

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.208 of 2019

Arising Out of PS. Case No.-147 Year-2017 Thana- MAHILA P.S District- Supaul

Rajendra Sah, Son of Pratham Sah @ Parmeshwari Sah, Resident of Village - Narhishipuri, P.S.- Kisanpur, Distt - Supaul.

... .. Appellant/s
Versus
The State of Bihar

... .. Respondent/s

Appearance :
For the Appellant/s : Mr. Fakhruddin ali Ahmad, Advocate
Mr. Nawaz Shareef, Advocate
Md. Rayaj, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, 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 : 20-07-2023

By the impugned judgment and order dated 05.01.2019/08.01.2019 passed by the learned Additional Sessions Judge-I-cum-Special Judge, Supaul in POCSO Case No. 25 of 2017, arising out of Mahila P.S. Case No. 147 of 2017, the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
376 of the IPC	For life	25,000/-	X
6 of the POCSO Act	For life	25,000/-	X
4 of the POCSO Act	X	X	X



2. A *fardbeyan* of the maternal grandmother of the victim aged eight years, recorded by the Station House Officer, Mahila Police Station, Supaul on 23.09.2017 at 8:30 PM, is the basis for registration of the concerned Mahila P.S. Case No. 147 of 2017 disclosing commission of the offences punishable under Sections 376/506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO Act in short).

3. According to her *fardbeyan*, the victim i.e. the maternal granddaughter of the informant lived with her. At 6:30 PM on the said day i.e. 23.09.2017, the victim had come to her crying and on probe she explored that the *pant*, which the victim was wearing, was soaked with blood. The victim disclosed to the informant that when the victim had gone to drink water from a place near the appellant's shop, the appellant after gagging her had taken her to his rented house and had committed "dirty things" with her, after putting her *pants* off. The informant started screaming upon learning about the incident from the victim, whereafter, other persons present nearby came and they rushed to the appellant's shop. On seeing them, the appellant started fleeing away, but was subsequently apprehended and an information was given to the police station in this regard. When



the *fardbeyan* of the informant was being recorded, the victim was still bleeding. The victim was thereafter taken to a nearby hospital for her treatment and for her examination by a Medical Board. The Medical Board found that the victim had 'perineal tear at six o'clock position' and was having vaginal bleeding, repair of which was done under general anesthesia in the operation theater with full aseptic measure. Her undergarments were handed over to the Officer-in-Charge of the Police Station. One pant was soaked with blood and the other pant had clots. The Medical Board opined that it seemed to be a case of rape.

4. The statement of the victim was recorded under Section 164 of the CrPC on 10.10.2017 by the learned Chief Judicial Magistrate, Ist Class, Supaul. In her statement under Section 164 of the CrPC, she narrated the occurrence, as was disclosed by her grandmother in her *fardbeyan*, based on her (victim's) disclosures, that the appellant had committed rape upon her.

5. The age of the victim is not much in controversy. According to the *fardbeyan*, the victim was eight-year old, whereas, the Medical Board found her age to be 8-10 years. The age of the victim has thus been found, in any case, below twelve years.



6. The police upon completion of investigation submitted chargesheet against the appellant for commission of the offences punishable under Sections 376, 506 and Sections 4 and 6 of the POCSO Act. Cognizance was thereafter taken and charges were framed for commission of offence punishable under Section 376 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act. The appellant denied the charge and claimed to be tried.

7. At the trial, the victim came to be examined as PW-1 and the informant as PW-2. The doctor, who was a member of the Medical Board constituted for examination of the victim deposed as PW-5. The Investigating Officer deposed at the trial as PW-4. PW-3, the maternal aunt of the victim, supported the prosecution's case to the extent that the victim had disclosed to her about commission of rape upon her by the appellant.

8. Apart from oral evidence the prosecution adduced following documentary evidence at the trial:-

1	Signature of victim on Statement u/s-164 Cr.P.C	Exhibit-1
2	Whole Statement u/s-164 Cr.P.C	Exhibit-1/1
3	Statement of Informant u/s-164 Cr.P.C	Exhibit-1/2
4	Signature of victim on medical report	Exhibit-2
5	Whole Medical Report	Exhibit-2/1
6	Fard Statement	Exhibit-3



7	Paging on fard Statement	Exhibit-3/1
8	Signature of Witness Surendra Kumar & Victim on Fard Statement	Exhibit-3/2 Exhibit-3/3
9	F.I.R.	Exhibit-4
10	Production cum seizure list related to panty of victim	Exhibit-5
11	Production cum seizure list related to pajama	Exhibit-5/1
12	Seizure list related to Jute bag	Exhibit-5/2
13	Signature of Witness Surendra Kumar on Seizure list	Exhibit-5/3
14	F.S.L. Report	Exhibit-6

9. After closure of the prosecution evidence the trial court explained to the appellant, the evidence emerging against him so as to give him an opportunity to explain the circumstances in accord with the requirement under Section 313 of the Cr.P.C. The appellant answered those questions in negative. The trial court after having appreciated the evidence adduced at the trial has held the appellant guilty of the offences punishable under Section 376 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act and has sentenced the appellant to life imprisonment for the offence punishable under Section 376 of the Indian Penal Code with fine of Rs. 25,000/- and for the offence punishable under Section 6 of the POCSO Act to imprisonment for life with fine as noted above. The trial court has not imposed any separate sentence for the offence punishable under Section 4 of the POCSO Act, in the light of



the sentences imposed for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

10. Learned counsel appearing on behalf of the appellant has submitted that it is the prosecution's case that the appellant was apprehended soon after the occurrence by local people but apparently he was not subjected to medical examination as stipulated under Section 53A of the CrPC which, according to him, is a major lacuna in the present set of facts and circumstances of the case. He has further submitted that the prosecution's case and the deposition of the victim appears to be highly improbable as according to the victim, the appellant committed the offence in a populated area which could be easily accessed by any person. He has also argued that it is against natural course of conduct that the informant would have waited for the police to come for the purpose of lodging of an FIR, instead of taking the victim immediately to a medical centre for her treatment. He has drawn our attention to the evidence of the doctor (PW-5) to contend that in cross-examination the doctor admitted that the kind of injury sustained by the victim could have been sustained by her by falling on sharp edged material while doing a long-jump or high-jump. He has accordingly submitted that the appellant deserves to be given benefit of



doubt as the finding of the Medical Board that the victim was sexually assaulted cannot be said to be definite and conclusive.

