

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.2925 of 2022**

Arising Out of PS. Case No.-53 Year-2021 Thana- SHAHKUND District- Bhagalpur

RAJIV KUMAR, Son of Raghunandan Singh, Resident of village -  
Chadabadgaon, P.S.- Sahkund (Sajour), District - Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                              |
|----------------------|---|----------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr. Ajay Thakur, Sr. Advocate<br>Mr. Ajay Mukherjee, Advocate<br>Mr. Ganesh Sharma, Advocate |
| For the Respondent/s | : | Ms. Anita Kumari Singh, APP                                                                  |

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
**ORAL JUDGMENT**

**Date : 21-09-2023**

1. Heard learned senior counsel for the appellant and  
learned counsel for the State.

2. This appeal has been filed against the judgment of  
conviction dated 18.07.2022 and order of sentence dated  
21.07.2022 passed by the learned Exclusive Special Court  
(POCSO)-cum -7th Additional District and Sessions Judge,  
Bhagalpur in connection with POCSO Case No. 20 of 2021,  
arising out of Sahkund (Sajour) P.S. Case No. 53 of 2021,  
whereby and whereunder the appellant has been convicted for  
the offence punishable under Section 8 of the POCSO Act and  
sentenced to undergo rigorous imprisonment for 5 years with a  
fine of Rs. 3,00,000/- (Rupees three Lakhs only) for the said



offence, in default of payment of fine, to further undergo simple imprisonment for a period of 1 year.

3. The appellant stood charged for the offences punishable under Section 376 of Indian Penal Code (hereinafter referred to as IPC) and under Sections 4, 8, 13 and 18 of the Protection of Children from Sexual Offences Act (hereinafter referred to as POCSO Act).

4. The appellant was convicted only for the offence punishable under Section 8 of POCSO Act and acquitted of other offences charged with by the trial court.

5. The prosecution story appearing from the FIR in brief is that the informant who happens to be the mother of the victim, filed a written report before the SHO of P.S. Sajour with this allegation that on 06.02.2021 at about 6 a.m., the appellant/accused firstly enticed her daughter, who used to take tuition from the appellant and thereafter raped her daughter and after committing the offence of rape he threatened her daughter and said that she would be killed if she revealed the incident to her parents, on account of that fear and threatening her daughter did not reveal the alleged occurrence to her parents. The informant further alleged that the accused also made a video of the commission of the alleged occurrence of rape and made it



viral on 08.02.2021 and thereafter on 09.02.2021 the FIR was lodged by her.

6. On the basis of aforesaid written application of informant, Sahkund (Sajour) P.S. Case No. 53 of 2021 was lodged U/s. 376 of the IPC and Section 4/8 of POCSO Act against the appellant which set the criminal law in motion.

7. After completion of the investigation the police chargesheeted the appellant for the offences punishable under Section 376 of IPC and Sections 4/8 of POCSO Act.

8. After the cognizance, appellant's case was committed to the court of Exclusive Special Court (POCSO) -cum-7th Additional Sessions Judge, Bhagalpur (trial court) which framed the charges upon the appellant in the manner mentioned hereinabove.

9. During trial, the prosecution examined altogether 6 witnesses which are as under:-

|      |                                           |
|------|-------------------------------------------|
| PW1- | Informant                                 |
| PW2- | Victim                                    |
| PW3- | Raman Kumar                               |
| PW4- | Rupesh Kumar Sah @ Rupesh Kumar<br>Mandal |
| PW5- | Hari Om Prakash Singh (S.I.)              |



PW6- Ms. Anupama Sahay (Doctor)

10. In documentary evidence, the prosecution brought on record the following documents and got them marked as Exhibits which are as under:

Ext.- P-1 Signature of informant on written application of FIR

Ext.-P-2 Signature of victim on the statement recorded U/s. 161 of Cr.P.C.

Ext. P-3 Signature of victim on statement recorded U/s. 164 of Cr.P.C.

Ext. P-2/1 Writing and signature of S.I. Vidya Singh over statement of victim U/s. 161 Cr.P.C.

Ext. P-4 Writing and signature of SHO on FIR.

Ext. P-5 Writing and signature of I.O. on charge-sheet.

Ext. P-6 Medical report of the victim.

11. After completion of prosecution's evidence, the statement of the appellant/accused was recorded under Section 313 of Cr.P.C., in which the circumstances appearing against him from the prosecution's evidences were explained to him,



which were denied by the appellant and he took the defence that the so-called victim had some intimacy with one namely, Raman Kumar which was objected by him and the tuition fee concerned to victim's tuition was also due at the time of alleged occurrence and owing to the said reasons, a false case was lodged by mother of the said victim.

12. In defence, the appellant/accused examined following 4 witnesses:

DW.1- Chandan Kumar

DW.2- Reshmi Kumari

DW.3- Priyanka Kumari

DW.4.- Anita Devi

13. It has been argued by learned senior counsel for the appellant that in the instant matter, the alleged offence punishable under section 8 of POCSO Act is not made out as the prosecution failed to prove the victim's age before the trial court and did not produce any documentary evidence such as victim's school certificate etc., though the Doctor, who examined the victim, opined the victim's age in her report but the Doctor's opinion regarding the age of the victim was not proper and legal as she gave her opinion mainly considering the X-ray report of the victim and at that time no Ossification Examination was



conducted by the Doctor concerned in respect of victim's age and she did not even count the molar teeth of the victim while determining her age. Further argument is that the investigation made by the police in the present matter was completely faulty and the most important evidence which was the video clip of the alleged incident was not produced by the victim's family nor the same was recovered by the investigating officer. The learned counsel for the appellant has placed reliance upon the following judgments of the Hon'ble Apex Court as well as of this court which are as under:

