

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.207 of 2022**

Arising Out of PS. Case No.-41 Year-2019 Thana- MAHILA PS District- Aurangabad

X

... .. Appellant/s

Versus

1. The State of Bihar
2. Raju Chaudhary @ Teju, Son of Late Naresh Chaudhary, Resident of Village-Janakpur (Pokhrapar), P.S.-Nabinagar, District-Aurangabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar, Advocate Mr. Santosh Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 04-01-2023

A judgment of acquittal dated 01.11.2021 passed by the learned Additional District and Sessions Judge-VI cum Special Exclusive Judge (POCSO), Aurangabad in POCSO Case No. 47 of 2019 corresponding to CIS No. 47 of 2019 arising out of Mahila P.S. Case No. 41 of 2019, is under challenge in the present appeal.

2. The respondent No. 2 was charged of commission of the offences punishable under Section 376(AB) of the IPC and Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act for short). The appellant is the alleged victim/prosecutrix. Her name has accordingly been concealed in



the present judgment and order. It is directed that name of the appellant should not be printed in the cause title of the present order and shall be referred to, as has been done to as 'X'.

3. At the outset, we must point out that there are 10 grounds taken in the present memo of appeal to assail the impugned judgment of the trial court. It is not the case of the appellant, however, that there is any error of record in the impugned judgment while referring to the prosecution's case and the evidence of the respective witnesses. We have, therefore, heard the matter accordingly relying upon the evidence of respective witnesses, the case as disclosed in the F.I.R. and the statement under Section 164 of the Cr.P.C., as noted in the impugned judgment.

4. From the impugned judgment, it transpires that based on written application of 'X' Aurangabad Mahila P.S. Case No. 41 of 2019 was registered on 22.08.2019 at 06:30 PM disclosing commission of the offences punishable under Section 376 of the IPC and Section 4 of the POCSO Act, in relation to an occurrence which had taken place on 20.08.2019. The prosecutrix alleged that she was staying with her *mausi* (aunt, mother's sister) since her childhood. As on the date of occurrence, she was 11 years old. On 20.08.2019, when she was sleeping on the roof of the house of her aunt, the own brother-in-law (*dewar*) of her aunt that is the



respondent No. 2 arrived there and committed rape on her after gagging her mouth with a piece of cloth. On the said day, her aunt and the husband of her aunt had gone out and when they returned, she got registered the said police case with the aforesaid accusation. After registration of the F.I.R., the appellant was subjected to medical examination. Further, her statement was recorded before a learned Magistrate under Section 164 of the Cr.P.C.

5. The police upon completion of investigation submitted its chargesheet against respondent No. 2 for commission of the offences punishable under Section 376 of the IPC and Section 4 of the POCSO Act whereupon cognizance was taken of the offences punishable under Section 376(AB) of the IPC and Section 4 of the POCSO Act. Subsequently, charges were framed against him. Respondent no. 2 pleaded innocence and desired to face trial.

6. At the trial, the prosecution examined altogether seven witnesses, namely:-

1. The appellant X – PW-1
2. The aunt of the prosecutrix – PW-2
3. The mother of the prosecutrix – PW-3
4. The father of the prosecutrix – PW-4
5. The Investigating Officer – PW-5,
6. The doctor - PW-6
7. The husband of PW-2 – PW-7.



7. In addition, the prosecution proved the following documentary evidences which were marked as exhibits as under:-

"(A) Exbt. -1- Signature of the informant-cum-victim on F.I.R.

(B) Exbt. -1/1- Signature of Urmila Devi on F.I.R.

(C) Exbt. -1/2- Signature of Upashna Kumari on Endorsement on written application of Mahila P.S. Case NO. : 41/2019.

(D) Exbt. -2- Statement recorded in the Court u/s 164 Cr.P.C.

(E) Exbt. - 3- Formal F.I.R. of Mahila P.S. Case No. : 41/2019

(F) Exbt. - 4 Medical Report of informant-cum-victim girl."

