

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.326 of 2021

Arising Out of PS. Case No.-8 Year-2019 Thana- JAHANABAD District- Jehanabad

SATYENDRA BIND Son of Jagdish Bind Resident of Village- Bishu Bigha,
P.S.- Okari O.P. (Ghoshi), District- Jehanabad.

... .. Appellant

Versus

THE STATE OF BIHAR

... .. Respondent

Appearance :

For the Appellant : Mr. Sachchidanand Choudhary, Advocate
Mr. Lovekush Kumar, Advocate
For the Respondent : Mr. Dilip Kumar Sinha, 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 : 17-08-2023

This appeal has been preferred under Section 374(2) of the CrPC against the judgment of conviction dated 07.04.2021 and the order of sentence dated 08.04.2021 passed by the learned Additional Sessions Judge-VI-cum-Special Judge POCSO, Jehanabad, in POCSO Case No. 15 of 2019 arising out of Jehanabad (Mahila) P.S. Case No. 8 of 2019, whereby the appellant has been convicted and sentenced as under: -

Cr. Appeal (D.B.) No. 326 of 2021				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Satyendra Bind	376 of the IPC	R.I. for Life	20,000/-	R.I. for one year
	Section 4 of the POCSO Act	R.I. for Life	20,000/-	R.I. for one



				year
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2. Both the sentences have been directed to run concurrently.

3. Neither the name of the victim nor that of her parents, who are witnesses, are being disclosed in the present judgment and order so as to conceal the identity of the victim. The victim is being described in the present judgment as the victim (PW-3), her father, the informant, as (PW-2) and her mother (as PW-1).

4. The victim’s father PW-2 is the informant, whose written statement dated 06.03.2019, addressed to the Officer-in-Charge Okari (O.P.) (Jehanabad), is the basis for registration of Mahila P.S. Case No. 08 of 2019 disclosing commission of offence punishable under Section 376 of the Indian Penal Code (IPC) and Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act). The written report, addressed to the Officer-in-Charge of Okari O.P., was forwarded to the SHO Mahila Police Station, which resulted into registration of the aforesaid FIR. According to the narration in the written report, the informant’s (PW-2) daughter, i.e., the victim (PW-3) had gone to fetch water from his house from a nearby hand-pump at about 50 meters away from the house. One hour thereafter, she returned crying and complained to the informant that the appellant had forcibly



committed misdeed (*dushkarm*) with her. The informant did not disclose to anyone about the occurrence out of fear and subsequently he informed the Officer-in-Charge of Okari O.P.. Based on the information given by the informant, the police came to his village. Thereafter, the appellant started fleeing away, but was overpowered by the police with the help of the villagers in course of which the appellant sustained minor injuries. It is evident from the endorsement made by the Officer-in-Charge of Okari O.P. that the written report was forwarded to Mahila Police Station along with the appellant, who was apprehended from the village.

5. The victim was subjected to medical examination on 06.03.2019 at 2:30 pm by a Medical Board at Sadar Hospital (Jehanabad) comprising four doctors. Apparently, in order to ascertain the victim's age and injuries sustained by her. The Medical Board found the victim's age to be between 16-17 years based on radiological, dental and physical findings. The Board reached an opinion that there was no sign of recent sexual assault, but possibility of rape could not be ruled out.

6. Further, the statement of the victim was recorded under Section 164 of the CrPC before Magistrate on 07.03.2019. In her statement under Section 164 of the CrPC, she disclosed that the moment she had held the handle of the hand-pump, the



appellant had caught her from behind and committed rape upon her without her consent. She could not raise any alarm as she was gagged by the appellant. The *pyjama*, which she was wearing, was torn by the appellant while committing rape.

7. It is significant to note that it is evident from the written report itself that the appellant was apprehended before filing of the written report as the police had arrived in the village on an information received regarding the occurrence. It is also apparent that the appellant was not subjected to any medical examination as stipulated under Section 53 A of the CrPC in the background of the allegation against him of commission of an offence of rape.

8. Be that as it may, the police, upon completion of investigation, submitted charge-sheet against the appellant for commission of offence punishable under Section 376 of the IPC and Section 4 of the POCSO Act, whereupon cognizance was taken by an order dated 30.04.2019. Charge was framed on 03.06.2019 for commission of offence under the said provisions, i.e., Section 376 of the IPC and Section 4 of the POCSO Act. The appellant pleaded not guilty and claimed to be tried. Accordingly, he was put to trial.