*(i) Jarnail Singh vs. State of Haryana reported in (2013) 7 SCC 263, passed by the Hon'ble Supreme Court.*

*(ii) Rajak Mohammad vs. State of Himachal Pradesh reported in (2018) 9 SCC 248, passed by the Hon'ble Supreme Court.*

*(iii) Santosh Kumar Singh @ Santosh Yadav vs. The State of Bihar passed in Cr. Appeal (DB) No. 70 of 2020 by Patna High Court.*

*(iv) Dablu Kuamr @ Dablu Mahto @ Vinod Kumar passed in Cr. Appeal (DB) No. 1268 of 2019 by Patna High Court.*



*(v) Md. Suhail vs. The State of Bihar, passed in Cr.  
Appeal (SJ) No. 4329 of 2022 by Patna High Court.*

14. Learned APP for the State has argued that in view of the evidence given by PW-6, who medically examined the victim, the age of the victim was between 14 and 16 years at the time of the commission of alleged occurrence hence she was a minor girl at that time and the victim and PW-1 to PW-4 who were witnesses of the facts of the incident, completely proved the allegations made in the FIR and the victim also supported the allegations in her evidence as well as in her statement recorded under Section 164 of Cr.P.C.

15. I have heard both the sides and perused the impugned judgment and evidences available on the case record of the court below. In the present matter, as per allegation the accused/appellant firstly, forcefully established sexual relationship with the victim who happens to be the daughter of the informant and also made a video of the alleged incident and made viral the same two days after the commission of the alleged rape. As per the FIR, the victim did not reveal the alleged occurrence to her parents on account of fear of threat given by the appellant/accused to her and the said incident came into the knowledge of others on 08.02.2021 when the video of



the alleged occurrence was made viral by the accused/appellant. PW-1, who is the informant of this case deposed that she got the information of the occurrence when the accused/appellant made viral the video of the alleged occurrence.

16. PW-3 and PW-4 also deposed the same fact in their cross-examination, accordingly, the main source of information of the commission of the alleged occurrence of rape was the alleged video which was made viral by the accused/appellant after commission of the alleged occurrence but these witnesses including the informant deposed that the investigating officer did not take the mobile from the informant in which the alleged video was available.

17. PW-3, Raman Kumar, deposed in his cross-examination that he did not make any inquiry regarding the alleged video. The witness deposed in paragraph no. 6 of his cross-examination that the clip of alleged video was provided by the victim's mother to the police and seizure memo of that video clip was also prepared. In this regard, the evidence of investigating officer is very important and he deposed in his cross-examination that he neither recovered any video nor the same was produced before him by anyone. From these facts appearing from the evidence of the said witnesses, one thing is



quite clear that the prosecution failed to bring the video of the alleged crime before the trial court and in this regard, there is a serious contradiction in between the evidence of investigating officer and PW-3 and the most important evidence of the alleged crime was not brought in the light before the trial court despite being in the possession of the informant and other prosecution witnesses.

18. In the present mater the manner in which investigating officer investigated the allegations is completely faulty as according to the FIR, the alleged occurrence took place in the house of the accused where the said victim used to take her tuition from the accused/appellant but P.W-5 Hari Om Prakash Singh, who was the investigating officer deposed in his examination-in-chief that he inspected the place of occurrence which was victim's house. While there was a clear allegation that the accused/appellant sexually assaulted the victim when she went to appellant's house to take her tuition. The investigating officer did not take pain to find out the actual truth of the allegations and the same goes against the prosecution.

19. As per the allegation, the appellant sexually assaulted the victim but no evidence of recent sexual intercourse



was found by the Doctor concerned who medically examined the victim and in this regard Exhibit-P-6 is relevant, though the alleged occurrence took place on 06.02.2021 and the victim was examined on 09.02.2021 but no evidence regarding physical injury to any part of the body of the victim including her private parts was found by the Doctor concerned and the said circumstance goes against the prosecution and in favour of the accused/appellant.

20. In the evidence of the prosecution witnesses, it came into light that several students used to take tuition from the appellant/accused and as per victim's statement, the accused had been harassing her for 2-3 months just before the commission of the alleged occurrence. In this regard, particularly, conduct of the accused ought to have been examined by the I.O. from other students of the accused but none of them was examined by him, rather the defence witnesses deposed that the appellant never misbehaved with any other student. So the non-examination of other students of the appellant by the investigating officer goes against the prosecution.

21. In view of the facts discussed above, as well as in the light of the principles laid down by the Hon'ble Apex Court



as well as this court in the above mentioned judgments, I reach to this conclusion that though in the present matter, the victim's evidence goes in favour of the prosecution but the investigation which was made in connection with the allegations, was completely faulty and the investigating officer did not make any effort to find out the actual truth of the allegations and the most important evidence which was the video clip of the commission of the alleged occurrence was not brought into light before the trial court and the same was neither produced by the victim's mother nor produced by any other person who claimed to have seen the clip and the same was not recovered by the investigating officer moreover, the medical evidence also does not help the prosecution in any manner and none of the students, other than the victim, who also used to take tuition from the appellant was examined by the investigating officer to find out the conduct of the appellant with other female students, so in the light of these circumstances, the appellant is entitled to get the benefit of doubt and I find the judgment impugned convicting the appellant for the offence punishable under Section 8 of POCSO Act to be not proper hence, the impugned judgment and order convicting and sentencing the appellant for the offence punishable under Section 8 of POCSO Act stand set



aside and the present appeal stands allowed. The appellant is in custody, hence he is directed to be released forthwith from jail, if his custody is not required in any other case.

22. Let the copy of the judgment be sent to the concerned court and Jail Superintendent for immediate compliance of this judgment.

23. Let the L.C.R. be sent back to the trial court.

**(Shailendra Singh, J)**

Rajiv/-

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