

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.719 of 2016

Arising Out of PS. Case No.-359 Year-2014 Thana- PIRO District- Bhojpur

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Dinesh Kumar Verma Son of Late Sudama Prasad, Resident of Village-Piro,
P.S.- Piro, District Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar, Advocate

For the Respondent/s : Mr. Satya Narayan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 14-12-2023

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment of conviction dated 14.06.2016 and order of sentence dated 18.06.2016 rendered by the learned Ist Addl. Sessions Judge, Ara, District-Bhojpur in POCSO Case No. 23 of 2014, arising out of Piro P.S. Case No. 359 of 2014, whereby the present appellant



has been convicted for the offence punishable u/s 376(2)(i) of the I.P.C. and sentenced to undergo rigorous imprisonment for 14 years and a fine of Rs. 25,000/- and in default of payment of fine to further undergo simple imprisonment for 10 months. Further for the offence punishable under Section 6 of the POCSO Act, the appellant has been sentenced to undergo rigorous imprisonment for 14 years and a fine of Rs. 25,000/- and in default of payment of fine to further undergo simple imprisonment for 10 months. Both the sentence have been directed to run concurrently.

2. The factual matrix of the present case is as under:-

2.1 The *fardbeyan* of Sharda Kunwar, who is the mother of the victim, came to be recorded on 12.11.2014 at about 18:15 hours in Primary Health Centre, Piro. In the said *fardbeyan*, the informant has stated the prosecution story, that on 12.11.2014 at about 04:30 PM she had gone to market, and at that time her daughter was alone in her house. Dinesh Verma, who is the tenant in her house runs a shop of TV repairing on the ground floor, committed rape on her daughter due to which bleeding started on the private part of her daughter. When she returned from the market, she took her daughter to the government hospital for treatment.



2.2 On the basis of the said fardbeyan, formal FIR came to be registered for the alleged offences punishable under Section 376 of the IPC and 10/12 of the POCSO Act. After registration of the FIR, investigating agency carried out the investigation and during the course of the investigation, the statement of the witnesses came to be recorded. After the investigation was over, the investigating officer filed the charge-sheet against the accused before the concerned Magistrate Court. However, the case was exclusively triable by the Court of Sessions, the same was committed to the concerned Special Court, where the same was registered as POCSO Case No. 23 of 2014 arising out of Piro P.S. Case No. 359 of 2014.

2.3 During the course of the trial, the prosecution has examined 8 witnesses and also produced the documentary evidence, thereafter the statement of the accused under Section 313 of the Code came to be recorded. After the conclusion of the trial, the trial court passed the impugned order and, therefore, the appellant has preferred the present appeal.

3. Heard Mr. Sunil Kumar, learned advocate for the appellant and Mr. Satya Narayan Prasad, learned APP for the respondent-State.



4. Learned counsel for the appellant has mainly contended that in the present case the appellant has been falsely implicated in the occurrence in question as the appellant was the tenant in the house of the informant. Learned counsel for the appellant has referred the deposition of the victim (PW-5) and thereafter submitted that the said witness is a tutored witness and before coming to the court, the mother of the victim as well as the concerned advocate has instructed her as to what is to be stated before the court. It is further submitted that even while the victim was taken to the Magistrate for recording her statement under Section 164 of the Code of Criminal Procedure, specific instruction was given to her. It is also submitted that before the Magistrate, while giving statement under Section 164 of the Code, the victim had not specifically given name of the person who had committed rape on her. Learned counsel, therefore, urged that when the prosecution has failed to prove the case against the appellant-accused beyond reasonable doubt, he is required to be acquitted, despite which the trial court has recorded the order of conviction against the appellant-accused. Learned counsel, therefore, urged that the present appeal be allowed and impugned order passed by the trial court be set aside.