9. At the trial, the prosecution examined altogether five witnesses including victim (PW-3), victim's mother (PW-1), victim's father (PW-2), the Investigating Officer (PW-4) and a doctor, who was the member of the Board, who had conducted medical examination of the victim (PW-5). In addition to the oral evidence of the prosecution's witnesses, the prosecution also brought on record by way of exhibits documentary evidence, namely, written petition (exhibit-1), signature of the informant on production-cum-seizure list (exhibit-2), endorsement regarding registration of the case on the written report of the informant (exhibit-3), formal FIR (exhibit 4), production-cum-seizure list (exhibit 5), requisition for the medical examination of the victim (exhibit 6), medical report of the victim (exhibit 7) statement of the victim under Section 164 CrPC (exhibit 8) letter no. 4813/F.S.L./701/19 dated 22.09.2020 (exhibit 9) and the FSL report (exhibit 9/A and 9/B).

10. After closure of the prosecution's evidence, the appellant was questioned under Section 313 of the CrPC by the trial court so as to give him an opportunity to explain the circumstances emerging against him based on the evidence of the prosecution's witnesses. The appellant denied the circumstances explained to him by the trial court and stated that at the time of the



occurrence he had gone to Masaurhi with a tractor for supplying bricks and had returned at 9 pm.

11. The trial court, after having appreciated the evidence adduced at the trial, reached a conclusion by the impugned judgment, with the aid of Sections 29 and 30 of the POCSO Act, that the prosecution established beyond doubt at the trial that the victim was aged about 13 years of age as on the date of occurrence and that the appellant had committed an offence of rape in the nature of penetrative sexual assault on her. After having held the appellant guilty of the said offences, the trial court imposed the sentence of imprisonment and fine as has been noted above.

12. Learned counsel appearing on behalf of the appellant, assailing the impugned finding of conviction recorded by the trial court, has submitted that the prosecution miserably failed to prove at the trial that the victim was a child within the meaning of Section 2(1)(d) of the POCSO Act by adducing cogent evidence in accordance with law. As a matter of fact, he contends, no effort was made by the prosecution to ascertain the correct age of the victim. There is no evidence at all adduced at the trial based on which the trial court could have reached a definite conclusion that the age of victim was 13 years as on the date of occurrence. The victim's age came to be assessed by the Medical Board as



between 16-17 years. He has submitted that the said assessment by the Medical Board is tentative in nature and based on radiological and dental examination, which cannot be said to be conclusive in nature. He has relied on this Court's decision of a coordinate Bench in the case of ***Santosh Kumar Singh vs State of Bihar***, reported in **2023(1) PLJR 244**, wherein, relying on Supreme Court's decision in case of ***Jarnail Singh v. State of Haryana***, reported in **(2013) 7 SCC 263**, this Court has held in paragraphs Nos. 19 and 20 as under :-

“19. Based on the scrutiny of evidence adduced at the trial, we find substance in submission made on behalf of the appellant that the prosecution failed to prove beyond all reasonable doubt the fact that the victim was below 18 years of age (a minor) as on the date of occurrence. The Supreme Court has held in case of ***Jarnail Singh*** (supra) that though Rule 12 of the Juvenile Justice (Care And Protection Of Children) Act, 2000 (hereinafter referred to as the 'Act of 2000') have been framed under the provisions of the Juvenile Justice (Care And Protection Of Children) Act, 2007, is applicable to determine the age of child in conflict with law, the aforesaid provision should be the basis for determination of age even of a child who is a victim of crime. The Court remarked that there was hardly any difference insofar as the issue of minority is concerned between a child in conflict with law, and a child who is a victim of crime. Paragraph 22 and 23 of the said decision in case of Jarnail Singh can be usefully referred to for clarity:-

“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.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the



prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion. ”

20. The date of occurrence in the present case is 24.05.2018. It is pertinent to note that Act of 2000 has been repealed by the Juvenile Justice (Care And Protection Of Children) Act, 2015, Section 94 of the Act of 2015 lays down the procedure for determining juvenility. Relevant part of sub-section (2) of Section 94 which has substantially adopted the procedure prescribed under 2007 Rules reads as under:-



“ (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.”

13. In the present case, the date of occurrence is 05.03.2019, i.e., subsequent to coming into force of the Juvenile Justice (Care and Protection of Children) Act 2015. There is no gainsaying that the Supreme Court’s decision in case of **Jarnail Singh** (supra) for the purpose of the present case shall have to be read with Section 94 of the Act of 2015 instead of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007, which was framed under Juvenile Justice (Care and Protection of Children) Rules 2000. As in case of **Santosh Kumar Singh** (supra), in the present case also no exercise was carried out by the prosecution to establish that the victim was a child on the date of occurrence by following the procedure prescribed under the Act in conformity with the reasoning put forth by the Supreme Court’s decision in case of **Jarnail Singh** (supra). In case of **Rajak**



Mohammad v. State of H.P. reported in (2018) 9 SCC 248, the Supreme Court has held that the age determined on the basis of radiological examination may not be accurate and sufficient margin either way has to be allowed.

