

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.296 of 2021

Arising Out of PS. Case No.-7 Year-2017 Thana- MAHILA PS District- Aurangabad

Ramjeet Yadav @ Ranjit Yadav, S/O Late Gumani Yadav, R/O Village Moti
Bigha, Saidpur, P.S-Haspura, District-Aurangabad (Bihar)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the Respondent/s	:	Ms. Shashi Bala Verma, 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 : 21-08-2023

The victim's name and her parentage is not being disclosed in the present judgment and order.

2. By the impugned judgment and order dated 01.02.2021/ 08.02.2021 passed by the learned Additional District and Sessions Judge-VI- cum- Special Exclusive Judge(POCSO), Aurangabad in connection with Mahila P.S. Case No. 07/2017, GR No. 08/2017, CIS No. 08/2017, the appellant has been convicted and sentenced as under :-



Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
342/34 of the IPC	SI for six months	X	X
504/34 of the IPC	SI for six months	X	X
307/34 of the IPC	RI for ten years	5,000/-	SI for three months
376-D of the IPC	RI for 20 years	20,000/-	SI for three months
4 of POCSO Act	X	X	X
3(1)(r) of SC/ST Act	SI for six months	X	X
3(1)(s) of SC/ST Act	SI for six months	X	X

All the sentences have been directed to run concurrently.

3. The victim is the informant (PW-3), based on whose *fardbayan* recorded by the Sub-Inspector of Police-cum-SHO, Mahila Police Station Shakuntala Kumari (PW-7), Aurangabad Mahila Police Station Case No. 7 of 2017 was registered on 18.03.2017 disclosing commission of offences punishable under Sections 341, 342, 376, 307, 323, 120-B of the Indian Penal Code, Section 4 of the Protection of Children from Sexual Offences Act ('POCSO Act' in short) and Sections 3(1)(r)(s)/3(1)(w)(ii)/3(2)(v) of the SC/ST (Prevention of Atrocities) Act ('SC/ST Act' in short). The *fardbayan* was recorded on 18.03.2017 at 10:50 AM at Mahila Police Station, Aurangabad with an allegation that on the previous night a *Faguni/Chaita* was organized on a piece of land (*khalihan*) belonging to one



Sakaldev Yadav. At 1:30 AM when the victim woke up, she proceeded towards the said place for watching the dance. On her way, the accused persons, namely, Mantu Yadav, Ramjeet Yadav (the appellant) and Chandan Yadav caught hold of her and took her towards the western side in an orchard. Accused Mantu Yadav committed rape upon her in course of which this appellant had held her legs and co-accused Chandan Yadav had gagged her by pressing her mouth. The accused Mantu Yadav is said to have stood up over her neck with his slippers on, because of which she became unconscious. When she regained consciousness, she found herself lying in a dried well near the place of occurrence. She alleged that the accused persons had thrown her in the said dried well after pressing her neck with an intention to kill her.

4. It is apparent that the co-accused persons, Mantu Yadav and Chandan Yadav after having been declared Juvenile had been referred to the Juvenile Justice Board to proceed in accordance with law.

5. The victim's statement was recorded by the learned Magistrate under Section 164 of the CrPC on the very next day i.e. 18.03.2017. In her statement, she reiterated that when she was going in the night at about 1:00-2:00 AM to watch a dance



performance, the accused persons caught hold of her and took her towards jungle. Co-accused Mantu, after having put off her pants committed "wrong" with her. Thereafter, all the three persons threw her in a well. They had beaten her up also. She had become unconscious and when she regained consciousness, she found herself in the dried well. Further, the victim was subjected to medical examination by a board of Doctors on 18.03.2017 for determination of her age and examination of injuries. The medical board opined the victims age to be approximately between 14-16 years. The medical board also opined that the victim had undergone sexual act.

6. The police upon completion of investigation submitted charge-sheet whereupon cognizance was taken of the offences punishable under Section 341, 342, 323, 376-D, 307, 504/34 of the IPC, Section 4 of the POCSO Act and Section 3(1) (r)(s) of the SC/ST Act. Subsequently, charges were framed against all the accused persons for commission of the aforesaid offences. The accused persons charged with the offences denied the charge and claimed to be tried.

7. The trial court has noted in its judgment that a charge ought to have also been framed for the offence punishable under Section 6 of the POCSO Act but proceeded with the



charges so framed so as to expedite conclusions of the trial, particularly, in the background of the fact that Section 376-D of the Indian Penal Code prescribes punishment similar to that of Section 6 of the POCSO Act.