8. The defence also got examined four defence witnesses.

Upon appreciation of the evidence of the prosecution and defence witnesses, the trial court reached its conclusion in its impugned judgment that the prosecution could not substantiate its case and accordingly recorded acquittal of respondent No. 2. The trial court, before recording acquittal, has noticed the requirement under Section 29 of the POCSO Act.

9. Assailing the impugned judgment of the trial court, Mr. Rajesh Kumar, learned counsel for the appellant has submitted that the trial court has unnecessarily given undue weightage to the minor contradictions in the evidence of the prosecution's witnesses and has adopted a hyper technical approach while acquitting the respondent no. 2. He has submitted that the minor contradictions in



the evidence of the victim are natural, she being a rustic person living in rural area which ought not to have been the basis for disbelieving her deposition. He has further submitted that the medical evidence has not negated the fact of commission of rape on the victim, a child within the meaning of act.

10. We have heard Mr. Rajesh Kumar, learned counsel appearing on behalf of the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor representing the State.

11. It appears from the evidence of the appellant X (PW-1) that she deposed at the trial that the occurrence had taken place on the day of *Raksha Bandhan*, two days before which her aunt had gone to her paternal house (*maika*) and on the following day she had returned to her house at Nabinagar and on that very day, she had gone to Nabinagar Police Station for registration of F.I.R. As no F.I.R. was accepted at Nabinagar Police Station, she had gone to the Mahila Police Station along with her aunt (PW-2). PW-2, in her evidence deposed that the occurrence had taken place on 20.08.2019 when she had gone to her *maika* leaving her two-year old son behind in her house with the appellant X. Upon return to her house, she had seen the clothes of the appellant X smeared with blood. It is worthwhile noticing that the defence, with reference to the calendar of 2019, took specific plea that *Raksha Bandhan* and the Independence Day had fallen on 15th of August of



that year. It was, accordingly, the case of the defence that the prosecution's case that the occurrence had taken place on the day of *Raksha Bandhan* on 20.08.2019, was self contradictory.

12. The evidence of the appellant has been elaborately mentioned in the impugned judgment. From the impugned judgment, it appears that in her examination-in-chief, she deposed that the incident had taken place 2-3 years ago. In the same breath, replying to a court's query, she replied that the occurrence of rape was committed on her in the last year. In her cross-examination, she deposed that the incident had taken place three years ago. The trial court noticed her demeanor of prosecutrix of mumbling at that stage and saying that the occurrence had taken place one year ago. As has been noted above, she deposed that the rape was committed on the day of *Raksha Bandhan* and her aunt PW-2 (*mausi*) and the aunt's husband (PW-7) had gone to the paternal home of her aunt to celebrate *Raksha Bandhan* two days before the day of *Raksha Bandhan*. On the day following *Raksha Bandhan*, her aunt (PW-2) had returned with her husband (PW-7). She further deposed in her cross-examination that she was sleeping in bed when the rape was committed but there was no blood stain either on her clothes or the bed.

13. PW-2, the appellant's aunt, on the other hand, deposed that the rape was committed on 20.08.2019 which she learnt from



the appellant on 21.08.2019 after she had returned from her *maika*. She further deposed that once the appellant had disclosed about the commission of rape, she had cried aloud, whereupon around 10 people had gathered there. Contrary to the evidence of the appellant herself, she deposed that she had seen the blood stained clothes of the prosecutrix which she had produced before the Investigating Officer who had not seized it.

14. PW-3, the mother of the victim appears to have not given any date when the rape was committed. She disclosed that the rape was committed after 10 years of the stay of the appellant in the house of PW-2 when her sister (PW-2) and her brother-in-law (PW-7) were not present. She further deposed that the occurrence had taken place on the day of *Raksha Bandhan*. She admitted in her cross-examination that there was land dispute between her sister-in-law (PW-2) and the respondent No.2.

15. PW-6, the doctor proved the report of a Medical Board constituted to examine the appellant who was examined on 23.08.2019. The opinion of the medical board was proved by PW-6 as under:-

"(i) Regarding rape :- She is habitual to intercourse. Rape cannot be denied.

(ii) On the basis of physical appearance, secondary sexual character, and dental and radiological report the age of victim is between 14-15 years.