14. In case of ***Rajak Mohammad*** (supra), the Supreme Court, taking into account the facts and circumstances of that case, opined that the report of the radiological examination left room for ample doubt with regard to correct age of the prosecutrix and in such case the benefit of aforesaid doubt naturally must go in favour of the accused.

15. Situated thus, as the prosecution failed to prove at the trial that the victim was a child withing the meaning of Section 2(1)(d) of the POCSO Act, in our opinion, Section 4 of the POCSO Act is not attracted. From the impugned judgment of the trial court, it is manifest that the trial court has taken aid of Sections 29 and 30 of the POCSO Act for recording conviction of appellant. For the same reason that the prosecution failed to establish beyond all reasonable doubts the childhood of the victim within meaning of the Section 2(1)(d) of the POCSO Act, Sections 29 and 30 of the POCSO Act shall have no application in the present case.



16. The only question, which now requires to be addressed by this Court, is as to whether the prosecution could successfully prove beyond all reasonable doubts commission of an offence by this appellant punishable under Section 376 of the IPC. It is obligatory for the prosecution to prove commission of rape within the meaning of Section 375 of the IPC. Section 375 of the IPC reads as under: -

“[375. Rape.—A man is said to commit “rape” if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven 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 eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.



Exception 1.—A medical procedure or intervention shall not constitute rape.

382[Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape].]”

17. The law need not be reiterated that in order to prove commission of rape within the meaning of Section 375 of the IPC, the prosecution is required to prove its essential ingredients to constitute such offence. We find in the present case that the prosecution has not been able to prove either of the ingredients prescribed under Clause (a), (b) and (c) of the Section 375 of the IPC. Further, the medical report does not corroborate the accusation of commission of rape. We are conscious of the legal position that an accusation of rape by a victim is not required to be essentially corroborated to prove commission of an offence for rape. If a witness is found to be trustworthy and her evidence of staler character, conviction can be recorded for offence of rape even in the absence of corroboration by medical evidence. In the present case, we notice that according to the evidence of the prosecution's witnesses 1, 2 and 3, the place where the occurrence had taken place near the hand-pump was 50 meters away from the informant's house. We also notice from their evidence as also the evidence of the Investigating Officer (PW 5) that the place of



occurrence was an open place accessible to any person. In the written report as also in the evidence of PWs 1, 2 and 3, the time of occurrence has been mentioned as 7 pm. The Investigating Officer in her evidence (paragraph 3) deposed that the occurrence was said to have taken place at 5 pm on 05.03.2019. These facts coupled with the fact that the prosecution has failed to bring on record the initial version of the information received by the police, consequent upon which the police had reached the informant's village, casts reasonable doubt over the prosecution's case. It may also be noted that, according to prosecution's case, the clothes, which the victim was wearing, were sent for forensic examination. The forensic report was brought on record by the way of exhibit 9/A and 9/B. The result of the examination is as under:-

Description of articles requiring serological examination

Sl. No.	Description of articles	Nature of stains	Exhibit(s) marked
1.	Salwar cuttings	Blood	‘A’
2.	Salwar cuttings	Semen	‘A’

Results of serological analysis

Sl. No.	Exhibit(s) marked	Nature of Stains	Species of origin results	A B O Grouping results of
1.	A	Blood	Human	Group-A
2.	A	Semen	Human	Group-A

18. We do not find any evidence to establish any connection between the appellant and the finding of existence of



human blood or human semen on the *salwar* cutting of the prosecutrix. It is manifest that as a matter of fact no effort was made by the prosecution to prove in any manner that the blood stains or semen stands found on the victims *salwar* cutting were connected to this appellant. In such circumstance, we are of the considered view that the prosecution was not able to establish the charge of commission of offense for rape punishable under Section 376 of the IPC beyond all reasonable doubt. The appellant, in the facts and circumstance discussed above, deserves acquittal by giving him benefit of doubt. The impugned judgment of the trial court holding the appellant guilty of offence punishable under Section 376 of the IPC and Section 4 of the POCSO Act cannot be affirmed.

19. Accordingly, the impugned judgment of conviction dated 07.04.2021 passed by the learned Additional Sessions Judge-VI-cum-Special Judge POCSO, Jehanabad, in POCSO Case No. 15 of 2019 arising out of Jehanabad (Mahila) P.S. Case No. 8 of 2009, is hereby set aside. The appellant stands acquitted of the charge of commission of offences punishable under Section 376 of the IPC and Section 4 of the POCSO Act giving him benefit of doubt. The order of sentence dated 08.04.2021 also stands set aside.



20. This appeal is allowed.

21. The appellant is in custody. Let him be released forthwith, if not required in any other matter.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.08.2023.
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