

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.845 of 2018**

Arising Out of PS. Case No.-25 Year-2014 Thana- MAHILA P.S. District- Kishanganj

Manoj Kumar Das S/o Satyanarayan Das, R/o Village- Majhiya Road
Dharmganj, Ward No. 28, Police Station and District- Kishanganj.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shri Krishna Sinha, Adv.

For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

Date : 05-10-2023

1. At the outset, it is submitted by Mr. Krishna Sinha, learned counsel for the appellant Manoj Kumar Das that the appellant has completely served his sentence and has been released from the jail and now he does not want to pursue this appeal and wants to withdraw the same.

2. The instant appeal has been filed against the judgement of conviction dated 04.01.2018 and order of sentence dated 12.01.2018 passed by learned Additional Sessions Judge-I-cum- Special Judge, (POCSO Act, 2012), Kishanganj in Special case No. 35/ 2014, whereby and whereunder the appellant has been convicted for the offences punishable under Section 376(E) of the IPC and under Section 4 of POCSO Act, 2012 and he has



been sentenced to undergo rigorous imprisonment of 10 years under Section 376(E) of the IPC with a fine of Rs. 20,000/- and in default of payment of fine, to further undergo one year imprisonment and has also been sentenced to undergo rigorous imprisonment of seven years under Section 4 of POCSO Act, 2012 with a fine of Rs. 10,000/- and in default of payment of fine, to further undergo six months imprisonment and both the sentences have been ordered to run concurrently.

3. The prosecution's allegation in brief is that on 07.05.2014, at about 7 PM, the informant's daughter (victim) aged about 12 years went to a shop to buy mosquito coil but she did not return back then the informant started searching for her and thereafter at 9.30 PM the victim returned weeping and in the morning she vomited 3-4 times and thereafter fell asleep and in the next morning when she woke up she told the alleged occurrence to her mother. According to victim's allegation, in the evening of 07.05.2014, the appellant/ accused asked her to bring some articles to his house and at that time there was no other family member in his house and when she went into his house then he raped her after finding her alone in his house and after the commission of rape, the accused/ appellant threatened her and forcefully feed her sleeping pills.



4. With the above allegations, the informant recorded her fard bayan vide Exhibit-3 and on that basis formal FIR bearing Kishanganj Mahila PS case No. 25/2014 was registered under Section 376 of IPC and under Sections 4/8 of POCSO Act, 2012 and after the completion of investigation, the police submitted charge sheet against the appellant for the alleged offences.

5. The appellant stood charged for the offences under Section 376 of the IPC and under Sections 4/8 of POCSO Act. During trial, altogether 10 witnesses were examined and in documentary evidence, formal FIR, victim's medical examination report, FSL report and applications for FSL examination etc. were proved and marked as Exhibit 1 to 9 and thereafter the appellant's statement u/s 313 of Cr.P.C. was recorded, in which he denied the circumstances appearing against him from the prosecution's evidences and claimed himself to be innocent and the appellant did not give any evidence in his defence.

6. Heard learned APP for the State and perused the judgement impugned and evidences available on the case record of the court below.

7. The most important witnesses are the victim and her mother. The victim was examined as PW 5 and she fully supported the allegations made in the FIR against the appellant and alleged



that the appellant, firstly, persuaded her to bring some articles from the shop, when she brought the articles and went to appellant's house to deliver the same then the appellant, who was alone at his house at that time, bolted the door of his house from inside and finding her alone, firstly, tied her hands and legs and then opened her clothes and raped her and in that course he made her to take some intoxicated pills. The said allegations made by the appellant are completely relevant for which the appellant has been convicted. PW 4, who happens to be mother of the victim, has fully supported the said allegation and she and her husband, who has been examined as PW 3, deposed that when the victim returned back she was in an unconscious condition and she became conscious two days after the alleged occurrence. Accordingly, the evidences of PWs 3 and 4 are also in conformity with the prosecution's story.

8. Though the medical evidence does not come in support of the prosecution but ocular evidence given by the victim herself is completely in support of the prosecution's story and from the evidences of victim as well as her parents, I do not find any reason on the part of the victim and her mother to make a false allegation against the appellant and moreover, it is a settled



principle of law that ocular evidence always prevails over the expert’s opinion.

9. Considering the above discussions as well as taking into account the other materials available on the case record of trial court, I find that the learned trial court has rightly convicted the appellant for alleged offences hence, I do not find any reason to interfere in the said conclusion. Accordingly, the instant appeal stands dismissed.

(Shailendra Singh, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N. A.
Uploading Date	09.10.2023
Transmission Date	09.10.2023

