

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.262 of 2021

Arising Out of PS. Case No.-73 Year-2019 Thana- MAHNAR District- Vaishali

ABHISHEK KUMAR @ CHANDAN KUMAR Son of Sri Ashok Kumar@
Ashok Kumar Rai Resident of Village Narainpur Derhpura, P.S. Mahnar,
District - Vaishali.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 284 of 2021

Arising Out of PS. Case No.-73 Year-2019 Thana- MAHNAR District- Vaishali

RITESH RANJAN @ BANTI KUMAR @ MANTU Son of Raj Ballam Rai
Resident of Village- Narayanpur, Dedhpura, P.S.- Mahnar, District- Vaishali.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 262 of 2021)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mrs. Kiran Kumari, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate

For the Respondent : Ms. Shashi Bala Verma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 284 of 2021)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Pravin Kumar, Advocate
Mr. Ravi Ranjan, Advocate
For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-07-2023

Both these appeals have been preferred under Section
374(2) of the CrPC against the judgment of conviction dated



27.02.2021 and order of sentence dated 08.03.2021 passed by the learned Special Exclusive Court POCSO-cum-Children Court-cum-A.D.J.-VI, Vaishali at Hajipur, in Mahnar P.S. Case No. 73 of 2019, G.R. No. 16 of 2019, and accordingly they have been heard together and are being disposed of by the present common judgment and order.

2. By the impugned judgment and order, the appellants have been convicted and sentenced as under: -

Cr. Appeal (D.B.) No. 262 of 2021				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Abhishek Kumar @ Chandan Kumar	376DA read with 34 of the IPC	R.I. for Life (remainder of natural life)	1,00,000/-	R.I. for one year
	Section 10 of the POCSO Act	R.I. for Seven years	51,000/-	R.I. for six months
Cr. Appeal (D.B.) No. 284 of 2021				
Ritesh Ranjan @ Banti Kumar @ Mantu	376DA read with 34 of the IPC	R.I. for Life (remainder of natural life)	1,00,000/-	R.I. for one year
	Section 10 of the POCSO Act	R.I. for Seven years	51,000/-	R.I. for six months

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

4. The victim’s name in the present appeals is not being disclosed and in the present judgment and order, she has been referred to as the victim/PW 6. We are not mentioning the names of the witnesses, who are related to PW 6 so as to conceal her identity.



5. A written report, given by the victim to the Officer-in-Charge, Mahnar Police Station, Vaishali, is the basis for registration of Mahnar Police Station Case No. 73 of 2019 on 08.03.2019 for the offences punishable under Sections 376DA and 120B of the Indian Penal Code and Sections 4, 6, 8, 10 and 12 of the POCSO Act. The victim alleged in her written report that she was 13 years of age and was studying in a Government School in Class-VIII. She alleged that the appellant Abhishek Kumar @ Chandan Kumar and Ritesh Ranjan @ Banti Kumar @ Mantu had illicit relationship with a female since long. The victim was inveigled by the said female to have illicit physical relationship with the said two persons, who are appellants herein. She alleged that they had videographed the activities and they would blackmail her on the threat of making the videographs viral.

6. After completion of investigation, a charge-sheet was submitted by the police against these appellants on 30.04.2019 for commission of offences punishable under Sections 376A, 376D, 120B, read with Section 34 of the Indian Penal Code and Sections 4, 6, 8, 10, 12 and 17 of the POCSO Act. Cognizance was subsequently taken and the charges were framed against these appellants for commission of the offences



punishable under Sections 376DA read with Section 120B/34 of the Indian Penal Code and Sections 4, 6, 8, 10 and 17 of the POCSO Act. The appellants pleaded not guilty and claimed to be tried.

7. At the trial, the prosecution examined seven witnesses, including the doctor, who had examined the victim on 09.03.2019 and PW 5, Dr. Brajesh Kumar Singh, who had examined the victim for the purpose of determination of the age. Her age was found to be between 14-16.5 years. The I.O. came to be examined as PW 7 and the victim as PW 6.

8. PW 1, the maternal uncle of the victim, supported the prosecution's case. PW 2, mother of the victim, also supported the prosecution's case. From the evidence of PW 2, it transpires that the female, with whom the appellants allegedly had physical relationship, happened to be her sister (PW's-2). Father of the victim also supported the case of the prosecution.

9. It is, however, significant to note that the victim has not supported the prosecution's case against these appellants in her deposition at the trial. She deposed, at the trial, that she did not know the persons, who had wronged her. She did not support the prosecution's case at all against these appellants by deposing specifically that she did not know as to who had committed the



offence with her. As regards her written report, which was the basis for registration of FIR, she deposed that she had written the same at the instance of the Police Officer and the statement, which was recorded under section 164 of the CrPC, was also at the instance of the Police Officer. She denied that she knew any person, who had committed the wrong with her. She declined to identify the accused persons, who were present in the court.

10. Since the evidence of witnesses is apparently based on the disclosures said to have been made by the victim to them, all of them are hearsay witnesses. As the prosecutrix herself has not supported the prosecution's case, it cannot be said that the prosecution was able to establish the case of commission of offence punishable under Section 376DA of the IPC and Section 10 of the POCSO Act. On this ground alone, the appellants deserve to be acquitted by giving them benefit of doubt in the light of the depositions made by the victim (PW 6). The finding of conviction, recorded by the trial court in the impugned judgment cannot be affirmed.

11. Accordingly, the impugned judgment of conviction dated 27.02.2021 and order of sentence dated 08.03.2021 passed by the learned Special Exclusive Court POCSO-cum-Children



Court-cum-A.D.J.-VI, Vaishali at Hajipur, in Mahnar P.S. Case No. 73 of 2019, G.R. No. 16 of 2019, are set aside.

12. The appellants stand acquitted of the charge punishable under Section 376DA of the IPC and Section 10 of the POCSO Act by giving them benefit of doubt.

13. These appeals are accordingly allowed.

14. The appellant, namely, Abhishek Kumar @ Chandan Kumar in Cr. Appeal (DB) No. 262 of 2021, and the appellant, namely, Ritesh Ranjan @ Banti Kumar @ Mantu, in Cr. Appeal (DB) No. 284 of 2021, are in custody. Let them be released forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Pawan-Nirmal

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.07.2023.
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