5. On the other hand, learned APP has opposed this appeal. Learned APP has mainly contended that the victim herself, who is aged about 8 years, has specifically narrated the occurrence which took place, before the court and while giving her statement under Section 164 of the Code of Criminal Procedure before the learned Magistrate. It is further submitted that the case of the prosecution/victim is supported by the medical evidence. Learned APP has referred the deposition given by PW-6, Dr. Madhubala Sinha. Learned APP, therefore, urged that when the allegation leveled by the victim is supported by the medical evidence, no error is committed by the trial court while passing the impugned order and, therefore, the present appeal may not be entertained.

6. Considering the submissions canvased by the learned counsel appearing for the parties and after perusing the deposition of the prosecution witnesses and the other material produced by the prosecution before the trial court, it would emerge from the record that *fardbeyan* was given by the mother of the victim when the victim was in the hospital.

7. PW-1 is the informant, Sharda Kunwar. The said witness stated in the examination-in-chief that she is the informant of the case and victim is her daughter aged about 8 years. At the time of occurrence, she had gone for some domestic work in the



market, at that time her daughter was alone in the house. She had further stated that one, Dinesh Verma was having a shop of TV repairing on the ground floor of her house. The said person has committed rape on her daughter. She got the said information from her son Sonu. Therefore, she immediately came to her house and saw that blood was oozing from private part of her daughter. When she inquired, the victim told that Dinesh Verma has committed wrongful act with her and thereafter, she took her daughter to the government hospital for her treatment. When she was in hospital, the police came, and before the police, she has given her *fardbeyan*. She had put her thumb impression on the *fardbeyan*. The doctor of PHC at Piro referred the victim to Sadar Hospital, Ara and the treatment of the victim was given in the said hospital. Thereafter, the victim was taken to the Magistrate and statement of her daughter was recorded. The said witness had identified the accused who was present in the court.

7.1 During the cross-examination, PW-1 has stated that when she returned to her house, she has seen her daughter and at that time there was no undergarment on her body. Her daughter was standing on the floor in the room and Sushil was also present. Blood stains were found on the floor of the house. She had further stated that thereafter, the victim was taken to the hospital. Doctor,



thereafter, called the police in the hospital and on inquiry made by the police, she had given her *fardbeyan* and put her thumb impression on the said *fardbeyan*. She has further stated that her daughter is studying in nursery in the school. She has also stated that before giving the statement to the Magistrate, the police informed her and her daughter that the victim has to give the statement before the Magistrate. The instruction was also given how to give the statement before the Magistrate.

8. PW-2, Bali Ram Sharma, is the son of the informant and brother of the victim. The said witness is aged about 15 years. PW-2 has stated in his examination-in-chief that the age of his sister is 8 years. At the time of occurrence, he was playing in the courtyard of the house and his mother had gone to work at the house of one Rajendra in Gola Road. At that time, his sister was alone in the house. Dinesh Verma came to the house, and thereafter, committed rape on his sister. When said witness came inside the house, he saw that her sister was crying and blood was oozing out of the private part of his sister. When he inquired with his sister, she informed that Dinesh Verma had committed wrong act with her. Thereafter, he called his younger brother Sonu and asked him to call Sushil. Thereafter, his mother, victim and Sushil had gone to the government hospital where his sister was treated.



8.1 During cross-examination, the said witness PW-2 stated that Dinesh Verma had taken one room on rent and started work of TV repairing prior to 8 days from the date of occurrence. Dinesh Verma was working in the shop between 7 AM to 6 PM. The said witness has further stated that at the time of occurrence, he was playing in the courtyard of the house. When he returned to the house, he found that his sister was alone and she was crying. Thereafter, the said witness stated that initially he has not given his statement before the police but immediately clarified that his statement was recorded in Ara hospital between 9 to 9:30 PM by the concerned police officer.

