

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.426 of 2021

Arising Out of PS. Case No.-96 Year-2019 Thana- BALIGAON District- Vaishali

MD. MINTU SON OF MD. QURBAN @ MD. KURBAN R/O VILLAGE-
BELADAM, P.S.- BALIGAON, DISTRICT- VAISHALI

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Ms.Rina Sinha, Adv. Mr.Dhirendra Prasad Sinha, Adv.
For the Respondent/s	:	Mr.Dilip Kumar Sinha, 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 : 19-09-2023

The appellant has preferred this appeal under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 16.03.2021 and order of sentence dated 23.03.2021 passed by the learned Exclusive Special Judge POCSO-Cum-Children Court-cum-Additional District & Sessions Judge-VI, Vaishali at Hajipur in G.R. No. 79 of 2019, arising out of Baligaon P.S. Case No. 96 of 2019, whereby and whereunder the appellant has been convicted and sentenced as under:-



Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
4(2) of the POCSO Act	Rigorous imprisonment for 21 years	1 Lakh	R.I. for one year

2. The victim’s name is not being disclosed in the present judgment and order so as to protect her identity and is being referred to as the informant/victim (PW 5).

3. The concerned Baligaon P.S. Case No. 96 of 2019 came to registered based on a written report of the victim dated 24.09.2019. Her father (PW 6) is the attesting witness to her written statement. According to the informant, nearly seven days before, on 17.09.2019, when she had gone to pluck vegetables, the appellant had started forcing upon her and despite her attempts to protect herself, the appellant committed rape upon her. As she started screaming, persons present nearby rushed towards the place of occurrence, but the appellant managed to escape. The victim described the appellant’s parentage and his address too in the FIR.

4. After completion of investigation, the police submitted charge-sheet and subsequently, charge was framed against the appellant for commission of offences punishable under Section 376(3) of the I.P.C. and Section 4(2) of the



Protection of Children from Sexual Offences (POCSO) Act, 2012.

5. At the trial, the prosecution examined altogether eight witnesses including the Investigating Officer (PW 7), the Doctor, who had examined the victim (PW 8), the victim's father (PW 6) and the victim herself (PW 5). PWs 1, 2, 3 and 4 did not support the prosecution's case and they came to be declared hostile at the instance of the prosecution. In addition to oral evidence of the prosecution's witnesses, certain documentary evidence were also adduced at the trial by getting them marked as exhibits.

6. After closure of the prosecution's evidence, the appellant was questioned under Section 313 of the CrPC so as to give him an opportunity to explain the incriminating circumstances emerging against him, based on the evidence of the prosecution's witnesses. He answered the questions in negative. The trial court, after having appreciated the evidence on record, has held the appellant guilty of the offences punishable under Sections 376(3) of the I.P.C. and Section 4(2) of the POCSO Act and has sentenced the appellant to imprisonment and fine as has been noted hereinabove.

7. Learned counsel appearing on behalf of the



appellant has submitted that none of the prosecution's witnesses including the victim herself have supported the case of the prosecution of commission of rape by the appellant. He has drawn our attention to the statement of the victim recorded under Section 164 of the CrPC during the course of investigation before a Magistrate to the effect that she admitted that she did not recognize the perpetrator of the offence. He has further submitted that the father of the victim (PW 6) has also not supported the prosecution's case and he has not been declared hostile.

8. Learned counsel appearing on behalf of the State has submitted that it is apparent from the pattern of the evidence of the prosecution's witnesses that they have been gained over by the defence. The trial court, after taking into account in totality of the facts and circumstances, has rightly held the appellant guilty of the offences punishable under Section 376(3) of the I.P.C. and Section 4(2) of the POCSO Act.

9. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. It is evident from the evidence of the prosecution's witnesses that none of them has



supported the prosecution's case of commission of rape by this appellant upon the victim. The doctor (PW 8), who had examined the victim deposed that there was no evidence of sexual intercourse. We are mindful of the fact that the victim was examined by the doctor on 25.09.2019, whereas the alleged occurrence was on 17.09.2019, because the FIR was registered on 24.09.2019.

10. Be that as it may, even the victim has not deposed at the trial that it was the appellant who had committed rape upon her. She deposed that she had put her signature on the written report, without having read the contents thereof. She did not know as to who had prepared the written report. She further deposed that she could not recognize the person who had committed rape upon her. This evidence read with the statement of the victim recorded under Section 164 of the CrPC to the effect that she did not recognize the appellant and she could identify him upon seeing him, assumes significance. At the trial, the victim did not identify the appellant as the person who had committed rape upon her.

11. We do not find any material worth evidence on record justifying the appellant's conviction for the offence punishable under Sections 376(3) of the I.P.C. and Section 4(2)



of the POCSO Act.

12. The finding of conviction recorded by the trial court is unsustainable and deserves to be set aside. The appellant deserves to be acquitted by giving him benefit of doubt.

13. Accordingly, the impugned judgment of conviction dated 16.03.2021 and order of sentence dated 23.03.2021 passed by the learned Exclusive Special Judge POCSO-Cum-Children Court-cum-Additional District & Sessions Judge-VI, Vaishali at Hajipur in G.R. No. 79 of 2019, arising out of Baligaon P.S. Case No. 96 of 2019, are set aside.

14. This appeal is allowed.

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

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Sonali/Kundan

AFR/NAFR	NAFR
CAV DATE	NA
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