7	Formal FIR
Exhibit-8	Seizure list.
Exhibit-9	Medical report of the victim.
Exhibit-10	Registration card of victim.
Exhibit-11	Admit card of victim
Exhibit-12	Birth certificate.
Exhibit-13	Statement of victim recorded under section 164 of the Cr.P.C.
Exhibit-14	Seizure List.
Exhibit-15	Seizure List.
Exhibit-16	Arrest Memo.

13. Upon closure of the evidence, appellant was questioned by the trial court under Section 313 of the CrPC, in order to give him an opportunity to explain the incriminating circumstances emerging against him based on the evidence of the prosecution’s witnesses. The appellant answered the questions in negative. In the present facts and circumstances, we



deem it appropriate to reproduce the questions which were put by the learned trial court to the appellant under Section 313 of the CrPC and the answers of the appellant to such questions:-

“प्रश्न : आपने गवाहों का ब्यान सुना है ?

उत्तर : हाँ ।

प्रश्न : आपके विरुद्ध यह आरोप एवं साक्ष्य है कि आप अन्य अभियुक्तों के साथ दिनांक 24-25/4-17 से करीब एक डेढ़ वर्ष पहले मुहल्ला नाका नं0 3, थाना नगर, जिला दरभंगा स्थित कृष्णा महासेठ के मकान में पीड़िता के साथ बलात्कार किया ?

उत्तर : नहीं ।

प्रश्न : आपके विरुद्ध यह भी साक्ष्य है कि आप अन्य अभियुक्तों के साथ पीड़िता का गन्दी वीडियो बनाकर वीडियो को वायरल करने की धमकी देकर अन्य अभियुक्तों के साथ उक्त कृष्णा महासेठ के मकान में पीड़िता के साथ बराबर बलात्कार करते रहे ?

उत्तर : नहीं ।

प्रश्न : आपके विरुद्ध यह भी साक्ष्य है कि आप अन्य अभियुक्तों के साथ दिनांक 24-25 अप्रैल 2017 को भी पीड़िता के साथ उक्त कृष्णा महासेठ के मकान में बलात्कार किया ?

उत्तर : नहीं ।

प्रश्न : सफाई में क्या कहना है ?

उत्तर : निर्दोष हूँ, फंसाया जा रहा है ।”

14. The trial court after having appreciated the evidence adduced at the trial had reached at a conclusion that the victim was a child within the meaning of Section 2(1)(d) of the Act and that she was subjected to penetrative sexual assault by the appellant with other named accused persons. In order to reach a conclusion that the victim was a child, the learned trial court relied on the entry of date of birth of the appellant in the birth



certificate issued by the Directorate of the Statistics and, Evaluation and Registration Cards of the year 2015 and 2016, both issued by the Bihar School Examination Board, which was marked as Exhibits-20, 19 and 21 at the trial, in which her date of birth was recorded as 19.04.2001. Further, the learned Magistrate while recording the statement of the victim under Section 164 of the CrPC had assessed the victim's age to be 16 years. Taking into account the facts as noted above, the trial court reached a conclusion that the victim was a child as on the date of occurrence. The trial court, relying on the deposition of the prosecution's witness has held the appellant guilty of the offence punishable under Section 6 of the POCSO Act and Section 376D of the IPC and has sentenced him to undergo imprisonment and fine as has been noted hereinabove.

15. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant has argued that the prosecution failed to conclusively prove that the victim was a child in accordance with the procedure prescribed by the Supreme Court in the case of Jarnail Singh (supra). He has submitted that it is apparent from the opinion of the medical report found on thorough medical examination of the victim that her age was assessed to be between 17 to 18 years. The documents brought on record in



support of the date of birth of the victim to be 09.04.2001 was not proved at the trial by the persons competent to prove the same. He has further submitted that the prosecution appears to have intentionally suppressed entry of date of birth of victim in the school which was first attended by her. He has further argued that if the case of the prosecution as disclosed in the FIR is taken as a whole, so far as this appellant is concerned, there is absolutely no accusation of any act against the appellant prior to the alleged date of occurrence i.e. 24.04.2017. He has submitted that for the purpose of present appeal, a question would arise that as to whether the prosecution could conclusively prove at the trial that the victim was a child as on the said date or not. This is in the background of the fact that the victim has alleged against co-accused Akash Mahto of having established sexual relationship with her on several occasions for last two years prior to the date of occurrence with their mutual consent but so far as this appellant is concerned, he is said to have participated in commission of the offence on 24.04.2017.