8. At the trial, the prosecution examined altogether seven witnesses to bring home the charges against this appellant. It is mentioned at the cost of repetition here that after framing of the charges the other co-accused Mantu Yadav and Chandan Yadav were referred to the Juvenile Justice Board and it is not in dispute that they have been declared juveniles as on the date of the occurrence. The grandmother of the victim deposed as (PW-1) whereas her mother as (PW-2) at the trial. The victim deposed as PW-3. PW-4, a co-villager did not support the prosecution's case and accordingly, she came to be declared hostile at the instance of the prosecution. The victim's father deposed as PW-5. The doctor, who was one of the members of the medical board, which had examined the victim, deposed as PW-6, whereas the Investigating Officer deposed as PW-7.

9. Apart from the oral evidence of the prosecution's witnesses, the prosecution brought on record at the trial following documentary evidence :-

(i) Exhibit-1 : Signature of informant-cum-victim girl on *fardbeyan*



- (ii) Exhibit-2 : Signature of victim on statement of victim under Section 164 of CrPC
- (iii) Exhibits -3, 3/1 & 3/2 : Signatures on Production and Seizure list, signature of victim girl as Exhibit-3, signature of Jitni Devi as Exhibit 3/1 and thumb sign as Exhibit 3/2.
- (iv) Exhibit-1/3 : *Fardbayan* and Endorsement.
- (v) Exhibits-4 and 4/1: Injury Report and Supplementary Injury Report.
- (vi) Exhibit 5 : Formal F.I.R.
- (vii) Exhibit-6 : Application for material Exhibit.
- (viii) Exhibits 7 and 7/1: F.S.L. reports.

10. We will be referring to the Exhibits 7 and 7/1 which are the FSL reports which were proved at the trial by the Investigating Officer at appropriate stage.

11. While considering the depositions of the witnesses at the trial we have kept in mind the earliest version of the prosecution as was disclosed by the victim in her *fardbayan*, according to which after commission of rape by Mantu Yadav with the aid of two other accused persons including the appellant she was thrown in a dried well, whereafter she had become unconscious and upon regaining consciousness she had found herself lying in the well.

12. It is useful to begin with the deposition of the victim (PW-3) herself at the trial. In her examination-in-chief,



while supporting the case of commission of rape upon her and throwing her in the well, she deposed that after she regained consciousness, with the aid of root of a tree she came out of the well and went to her house where she disclosed about the occurrence to her parents. In the morning, she went to Haspura Police Station where she was asked to go to the Mahila Police Station, Aurangabad. She also disclosed that she had handed over her jeans and frock to the police which were seized. In her cross-examination, she deposed that while leaving the house in the night, she had informed her grandmother and the parents that she was going to visit *Chaita*. She disclosed in paragraph 6 of her deposition that the place where *chaita* was organized was only 5 steps away from her house. She also deposed that she was dragged by the accused persons for 10-20 steps with her back on the earth. She also deposed that she had narrated about the occurrence at Haspura Police Station where her statement was recorded and her signature was obtained. After having stayed for an hour at Haspura Police Station, she had gone to Aurangabad Mahila Police Station. Along with her, three co-villagers had also gone with her to Aurangabad Mahila Police Station. All the five persons had gone to Mahila Police Station in a tempo.

13. In quick succession, we need now to notice the



evidence of grand mother (PW-1) of the victim. She supported the prosecution's case in her examination-in-chief. In her cross-examination, she deposed that the victim was sleeping with her on the fateful night and she (PW-3) had not woken her (PW-1) up before leaving the house. When she did not find the victim in the house, all the family members went to the place where *chaita* was organized but the victim could not be found there. The victim was finally found by them in a jungle from where she was brought. Contrary to the deposition of the victim PW-3, she deposed that no other co-villager had gone to Haspura Police Station with PW-5 and the victim (PW-3). She denied the suggestion that the age of the victim was 20 years and not 11 years as on the date of occurrence.

14. There are two aspects which emerge from the evidence of PW-1, the grand mother of the victim. Firstly, her deposition is self contradictory on the point of recovery of the victim. In her examination-in-chief, she deposed that the victim after having regained consciousness had come back to her house whereas in her cross-examination, PW-1 deposed that as she and the family members had found the victim (PW-3) absent from the house, they had gone in search of her and had found her in the jungle from where she was brought. Secondly, the deposition



of PW-1 in her cross-examination also contradicts the deposition of the victim that after regaining consciousness she had returned to her house. As has been noted above, according to PW-1, the family members had gone in search of the victim who was untraceable and was found in a nearby jungle.

