

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.244 of 2022

Arising Out of PS. Case No.-184 Year-2020 Thana- GOPALGANJ TOWN District-
Gopalganj

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Avinash Kumar Ranjan, S/o Sanjay Ram Resident of Village - Mathanpura,
P.S. - Jivi Nagar Tarwara, P.O. - Pipra Narayan, District - Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Manendra Kumar Sinha, Advocate. Mr. Rakesh Ranjan, Advocate. Mr. Navneet Kumar, Advocate.
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 29-11-2023

1. We have heard Mr. Manendra Kumar Sinha, learned Advocate for the appellant and Mr. Abhimanyu Sharma, learned APP for the State.

2. The appellant has been convicted under Sections 366A and 376(2) of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, *vide* judgment dated 28.01.2022, passed in POCSO Case No.28 of 2020 (C.I.S. No. 28 of 2020) arising out of Gopalganj P.S. Case No. 184 of 2020. By order dated 08.02.2022, he



has been sentenced to undergo R.I. for seven years, to pay a fine of Rs.10,000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 366A of IPC and to undergo R.I. for twenty years each, to pay a fine of Rs.50,000/- each and in default of payment of fine, to further suffer S.I. for three months each for the offence under Sections 4 and 6 of the POCSO Act, 2012.

3. Since sentence has already been awarded under Sections 4 and 6 of the POCSO Act, 2012, no sentence has been awarded under Section 376 of the IPC.

4. The sentences have been ordered to run concurrently.

5. The age of the appellant at the time of the judgment was assessed to be 20 to 21 years. The appellant is said to have enticed away the victim (P.W. 7) to Kanpur, where she was kept as the wedded wife of the appellant for about two months. She was recovered



from the house of the parents of the appellant.

6. The medical examination of the victim reflected her age to be between 15 to 16 years.

7. The father of the victim (P.W. 5) has lodged the FIR on 18.03.2020 alleging that his daughter left his house for reaching his motel on 16.03.2020, but neither did she reach the motel nor returned home. Later, in night, the informant (P.W. 5) learnt from his wife (P.W. 1) that the appellant had been stalking the victim regularly. The informant (P.W. 5), therefore, suspected that in all probability, the appellant might have kidnapped the victim.

8. On the basis of the aforementioned written report of P.W. 5, Gopalganj Town P.S. Case No. 184 of 2020 dated 18.03.2020 was registered for investigation for the offences under Sections 363, 366A/34 of IPC.

9. It appears from the records that the appellant was arrested and the victim was recovered



from his house on 14.05.2020. The victim had given her statement under Section 164 of the Cr.P.C., after her recovery, before the learned Magistrate in which she has alleged that she was taken away by the appellant on 16.03.2020 to a bus-stand, from where both of them went to Fatehpur, a locality at Kanpur. She was made to stay in a rented accommodation as the wife of the appellant. During her stay at Kanpur, she was subjected to sexual intercourse. When the parents of the appellant contacted him, the appellant grew nervous and brought her to his parent's house. Later, this case was lodged. In that Statement, she has disclosed her aged to be 15 years.

10. However, during the Trial, the victim (P.W. 7) had a different story to narrate.

11. Before the Trial Court, she declared that at the time of occurrence, she was only 14 years of age. She had come out of her house and had gone to Kanpur alone. She had met the appellant at Kanpur who



brought her to Gopalganj. She has categorically stated before the Trial Court that the appellant did not commit any wrong act with her. In fact, she did not even know the appellant from before and had met him for the first time at Kanpur railway station. On being questioned, she further stated that the case was lodged by her father but she is not aware whether the allegations are correct. She admitted of having given her statement before a female Police Officer and also before the Magistrate and that in the medical examination, she was found to be pregnant, bearing a pregnancy of 13 weeks, but she got aborted when she had consumed medicines for fever. When she was further questioned as to how did she conceive, she turned a volte-face again and said that because of the sexual intercourse with the appellant, she had become pregnant. Repeatedly, she was questioned whether the appellant forced himself upon her. She denied any such suggestion and said the appellant had not done anything wrong with her.



12. From the perusal of her deposition before the Trial Court, it clearly appears that she had no rancour against the appellant and that she did not even want to disclose that she had sexual relationship with the appellant. However, since she was of a tender age, she succumbed when a question was put to her about her pregnancy. She, then spilled the beans that because of the sexual relationship which was established by the appellant, she had become pregnant.