11. Learned Additional Public Prosecutor appearing on behalf of the State, defending the impugned finding of conviction recorded by the trial court has submitted that the victim (PW-1) has specifically deposed in her evidence the manner in which the offence was committed upon her by this appellant. He has submitted that she has been consistent in her statement made before the police under Section 161 of the CrPC, before the Magistrate under Section 164 of the CrPC and at the trial about the rape having been committed upon her by the appellant. He has submitted that by adducing cogent evidence the prosecution was able to prove at the trial that the victim was sexually assaulted which was in the nature of penetrative sexual assault. The victim's age has been rightly held by the trial court, as on the date of occurrence, to be below 12 years. Such being the circumstance, Section 29 of the POCSO Act applies with full force which casts presumption of commission of offence by an accused. The appellant miserably failed in his duty to discharge the onus cast upon him under Section 29 of the POCSO Act. He submits that the finding of conviction suffers from no legal infirmity, which has been



recorded by the trial court after due appreciation of evidence adduced at the trial.

12. We have perused the impugned judgment and order of the trial court as well as lower court's records. We have considered the rival submissions advanced on behalf of the parties as noted above. We notice that in her *fardbeyan* recorded by the Officer-in-Charge of the Mahila Police Station, the victim's grandmother (PW-2) had mentioned what was told to her by the victim. The informant had seen the victim bleeding and upon enquiry made by the informant, she (the victim) had disclosed to her that she was sexually assaulted by this appellant. The victim was taken to hospital for her medical examination and treatment. The finding of the Medical Board, upon examination of the victim, has been noted hereinabove. The Medical Board found it to be a case of rape. The treatment was given to the victim at the hospital under general anesthesia. The evidence of the doctor (PW-5) read with the report of the Medical Board leaves us to an irresistible conclusion that the victim was sexually assaulted and was subjected to penetrative sexual assault. This is also for the reason that PW-1, in her deposition at the trial, while giving a clear description of the circumstance in which the occurrence had taken place, testified



that the appellant had inserted his penis into her vagina.

13. In our considered view thus, the prosecution was able to bring on record, by way of evidence, foundational facts at the trial, constituting commission of offence of aggravated penetrative sexual assault on a female child less than twelve years, punishable under Section 6 of the POCSO Act. As the prosecution was able to adduce evidence to prove these foundational facts, in our opinion, Section 29 of the POCSO Act applied in the present case with full force.

14. Section 29 of the POCSO Act reads thus :-

"29. Presumption as to certain offences.-
Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

15. It will be useful to note that the appellant was questioned under Section 313 of the CrPC and it was explained to him with reference to the evidence adduced by the prosecution at the trial that he had committed rape upon the victim. He simply answered the questions in negative and did not come out with any plausible explanation, though an opportunity was extended to him. The appellant thus miserably



failed to overcome the presumption under Section 29 of the Act.

16. As has been noted above, learned counsel for the appellant has attempted to convince this court that the victim has been inconsistent in her stand before the police, before the Magistrate, who had taken her statement under Section 164 of the CrPC and during the course of trial while deposing as PW-1. We do not find any force in the said submission made on behalf of the appellant. On the other hand, the prosecution has been consistent in its case and the victim too has been consistent about the fact that she was sexually abused by the appellant in the manner alleged.

17. We are of the considered view, upon perusal of the evidence of the prosecution's witnesses and the documentary evidence, that the victim, a female child below twelve years of age, was subjected to penetrative sexual assault by the appellant, which act falls within the definition of aggravated penetrative sexual assault under Section 2(1)(a) of the POCSO Act. We do not, thus, find any flaw in the finding recorded by the trial court of conviction of the appellant under Section 6 of the POCSO Act.

18. The appellant's conviction under Section 376 of the Indian Penal Code recorded by the trial court, in the Court's



opinion, is justified and based on due appreciation of evidence of the prosecution's witnesses. Before amendment in the Indian Penal Code, by Act 22 of 2018 (w.e.f. 21.04.2018) Section 376 of the IPC read as under:-

"376. Punishment for rape.— (1) *Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.*

(2) *Whoever,-*

(a) *being a police officer, commits rape-*

(i) *within the limits of the police station to which such police officer is appointed; or*

(ii) *in the premises of any station house; or*

(iii) *on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or*

(b) *being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or*

(c) *being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or*

(d) *being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*

(e) *being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*

(f) *being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*

(g) *commits rape during communal or sectarian violence; or*

(h) *commits rape on a woman knowing her to be*



pregnant; or
(i) commits rape on a woman when she is under sixteen years of age; or
(j) commits rape, on a woman incapable of giving consent; or
(k) being in a position of control or dominance over a woman, commits rape on such woman; or
(l) commits rape on a woman suffering from mental or physical disability; or
(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine." (Highlighted for emphasis)

19. For the reasons noted above, we do not find any illegality in the impugned judgment of the trial court.

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

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Rajesh/Nirmal

AFR/NAFR	NAFR
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