

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.197 of 2018

Arising Out of PS. Case No.-326 Year-2013 Thana- SUGAULI District- East Champaran

Kundan Mahto Son of Indrashan Mahto Resident of Village-Kauaha, P.S. Sugauli, District-East Champaran.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Udit Narain Singh, Advocate Mr. Ramchandra Sahni, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Mr. Anshuman Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 16-01-2023

The appellant has preferred this appeal under Section 374(2) of the Cr.P.C. putting to challenge the judgment of conviction dated 14.12.2017 and the order of sentence dated 19.12.2017, passed by the learned 1st Additional Sessions Judge cum Special Judge POCSO Act, East Champaran, Motihari, in POCSO Trial No. 25 of 2017 (arising out of Sugauli P.S. Case No. 326 of 2013), whereby the sole appellant has been convicted and sentenced as under:-

Convicted under Sections	Sentence		
	Imprisonment	Fine(Rs.)	In default of fine
376(2)(f)(i)of the IPC	RI for Life	10.000/-	SI for two months
4 of POCSO Act	RI for Life	10.000/-	SI for two months



2. Both the sentences have been ordered to run concurrently.

3. Learned counsel appearing on behalf of the appellant, after some arguments, has submitted that without entering into the legality of the finding of conviction recorded by the trial court, this Court may with compassion consider the appellant's case on the point of sentence. He has submitted that the appellant has already remained in custody in connection with the criminal case since 24.10.2013. From his statement recorded under Section 313 of the Cr.P.C. before the trial court, it can be easily inferred that his age, as on the date of occurrence, was 20 years. He has submitted that long pendency of the trial and this appeal itself is a mitigating circumstance, which may be considered by this court while considering the term of sentence of imprisonment. He has further argued that considering the youth of the appellant and the chance of his reformation to become a good citizen and a productive member of the society, this Court may consider reducing the sentence of imprisonment for life, as has been imposed by the trial court, to an adequate period in accordance with the provisions under Section 376(2)(i) of the Indian Penal Code and Section 4 of the Protection of Children From Sexual Offences Act (for short "POCSO Act") as the said provisions existed as on the date of the occurrence.



4. Mr. Abhimanyu Shrama, learned Additional Public Prosecutor representing the State does not have any objection to such submission made on behalf of the appellant.

5. In order to consider the submission made on behalf of the appellant, we must take note of the provision under Section 376(2)(i) of the Indian Penal Code, as the same existed on the date of occurrence till it was omitted by Act 22 of 2018 with effect from 21.04.2018. The said provision read as under:

“376(i)

xxx xxx xxx

*(2) Whoever,- commits rape on a woman
when she is under 16 years of age.*

xxx xxx xxx

*shall be punished with rigorous
imprisonment for a term which shall not be less than
ten years, but which may extend to imprisonment for
life, which shall mean imprisonment for the
remainder of that person's natural life, and shall also
be liable to fine.”*

6. The POCSO Act has been enacted to protect the children from offences of sexual assault etc. A child has been defined under Section 2(d) of the POCSO Act. “Child” means as a person below the age of 18 years. Section 3 of the POCSO Act



defines penetrative sexual assault. Section 4 of the POCSO Act, before its amendment with effect from 16.08.2019, read as under:

“4. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.”

7. It is evident from the provision under Section 4 of the POCSO Act that before amendment with effect from 16.08.2019, the minimum sentence, which could be imposed for commission of offences punishable under the said provision, was seven years. There does not appear to be much controversy over the fact that the victim was less than 16 years of age as on the date of occurrence though a feeble attempt has been made on behalf of the appellant to convince the court that the prosecution failed to establish the age of the victim during the course of the trial.

8. Keeping in mind the appellant's young age and other mitigating facts and circumstances of the case, we are of the view that the interest of justice shall be subserved by modifying the sentence of life imprisonment to imprisonment for a term of 10 years. Accordingly, without interfering with the impugned finding of conviction recorded by the trial court, the order of sentence stands modified accordingly. Resultantly, the appellant stands



sentenced to undergo imprisonment for a term of 10 years for the offence punishable under Section 376(2)(i) of the Indian Penal Code with a fine of Rs.10,000/- and in default of fine the appellant shall be liable to undergo an additional period of imprisonment for a term of two months. Further, for the offence, punishable under Section 4 of the POCSO Act, the appellant shall undergo imprisonment for a term of 10 years and shall further be liable to pay fine of Rs. 10,000/- and in default of payment of fine, he shall undergo an additional period of imprisonment for a term of two months. Both the sentences shall run concurrently.

9. As has been directed by the trial court, the total amount of fine shall be payable to the victim.

10. This appeal stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

gauravkr/-

(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
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