13. This statement reflects that no force was applied on the victim and that it was all consensual.

14. The moot question, however, would be whether a minor can consent to any sexual act?

15. In this context, we have found that there is no definite opinion of the Trial Court regarding the age of the victim. The father of the victim, viz., P.W. 5 did not make any specific statement about the age of his daughter. In fact, he disclosed the age of his daughter to be between 15 to 16 years. The mother of



the victim but was consistent in disclosing that the victim was 14 years of age. The victim herself in her statement under Section 164 of the Cr.P.C. has disclosed her age to be 14 years. During the medical examination, her age was assessed to be 15 to 16 years.

16. In any case, the victim is less than 16 years of age, if an average of such projections of age is taken into account.

17. Be that as it may, with such confusion over the age of the victim, it was the solemn duty of the Investigating Officer to inquire about her age from the school in which she had been studying. It appears from the records of the case that no such effort was made with respect to ascertaining the age of the victim for confirming that she was less than 18 years of age, when she entered into sexual relationship with the appellant.

18. The father of the victim (P.W. 5) has stated before the Trial Court that when his daughter was recovered by the police from the house of the appellant,



she did not tell him that any untoward thing had happened in the last two months.

19. He had filed the case only on suspicion. He was categorical in stating before the Trial Court that his daughter was never kidnapped by any person. She, because of some grievance, had run away from her house.

20. That the victim ran away from her own house further gets confirmed from the deposition of the elder sister of the victim, viz., P.W. 6. She has also confirmed the fact that the victim had run away from his house in anger.

21. The mother of the victim (P.W. 1), as we have noted, has supported the prosecution case. She has denied the suggestion that only in order to hide the unwanted pregnancy of the victim, such a false case was instituted against the appellant, who in the past had shown some obscene gestures to the victim.



22. P.W. 4 has not supported the prosecution case and has been declared hostile.

23. The medical examination further confirms that the victim was never put to any force. There was no injury on the body of the deceased.

24. However, the 13 weeks pregnancy of the victim remained unexplained. That the victim was not in her house for two months and ultimately was recovered from the house of the appellant clearly suggests that the victim was in the company of the appellant. Given this also, with the complete denial of the victim of having entered into any sexual intercourse with the appellant, the pregnancy remains unexplained. When further pestered, the victim stated that because of the sexual relationship with the appellant, she had become pregnant.

25. The victim, therefore, had been prevaricating from the beginning.



26. Very many facts emerge from this story.

27. The victim left her home in anger.

28. Is this allegation an afterthought of the relatives of the victim?

29. If this were so, the victim would not have been recovered from the house of the appellant after two months. It would be too much to expect that the victim was only hallucinating about her stay with the appellant at Kanpur in a rented accommodation. It, therefore, is a bygone conclusion that the victim was in the company of the appellant for about two months at a different place. The victim was never kidnapped or kept in captivity which would become very evident from the fact that no hue and cry was raised by the victim while she was being taken to Kanpur and while she stayed in the rented accommodation with the appellant.

30. But all this does not absolve the



appellant of the offence, if the victim is a minor.

31. As we have already noted, no positive findings can be culled out from the records with respect to the age of the victim. It was imperative on the part of the Investigating Officer, we repeat, to have inquired about the age of the victim, especially, for ascertaining whether she had crossed the threshold of minority. The medical opinion and self-assessment are no sure grounds of computing the age of a person.

32. In this background, with the denial of the appellant that she was put under any coercion or pressure or that the appellant had done anything wrong to her and evidence of close relatives regarding the victim having herself left her home in anger, it would be difficult for us to hold the appellant liable under Sections 4 and 6 of the POCSO Act, 2012.

33. We say so also for the reasons that according to the evidence, it cannot be specifically ascertained that the appellant had made her pregnant.



34. Did she go for abortion of her own or she just got aborted without any medical aid?

35. This also assumes importance in a case of this kind where the victim does not raise an accusative finger at the appellant. All said and done, we have also taken into account the tender age of the appellant as well.

36. For the aforementioned reasons, the conviction of the appellant under Sections 366A and 376 of the IPC and Sections 4 and 6 of the POCSO Act, 2012 cannot be upheld. Giving benefit of doubt to the appellant, we acquit him of all the charges levelled against him.

37. The appeal stands allowed.

38. It is informed by the learned Advocate that the appellant is in jail since 14.05.2020.

39. He is directed to be released forthwith from jail, if not detained or wanted in any other case.



40. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

41. The records of this case be returned to the Trial Court forthwith.

42. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/saurav-

AFR/NAFR	NAFR
CAV DATE	NA
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