16. In the present case, the prosecution miserably failed to follow the procedure for determination of age of the victim in order to prove that she was a child so as to attract the provisions of the POCSO Act. It has further been argued, referring to the



impugned judgment of conviction of the trial court that for holding the appellant guilty of the offence punishable under Section 6 of the POCSO Act, the trial court has taken aid of sections 29 and 30 of the POCSO Act. As the prosecution failed to establish that the victim was a child, the legal presumption under Sections 29 and 30 of the POCSO Act shall have no application, he contends. It has also been argued that the victim does not appear to be a trustworthy witness. She has been vacillating in her stand, as regards, the accusation of commission of the offence by the appellant. In her written statement, which was the basis for registration of FIR, she alleged that she was lifted by Akash Mahto and taken to the house of Krishna Mahaseth when she was on her way to home. In her statement under Section 164 of the CrPC recorded soon thereafter she disclosed that on a request made by the said Akash Mahto, she had gone to the house of Krishna Mahaseth. It has also been argued that the allegations made by the victim in her written report to the Officer-in-charge of the P.S. is materially different from what she disclosed before the Magistrate in her statement recorded under Section 164 of the CrPC. A reference has been made to the allegation of the victim in her written statement that the victim was confined in the



house of Krishna Mahaseth for three days which fact she did not utter in her statement recorded under Section 164 of the CrPC. There is no evidence even otherwise that the police were ever informed about the victim's disappearance for three days, as alleged in the FIR. He has submitted that the entire prosecution's case is based on the evidence of the victim herself whose evidence cannot be trusted, considering different statements made by her at different stages of the investigation and the trial. The accusation that the victim was videographed while she was, semiconscious/unconscious has not been proved, rather there is no iota of evidence that there was any videography done by the appellants, though mobile phone of one of the co-accused Akash Mahto was seized. It has further been argued that there is conflicting evidence on the point of circumstances in which the victim was found by the police and subsequently taken to her house.

17. Ms. Shashi Bala Verma, learned APP representing the state on the other hand has submitted that the victim had disclosed in her written statement, her specific date of birth, according to which she was less than 18 years as on the date of occurrence, which had led to registration of the FIR. She further submits that the accusation made by the victim goes to suggest



that co-accused Akash Mahto used to sexually assault her, a child, for last two years when she was much less than 18 years if the medical evidence is taken into account. In such circumstance, the trial court was justified in invoking section 29 and 30 of the POCSO Act in the wake of specific accusation of sexual assault by these appellants constituting commission of offence punishable under Section 6 of the POCSO Act. It has also been argued that it is not expected from a child that her statements at different stages would be parrot like consistent and minor contradictions/deviations should be overlooked by this Court, in the interest of nature of the crime against a child.

18. We have perused the impugned judgment of conviction and order of sentence of the trial court and we have given our anxious consideration to the rival submissions made on behalf of the parties. We have also perused, accordingly, the lower court's records including the evidence adduced at the trial by the parties.

19. The foremost question which we need to consider in the present appeals is as to whether the prosecution was able to establish at the trial conclusively that the victim was a child within the meaning of Section 2(d) of the POCSO Act. We find, based on the evidence adduced at the trial that no effort at all



was taken by the prosecution to prove conclusively that the victim was a child. According to the evidence of the prosecution's witnesses including the parents of the victim and the victim herself, victim was studying in a school, no effort was made to adduce by way of evidence of any certificate issued by the school showing entry of date of birth of the victim. Father of the victim PW-2 in his cross-examination deposed that he did not know, as to what was the date of birth, which was entered in the school register, at the instance of his elder daughter who got the victim admitted in a school. We find substance in the submission advanced on behalf of the appellants that except the tentative determination of age, as recorded by the medical board i.e. between 17 to 18 years as on the date of the medical examination i.e 26.04.2017, the prosecution did not adduce any evidence at the trial, as regards, the age of the victim. The Supreme Court in the case of *Jarnail Singh(Supra)* has held in paragraph no. 22 as under:-

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as “the 2007 Rules”). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

“12.Procedure to be followed in determination of age.—(1) In every case concerning a child or a



juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either *(i)*, *(ii)* or *(iii)* of clause *(a)* above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses *(a)(i)*, *(ii)*, *(iii)* or in the absence whereof, clause *(b)* shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the



juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

20. It may be noted at this juncture that the J.J. Act 2000 stood repealed with the enactment of Juvenile Justice (Care and Protection Of Children) Act, 2015, section 94 of which serves the purpose now of laying down the procedure for determination of age which was there in Rule-12 of the Juvenile Justice (Care and Protection Of Children) Act, 2007, which was being considered by the Supreme Court in the case of *Jarnail Singh (supra)*.

21. We are thus of the view that the prosecution cannot be said to have established conclusively that the victim was a



child within the meaning of Section 2(1)(d) of the POCSO Act so as to attract the provisions of the POCSO Act. In such circumstances, neither sections 29 and 30 of the POCSO Act shall have any application nor section 6 of the POCSO Act could be attracted to held the appellants guilty of the said offences. We are, accordingly of the view that the finding of the trial court holding the appellants guilty of commission of offence punishable under section 6 of the POCSO Act, cannot be upheld.

22. We are in agreement with the submissions advanced on behalf of the appellant that the prosecution failed to follow the procedure prescribed for proving the age of the victim for the purpose of determination of the fact that she was below 18 years of age and, therefore, a child within the meaning of Section 2(1)(d) of the POCSO Act.