9. PW-3, Jitendra Sharma, is cousin brother of the victim. The said witness has stated that age of the victim is 8 years. On hearing *hulla* on the date of occurrence, he went to the house of the victim and found that victim was alone. He also found his aunt and other near relatives. The said witness also stated that he saw that blood was oozing out of the private part of the victim. Thereafter, the victim was taken to the Ara Hospital and doctor called the police and *fardbeyan* of his aunt Sharda Kunwar was recorded by the police in the hospital. Thereafter, his sister/victim was referred to Sadar Hospital, Ara. The statement was recorded



by the police. The said witness also identified Dinesh Verma who was present in the court.

10. PW-4 Motilal Sharma, is neighbour of the informant. The said witness has stated that on the date of occurrence he was returning from the market after purchasing the vegetables. When he reached near the house of the Sharda Kunwar, he heard *hulla* and found that the victim was crying and the blood was oozing out of the private part of her body. When he asked the informant i.e. mother of the victim, she stated that one Dinesh Verma had committed rape on her daughter.

11. PW-5 is the victim aged about 8 years. It is pertinent to note that before recording the deposition of the victim, the concerned learned judge had asked certain formal question to her with a view to ascertain that whether the minor victim was in a position to understand the question put to her or not, and thereafter, the examination-in-chief of the victim was recorded. The victim in her examination-in-chief has categorically stated that at the time of occurrence she was alone in the house and her brother was playing in the courtyard. At that time, Dinesh Verma came to her house and put off panty and molested her. As a result of the injury sustained by her in the said occurrence, she started crying and the blood started oozing out of her private part.



Thereafter, Dinesh Verma fled away from the spot and thereafter, her brother Baliram came and instructed her another brother Sonu to call the mother. Thereafter, she was taken to the government hospital by her mother at Ara where she was treated. Thereafter, she was taken to the Magistrate Court and the statement was recorded by the Magistrate. She had put her thumb impression on the statement which was recorded by the Magistrate. The said witness i.e. victim has also identified the accused Dinesh Verma who was present in the court.

11.1 During cross-examination, the victim has stated that she has come to the court for giving deposition and she left the house to depose with her mother. At that time, her mother informed her how to depose in the court. Thereafter, the advocate also instructed her how to give deposition in the court. She has further stated that she came to the court for the first time with the police. Thereafter, she had stated that she had not given the name of Dinesh Verma before the Magistrate. She has also not stated before the Magistrate that Dinesh Verma has done wrongful act with her. The victim has also stated in the cross-examination that she was taken to the hospital by her mother. At the time of occurrence, she had worn the school dress. She stated before the



Magistrate that she can identify the person who had committed wrong with her.

12. PW-6, Dr. Madhubala Sinha, is a doctor who has examined the victim on 12.11.2014 when victim was brought before her. The said doctor has stated in her examination-in-chief that on external examination of the victim, the hymen was found ruptured, tendernesss was present and tear in the interior wall of vagina was present and there was possibility of rape having been committed. She further stated that only R.B.C. was found and no spermatozoa either alive or dead was found. She further stated that according to the report, the victim was aged about 7 to 8 years.

12.1 During cross-examination, the doctor has stated that rupture of hymen may occur due to some other reasons also and tenderness may also occur due to some other reason. At the time of examination, bleeding was continued and the victim had been covered with some clothes. There was blood on the wearings of the victim.

13. PW-7, Pratibha Arvind Kumar, was working as Magistrate in the concerned court at Ara. The said witness had recorded the statement of the victim under Section 164 of the Code of Criminal Procedure. She had stated that statement of the victim was recorded by her and victim came with her mother. And after



recording the statement of the victim, the statement was read to the victim and her mother, and thereafter, the thumb impression of the victim and her mother was taken on the said statement. The said witness has produced the statement of the victim which was recorded under Section 164 of the Code of Criminal Procedure which is exhibited under Exhibit-2.