15. Evidence of the victim's mother (PW-2) is apparently based on the description of the occurrence given by the victim to her. It is however, peculiar to note from her deposition that according to her they had reached Haspura Police Station in the night at 10:00-11:00 PM and had waited outside the police station for the sunrise as the *dafadar* present at the police station had told her that their complaint shall be entertained in the morning. In the morning, the father of the victim had disclosed to the police personnel at Haspura Police Station about the occurrence which was taken down in writing. Mother-in-law of PW-2 and the victim were also interrogated by the police at Haspura Police Station whereafter they had gone to Aurangabad Mahila Police Station. She described, while deposing in her cross-examination, the circumstance and the manner in which they had to stay outside the police station in the night. The evidence of PW-2 assumes significance in the background of specific case of the prosecution as disclosed by



the victim in her *fardbayan* and deposed at the trial that the occurrence had taken place in the night between 1:00-2:00 AM on 18.03.2017, whereas PW-2 deposed at the trial that they had reached the police station at 10:00-11:00 PM of 17.03.2017.

16. The evidence of PW-4 is of not much significance as she has been declared hostile at the instance of the prosecution and nothing could be extracted from her evidence by the prosecution during her cross-examination.

17. The victim's father (PW-5) gave a different description of the occurrence and reporting of the occurrence to the police, in his deposition at the trial. While supporting the prosecution's case of the victim having been raped, he specifically mentioned that the occurrence had taken place at 2:00 AM on 18.03.2017. After she regained consciousness, the victim returned to her house and explained about the occurrence to PW-5, whereafter they went to Haspura Police Station at 4:00 AM from where they were directed to go to Mahila Police Station, Aurangabad where the FIR was registered. He specifically deposed that his statement was recorded at Haspura Police Station where they had reached at 8:00 AM. He also disclosed that he had in fact captured all the three accused persons after the incident was disclosed to him by his daughter at



the place where the dance performance was going on, but they managed to escape. Thereafter he, his wife and the victim had gone to the police station. He declined the suggestion put by the defense that the victim's age was nearly 18-19 years as on the date of occurrence. He also deposed that the victim had come alone at 4:00 AM and narrated the occurrence, when only he and his wife (PW-2) were present.

18. The doctor (PW-6) in her examination-in-chief proved the report of the medical board as under :-

1. On dated 18.03.2017 I was posted at Sadar Hospital Aurangabad as Medical Officer. On that day I examined Victim D/o Rabindra Rajbanshi Residence of Motibigha Saidpur P.S Haspura Dist. Aurangabad by the order of D.S Dr. Raj Kumar Prasad Sadar Hospital Aurangabad after written consent of the guardian reg. no. 63617D11354 dt. 18.03.2017. She was examined in F.O. P.D Sadar Hospital Aurangabad at 4 p.m. on 18.03.2017. She was brought and identify by Sima Kumari Arachhi no. 121 and Anupaman Singh Mahila Arachhi no.1178.
2. L.M.P- Menarche not established.
- 3-A medical board constituted by D.S Dr. Raj Kumar Prasad for her examination.
- 4- Members of board being Dr. Lalsha Sinha, Dr. Vikas Kr. Sinha, Dr. R.B. Choudhary, Dr. Bibhuti Prasanna and Dr. Santosh Kumar eye specialist.
- 5- Dental Opinion by Dr. Bibhuti Prasanna report attached- As per his reports 7-1/1-7/7-1/1-7=14/14. Total 28 Teeth present. Spacing not present.
- 6- General Examination- Childish looking intelligent, Co-operative, well orientated time and space, marks of violence present over face and eyes described below-
 - 1- Abrasion- Abrasion on forehead right side 1.5 cm. X 1 cm. With crewsting- blood curest on



surface- Blackish red in color- simple in nature.

2- Abrasion on right temporal region 1.5 cm. X 1 cm. With blood crusting on surface-Blackish red in color- simple in nature. Duration of injuries within 24 hours. Cause of injuries- Friction of rough surface- Probably due to fall on rough and hard surface.

Nature of injuries- Simple in nature.