23. For determining the question of the correctness of the appellant's conviction under Section 376D of the Indian Penal Code, we need to keep in mind, the fact that it is the victim's own case that she was in love with co-accused Akash Mahto for last two years and according to her, Akash Mahto had established physical relationship with her out of her love for him. We find manifest contradictions in the prosecution's case



as disclosed by her and in her written report, which is the basis for registration of FIR and her statement recorded under Section 164 of CrPC. The victim's statement under Section 164 of the CrPC was recorded on 29.04.2017. On a careful reading of the said statement, it can be easily discerned that she did not specifically alleged commission of sexual assault by this appellant so as to attract Section 376D of the IPC. In order to constitute an offence under Section 376D of the IPC, the prosecution is under an obligation to prove commission of rape within the meaning of Section 375 of the IPC which reads thus;

“375. Rape.--A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First.-Against her will.

Secondly.-Without her consent.

Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.-With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.-With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.-With or without her consent, when she is under sixteen years of age.

Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.-Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not



rape.”

24. We have carefully perused the evidence of the prosecution’s witnesses adduced at the trial and we are of the considered view that it cannot be inferred based on the said evidence that the prosecution was able to prove the essential ingredients requisite to prove commission of rape denied under Section 375 of the IPC. We do not find any iota of evidence to prove the acts falling under Section 375 of the IPC, against this appellant. The victim was subjected to sexual assault on 24.04.2017, itself becomes doubtful, in view of two circumstances. Firstly, that the victim has not been consistent in her stand at different stages of the investigation and trial. Secondly, the statement of the victim recorded under Section 164 of the CrPC does not specifically disclose that she was sexually assaulted in a manner as would have attracted the Sections 375, 376 or 376D of the IPC. It is true that to prove commission of offence punishable under Section 376D of the IPC, the prosecution is not required to prove commission of rape by each individual constituting a group. Section 376 D of the IPC clearly states that where a woman is raped by ‘one’ or more persons constituting a group or act in furtherance of common intention each of the persons shall be deemed to have



committed the offence of rape. In the present case, however, we are of the view that the prosecution has failed to prove that the victim was subjected to penetrative sexual assault on 24.04.2017, against her consent. We have consciously used the expression 'consent' in the background of the fact that we have concluded hereinabove that the prosecution could not establish that the victim was child within the meaning of Section 2(1)(d) of the POCSO Act as on the date of occurrence. In the aforesaid background, medical evidence assumes significance. The Doctor (PW-8) in her evidence has deposed as under:-

"OPINION

On the basis of above noted physical & radiological finds the board is of the opinion that Sapna Kumari D/O Pappu Kumar Chandrabanshi, whose identification marks have been mentioned earlier is aged between 17 & 18 (Seventeen & eighteen) years. There was no positive evidence to suggest commission of recent forceful sexual intercourse with her with emission. However previous sexual connections can not be ruled out.

2- On the basis of our examination the report was prepared & signed by me and others members of medical board. This medical report was typed by staff of the office superintendent DMCH. I Identified this report & my signature & signature of the other members of the medical board. This medical report is exhibited as an ext.-9.

Cross examination on behalf of accused Prince Khatik.

3. Pink is the normal color of vagina. At the time of examination of the victim I found vaginal wall are pin in color with rugosity on its wall. The vagina was pink on the time of examination the vagina was in normal state.



At the time of sexual intercourse labia majora is first countered by the male organ in this case I didn't find even the slightest bruises and tenderness redness or inflammation. I didn't find the hymen to be red or congested. I didn't find any recent laceration or bruises inflammation on the labias for fourchette or perinum. I didn't find any blood or blood clots on vaginal wall.

4- I didn't find any mark of violence on any part of the body of the victim. If four or five young man commit gang rape upon a minor girl then there would be major injury or laceration on the fourchette all the labias but I didn't find any such type of injury in this case. I didn't find any recent injury or laceration in the perinum. I only find old healed tears on the hymen at 4 o'clock and 8 o'clock. This shows that she might be accustomed to sexual intercourse but it rules out recent forceful sexual intercourse.

5- The medical board examined the victim including me and also conducted the required investigation but not find any recent sexual intercourse. In pathological examination no live or dead intact or broken spermatozoa was detected. The victim who was examined by me is not present in court today. I didn't know victim since earlier.

Court Question.

Rugosity in vaginal wall vanishes after child birth. It has nothing to do with sexual intercourse.

6- At the time of examination vaginal swab and aspiration taken from vaginal canal and sent to pathological department for examination which the report was sent to me after examination which shows no spermatozoa."

25. In such view of the matter, we do not find it safe to uphold the finding of conviction recorded by the trial court.

26. Accordingly, the impugned judgment of conviction dated 07.01.2020 and order of sentence dated 20.01.2020 passed



by the learned passed by the learned 1st Additional Sessions Judge cum Special Judge (POCSO Act), Darbhanga in POCSO G.R. Case No. 13A of 2017 arising out of FIR no. 69 of 2017, is hereby set aside.

27. This appeal is allowed.

28. Since the appellant is in custody, let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

ranjan/suraj-

AFR/NAFR	NAFR
CAV DATE	NA
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