14. PW-8, Narendra Kumar, was working as ASI in Paru on 12.11.2014. The said witness has taken over the investigation after the registration of the FIR. The *fardbeyan* was written by Siddhanath Sharma and the writing of the said Siddhanath Sharma was identified by PW-8. The FIR was written by Santosh Kumar and Dhirendra Kumar both, the documents were at Exhibit-8. The said witness further stated that thereafter, he went to the place of occurrence. The said witness described about the place of occurrence and he found blood stains and semen on the floor of the house where the alleged occurrence took place. The same was seized. The investigating officer prepared the seizure list and the cloth of the victim was seized by the investigating agency. During the course of the investigation, the said witness recorded the statement of the witnesses and thereafter, filed the charge-sheet against the accused.



15. We also perused the statement recorded under Section 164 of the Cr.P.C. given by the victim before the concerned Magistrate. In the said statement, the victim has specifically stated that the occurrence took place during evening hours when her mother had gone to the market and she was alone in the house. Her brothers were playing outside the house. One person who is having shop in their house came to the house of the victim, his name was Dinesh Verma. Thereafter, the said person put off the panty of the victim and done the wrongful act, as a result of which she suffered pain on the private part and she had further stated that thereafter, blood started oozing out of her private part. Thereafter, she informed the occurrence to her brother. Her brother called the mother. She had also stated that she can identify the person who has committed the wrongful act with her.

16. From the aforesaid evidence led by the prosecution before the trial court, it would emerge that the victim, her mother, and her brother have fully supported the case of the prosecution. Even the independent witness namely, Motilal Sharma (PW-4), who is the neighbour of the victim, has also supported the case of the prosecution. If the deposition of the victim is carefully examined, it is revealed that though the victim is a minor, aged



about 8 years, she was in a position to understand the question put before her and she has given the answer to the concerned court, and only thereafter her deposition was recorded by the trial court. In her examination-in-chief the victim has specifically given the name of the appellant-accused and the manner in which the occurrence took place. It is also revealed from the record that immediately after the occurrence took place, she informed about the said occurrence to her brother Bali Ram Sharma (PW-2) who asked another brother Sonu to call the mother, Sharda Kunwar (PW-1). Thus, PW-2 and PW-1 had gone to the place of occurrence immediately and they saw that the blood was oozing out of the private part of the victim and the victim has specifically given the name of the accused. It also transpires from the record that thereafter, the victim was immediately taken to the Primary Health Centre at Piro, where the doctor examined the victim and was given treatment. The *fardebayan* of the PW-1, i.e. the mother of the victim, was recorded by the concerned police at the said PHC, Piro. Thereafter, the victim was referred to Sadar Hospital, Ara. It is also reflected from the deposition given by the PW-7 Pratibha, the Magistrate, who has recorded the statement of the victim under Section 164 of the Code that the victim had given the name of the appellant-accused before the said Magistrate.



17. From the deposition of the PW-6, Dr. Madhubala Sinha, it would emerge that on examination of the victim the said doctor has made specific observation that the hymen was found ruptured, tenderness was present, tear in the interior wall of vagina and both the ruptures were recent one and the bleeding was present. About the age of the victim, doctor has stated that as per the report, the victim was found to be aged about 7 to 8 years. The said witness further specifically stated that in her opinion the tear in the interior wall of vagina, bleeding present rupture in hymen present in the minor girl and there was possibility of rape having been committed. Thus, we are of the view that the medical evidence also supports the case of the victim and the informant.

18. Thus, we have appreciated and re-appreciated the entire evidence led by the prosecution before the trial court and we are of the view that the prosecution has proved the case against the appellant-accused beyond reasonable doubt. We have also gone through the reasoning recorded by the trial court while passing the impugned judgment/order of conviction against the appellant-convict and we are of the view that the trial court has not committed any error while passing the impugned order and, therefore, no interference is required in the present appeal.



19. In view of the aforesaid discussion, the appeal is dismissed and the judgment of conviction dated 14.06.2016 and order of sentence dated 18.06.2016 rendered by the learned Ist Addl. Sessions Judge, Ara, District-Bhojpur in POCSO Case No. 23 of 2014, arising out of Piro P.S. Case No. 359 of 2014, is hereby affirmed.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Alok Verma/-

AFR/NAFR	NAFR
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