Eye Injuries- By Dr. Santosh Kumar reports attached. As per his report- Congestion L/Sub conjunctival hemorrhage, Cornea L/Tear within normal. Pupil L/C/R/P (WNL) ACL/ well found deep (WNL) Lens L/Clear nature of injuries simple. Cause of injuries- Intravenous pressure due to strangulation rised. Victim girl complain pain in neck-No pressure marks in around neck.

7- Secondary Sexual Character- Not developed. Menarche not established. Axillary and pubic hair absent. Breast small developing. Per Abdomen examination- NAD

8- Pelvic examination- Hymen ruptured tenderness present. Fourchette skin intact but indurated on internal aspect and tender to touch. Vaginal introitus lax and admits one finger easily. No abnormal discharge seen. She has washed of her private parts and change her dress after the incidence. Get normal. Vaginal Swab taken and send for pathological examination. Victim sent for radiological examination. Opinion reserved till all reports coming.

9- Supplementary pathological and radiological reports of victim D/o Rabindra Rajbanshi Residence of Motibigha Saidpur PS Haspura Dist. Aurangabad. All reports attached. Pathological reports Dr. R.B Choudhary M.O Sadar Hospital Aurangabad. As per his reports- No spermatozoa found on either slides. Radiological reports by Dr. Vikas Kumar Sinha M.O Sadar Hospital Aurangabad.

1. X-ray face lateral view right and left 7-1/1-7/7-1/1-7=14/14 Total 28 Teeth present. Spacing not present.

2. X-ray right wrist A.P lateral- Distal end of radius and ulna partially fused.

3. X-ray right elbow A.P and lateral- Proximal end



radius and elna almost fused.

4. X-ray chest A.P view epiphysis of sternal end of clavicle not fused. Regarding age of injuries and cause of injuries- Injuries described above local injuries and general injuries- Duration of injuries within 24 hours.

Local injury and introitus- Duration of injuries within 24 hours cause of injuries sexual act.

10- Opinion-1. Regarding sexual act.- On the basis of findings mentioned above- She has undergone sexual act.

2. All injuries present on face mentioned above.

3. Age of Victim girl- On the basis of dentition, general appearance, secondary sexual characters and radiological findings- Member of board opined- Age of Victim girl is approximately 14 to 16 years (Fourteen to Sixteen years).

Both injuries reports are in my pen and writing and bears signature of all board of members. It is marked as Exhibit-4 and 4/1."

19. In paragraph 17 of her cross-examination, the doctor said that she did not find any injury on her neck. It has been argued on behalf of the appellant in this regard that the said evidence of the doctor contradicts the case of the prosecutrix that her neck was pressed by the accused Mantu Yadav by his feet with his sleepers on. Further, in paragraph 23 of the depositions the doctor (PW-6) testified that no injury was found either on the back side or the elbows of the victim. This deposition, it has been submitted on behalf of the appellant, belies the prosecution's case that the victim was dragged by the accused persons to a distance of 10-20 steps with her back on the earth.

20. Learned counsel appearing on behalf of the



appellant has submitted that it cannot be conclusively held based on the report of the medical board that the victim was essentially below 18 years as on the date of occurrence. The prosecution did not bother to establish its case by proving the fact that victim was a child within the meaning of Section 2(1)(d) of the POCSO Act by leading cogent and reliable evidence. In such circumstance, the presumption stipulated under Sections 29 and 30 of POCSO Act has no application. She has further argued that the evidence of the prosecution's witnesses are mutually destructive and cannot be said to be creditworthy. She contends that whereas according to the victim (PW-3) and her father (PW-5), the occurrence had taken place between 1:00-2:00 AM on 18.03.2017, the mother of the victim (PW-2) has deposed at the trial that they had reached Haspura Police Station at 10:00-11:00 PM, evidently on 17.03.2017. She contends that evidence of the mother of the victim on the one hand and that of the victim (PW-3) and her father (PW-5) on the other are substantially different and sheds serious doubt over the time of occurrence. The victim does not appear to be reliable and her evidence, which has not been duly corroborated by the medical evidence, could not have been the basis for the trial court to record the appellant's conviction.



21. Learned Additional Public Prosecutor representing the State, on the other hand, has submitted that the prosecutrix have fully supported the case of the prosecution in her evidence at the trial. There are minor contradictions in the evidence of the prosecution's witnesses which are not of much consequence. The medical evidence does not contradict rather corroborate the prosecution's case as narrated by the victim herself. In such circumstances, he contends that the finding recorded by the trial court does not suffer from any legal infirmity requiring this Court's interference.

22. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have considered the rival submissions made on behalf of the parties as noted above. Beginning from the disclosure of facts by the victim in the *fardbayan*, it is easily noticeable that according to the victim, the occurrence had taken place after 1:00-1:30 AM when she had come out of her house to visit a *chaita* function going on almost adjacent to her house (5 steps away). After she was abducted by the accused persons and raped by Mantu Yadav, she was thrown in a dried well according to her. She had come out of the well taking aid of branch of the root of a large tree and returned to her house thereafter narrated entire occurrence to her



parents.

23. The evidence of the mother of the victim that they had reached Haspura Police station at 10:00-11:00 PM i.e., nearly three hours before the occurrence cannot be brushed aside as minor contradictions/ inconsistencies. In the Court's opinion, it goes to the root of the matter. Further, PW-1, the grandmother of the victim, is a crucial witness in this case. Contrary to the evidence of other prosecution's witnesses. According to her, the victim was found missing from the house when she (PW-1) had woken up, whereafter she had informed other family members including PW-2 and PW-5. Thereafter, they had gone to search for the victim and the victim was finally traced in a nearby jungle/orchard. The evidence of PW-1, in the Court's opinion, cannot be discarded on this point completely. Her deposition casts serious doubt on the prosecution's case as regards time of occurrence and the manner of occurrence. The evidence of PW-1 rather demolishes the entire prosecution's case of the victim having returned to her house after having being sexually and otherwise assaulted and thereafter, returned to her house. The evidence of PW-1, on the other hand, goes to suggest that the family members of the victim had gone to locate the victim who was missing and was finally located in the orchard.



24. There is yet another aspect of the matter which is of significance. According to the prosecution's witnesses, statement of the victim (PW-3) and her father (PW-5) were recorded by the police personnel at Haspura Police Station where they had gone first. The statements so recorded have not been brought on record by the prosecution, which may be considered to be concealment of the first version of the prosecution disclosed to the police.

25. Further, the fact that the medical evidence does not suggest any injury on the back of the victim in the background of her specific case that she was dragged by the accused person with her back touching earth for about 10 to 20 steps creates further doubt on the veracity of the prosecution's witnesses.

26. We also find substance in submission made on behalf of the appellant that the prosecution did not bother to prove at the trial that the victim was a child within the meaning of Section 2(1)(d) of the POCSO Act. We notice from the pattern of the cross-examination on behalf of the defense and the suggestions put by the learned Defense Counsel that the witnesses were questioned on the correct age of the victim. A question has arisen therefore as to whether the victim was below 18 years of age or not, which fact the prosecution has not be



been able to prove. We can usefully notice in this connection, the Supreme Court's decision in case of *Jarnail Singh vs. State of Haryana* reported in (2013) 7 SCC 263, wherein it has been laid down that for the purpose of determination of age of a victim for the purpose of application of POCSO Act the procedure prescribed under the Juvenile Justice (Care and Protection of Children) Act should be adopted. Section 34(2) of the POCSO Act clearly states that if any question arises in any proceeding before the special court whether a person is a child or not, such questions shall be determined by the special court after satisfying itself about the age of such person and it shall record in writing, its reasons for such determination.

27. We find from the evidence of the prosecution's witnesses in the present case that according to them the victim was studying in a school up to Class-V. No effort was made to find out entry of her date of birth in the school register and by obtaining certificate from the concerned principal of the school in that regard.

28. For the reasons noted above, we are of the considered view that the finding of conviction recorded by the trial court against this appellant is unsustainable and requires interference.



29. Accordingly, the impugned judgment of conviction and order of sentence dated 01.02.2021/ 08.02.2021 passed by the learned Additional District and Sessions Judge-VI- cum- Special Exclusive Judge(POCSO), Aurangabad in connection with Mahila P.S. Case No. 07/2017, GR No. 08/2017, CIS No. 08/2017 are set aside. The appellant stands acquitted of the charge of commission of the offences punishable under Sections 341/34, 342/34, 323/34, 376-D/34, 307/34, 504/34, Section 4 of the POCSO Act and Sections 3(i)(v)(s) of the SC/ ST (Prevention of Atrocities) Act.

30. This appeal is allowed accordingly.

31. The appellant is in jail custody. Let him be released forthwith, if he is not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Rajesh/Sudha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2023
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