Both report written by me in my pen and signature. I identify my signature and signatures of all the board members. The whole medical report is marked as ext:- 4.

16. PW-7, the husband of PW-2 while supporting the prosecution's case deposed that the occurrence had taken place on 20.08.2021. In his testimony, he further deposed that his wife (PW-2) had gone to her *maika* one a day prior to the date of occurrence and at the same time he deposed that she had gone to her *maika* three days before the date of occurrence. He further deposed that he had gone to bring his wife (PW-2) back from her *maika* on 21.08.2021 and returned on 22.08.2021.

17. DW-1, in her evidence stated that her house was adjacent to the house of PW-2 and PW-7 who were present with their children on 15.08.2019 in their house. On 20.08.2019 also PW-2 and PW-7 were present in the house. She deposed that because of land dispute between respondent No. 2 and PW-7, the respondent No. 2 had been falsely implicated. Similar is the evidence of DWs. 2 and 3. DW-4 proved the Thakur Prasad diary of 2019 as Exhibit- A, to bring home the case of the defence that *Raksha Bandhan* in the year 2019 was on 15.08.2019.

18. The trial court, in its judgment has noticed patent contradictions in the evidence of the appellant/prosecutrix herself. Initially she deposed that the occurrence of rape had taken place on



20th of August 2-3 years ago. Later, however, she stated at the trial that the occurrence had taken place last year. Subsequently, she deposed that incident had taken place nearly three months ago. Further, there were contradictions in her deposition in examination-in-chief and her statement recorded under Section 164 of the Cr.P.C. In her statement under Section 164 of the Cr.P.C., she disclosed that her father (PW-4) was present at the time of lodging of the F.I.R. In her examination-in-chief, she disclosed that PW-4 had come home one month after the occurrence, as he worked out in a different city. The trial court has noticed the conflicting evidence of the prosecutrix and her father (PW-4). The trial court has reached a conclusion that on 20.08.2019 was not the day of *Raksha Bandhan* rather *Raksha Bandhan* was on 15th of August in the year 2019. It being the specific case of the prosecutrix that the occurrence had taken place on *Raksha Bandhan*, the trial court disbelieved her evidence that rape was committed on her by respondent No. 2 on 20.08.2021.

19. Upon noticing the vital contradictions, as mentioned in the impugned judgment, the trial court found the appellant (PW-1) not a reliable witness and her evidence being not creditworthy. We have carefully perused the impugned judgment of the trial court and considered the reasons assigned for disbelieving the evidence of the prosecution's witnesses including the most crucial



witness i.e. the appellant (PW-1). According to PW-1, the occurrence had taken place on the day of *Raksha Bandhan* i.e. 20.08.2019. The FIR was registered on 22.08.2019 with the allegation that the occurrence had taken place on 20.08.2019. No ground has been taken in the memo of appeal that the finding recorded by the trial court to the effect that 15th of August was the day of *Raksha Bandhan* in 2019 is factually erroneous and untenable. The entire case of the prosecution, thus, became doubtful as regards the date when the occurrence had, in fact, taken place.

20. It is noteworthy, at this juncture, that PW-7 in his evidence deposed that he had gone to the *maika* of PW-2 (his wife) on 21.08.2019. A natural inference of this deposition would be that he was present in the house on 20.08.2019. On the contrary, it is the evidence of the appellant that PW-7 had also gone with PW-2 before the day of *Raksha Bandhan* and he was not present in the house on the date of occurrence.

21. The defence witnesses in their depositions have clearly mentioned that on 20.08.2019, the PW-2 and PW-7 were present in their house. On 15.08.2019 also they were present in their house. The trial court has noted in its judgment that the defence witnesses withstood their cross-examinations.



22. Considering the patent and manifest contradictions and inconsistencies in the prosecution's case, the trial court appears to have rightly recorded in its impugned judgment that the prosecution has failed to make out a case of commission of rape on the appellant, a child. The finding recorded by the trial court, in our opinion, does not suffer from such legal infirmity as would require this Court's interference, exercising appellate jurisdiction against the judgment of acquittal.

23. The present appeal has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

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