

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.675 of 2021

Arising Out of PS. Case No.-234 Year-2019 Thana- BAIRIYA District- West Champaran

Munna Kumar S/o Late Birendra Sah @ Birendra Prasad R/o Vill Malahi Tola
P.S. Bairiya, Dist. West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : None

For the Respondent/s : Ms. Shashi Bala Verma, 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 : 10-10-2023

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, putting to challenge the impugned judgment of conviction dated 09.09.2021 and the order of sentence dated 10.09.2021, passed by learned Additional District and Sessions Judge-VII-cum-Special Judge (POCSO), West Champaran, Bettiah arising out of Bairiya P.S. case no. 234 of 2019, whereby the appellant has been convicted and sentenced as under:



Cr. Appeal (DB) No. 675 of 2021				
Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Munna Kumar	Under Section 376 of the Indian Penal Code	R. I. For seven years	- -	- -
	Under Section 4 of the POCSO Act	R. I. For 20 years	50,000/-	S.I. for two months

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

3. The victim (PW-10), is the informant of the case, whose written report, addressed to the Officer Incharge Bairiya police station in the district of West Champaran, is the basis for registration of Bairiya P.S. Case No. 234/2019, registered on 20.7.2019, disclosing commission of offences punishable under Section 376 of the IPC and Section 4 of the POCSO Act. The informant (PW-10) alleged in her FIR that she was 12 years old and in the night of 19.07.2019, she was asleep with her sister (PW-7). Suddenly at about 2:00 am, someone came and gagged her mouth, lifted her and took her to the bushes behind the house. There she noticed that it was the appellant who had kidnapped her. The appellant is said to have intimidated her of killing her should she opened her mouth. Thereafter, he committed rape upon her. Parents of the victim were sleeping in a nearby school. She went there to inform them about the occurrence. She explained the



entire occurrence to her mother (PW-6). The victim's father (PW-1) and her mother (PW-6) are attesting witnesses to the FIR. Medical examination of the victim was conducted by a doctor (PW-8). The Doctor opined that the victim's hymen was old ruptured and there was no internal or external injury found on her person or her private parts. She also opined that there was no recent sign of sexual assault. Based on physical, pathological and radiological findings, the doctor opined the victim's age to be between 12 to 14 years. The statement of the victim was recorded under Section 164 of the CrPC on 22.07.2019, in which she reiterated what had been alleged in the FIR. The police upon completion of investigation submitted chargesheet against the appellant for the offences punishable under Section 376 of the IPC and Section 4 of the POCSO Act. Charge was subsequently framed for commission of the offences punishable under Section 376 of the IPC and Section 4 of the POCSO Act. The appellant denied the charge and claimed to be tried. At the trial, the prosecution examined altogether 10 witnesses including the victim (PW-10), victim's father (PW-1), victim's mother (PW-6) and her sister (PW-7). The doctor came to be examined as PW-8, whereas the IO as PW 5. In addition, one Mohan Prasad came to be examined as PW-9.



4. In addition to oral evidence of the prosecution’s witnesses, the prosecution brought on record following documentary evidence to prove the charge:

Sl. No.	Description	Exhibit Number
1.	Application	Exhibit-1
2.	Written order for lodging of FIR and writing and signature of Rana Prasad	Exhibit-1/1
3.	Signature of SHO Rana Prasad on the pagination of formal FIR	Exhibit-1/2
4.	Application in the police station	Exhibit-1/3
5.	Signature of the victim on the application written at the police station	Exhibit-1/4
6.	Signature of the police officer Punam Kumari on the statement of the victim recorded under section 161 of CrPC	Exhibit-2
7.	Signature of the victim on her statement before the lady police officer	Exhibit-2/1
8.	Signature of witness Anil Kumar Jha on the chargesheet	Exhibit-3
9.	Signature of the Doctor on the medical report	Exhibit-4
10.	Signature of the victim on her statement recorded under section 164 of the CrPC	Exhibit-5

5. The trial court after having appreciated the evidence adduced at the trial reached at conclusion that the prosecution was able to establish the charge against the appellant for commission of the offences punishable under Section 376 of the IPC and Section 4 of the POCSO Act. It is noteworthy that the victim’s mother (PW-6), the victim’s sister (PW-7) and other prosecution’s witnesses, i.e., PW-2, PW-3, PW-4 and PW-9 did not support the



prosecution's case and accordingly they came to be declared hostile. The informant, however, supported the prosecution's case of commission of rape by the appellant on her. The trial court upon appreciation of the evidence opined that it appeared that after examination of the victim's father (PW-1), the parties got the dispute compromised and, therefore, the witnesses other than the victim did not support the prosecution's case. Most of the witnesses consistently deposed that there was land dispute between the family of the victim and that of the appellant which was the reason for false implication of the appellant in the criminal case. The trial court, however, rejected the case of the defense of false implication out of land dispute on the reasoning that the victim could not risk her dignity by making false accusation of rape for such dispute and has accordingly, recorded the conviction of the appellant and sentenced him to undergo imprisonment and fine as has been noted above.

6. Though, there is no representation on behalf of the appellant, after having perused the impugned order and the trial court's records, we are of the opinion that this appeal should not wait for a counsel to represent the case of the appellant who is in custody since 21.07.2019.



7. Learned Additional Public Prosecutor appearing on behalf of the State defending the finding of the trial court has submitted that the prosecution, in this case, has successfully established that the age of the victim was much less than 18 years and, therefore, was a child within the meaning of Section 2(1)(d) of the POCSO Act. She contends that the victim has consistently supported the prosecution's case as was disclosed in her statement, recorded under Section 164 of the CrPC and the deposition at the trial.

8. 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 State as noted above.

9. On perusal of the evidence of the witnesses, we notice that the victim's mother, to whom the victim is said to have disclosed about the occurrence soon after the occurrence, has not supported the prosecution's case and has been declared hostile. She deposed at the trial that she was married nearly 25 years ago. It is noteworthy that her evidence was recorded before the trial court in January, 2021. She deposed that the victim was her third child who was born in the third year of her marriage. The evidence of PW-6, the mother of the victim does not appear to be supporting



the prosecution's case that the victim was a child within the meaning of Section 2(1)(d) of the POCSO Act, as on the date of occurrence, i.e., 19.07.2019. PW-6 deposed that at no point of time her statement was recorded by the police and that she had not told the police that the victim had narrated her about the occurrence. It is the case of the informant (PW-10) as disclosed in the FIR that she was asleep with her sister (PW-7) when she was kidnapped. PW-7 also in her deposition did not support the case of the prosecution and she came to be declared hostile. Replying to a question during her cross-examination, she admitted that some land dispute was going on between the families of the appellant and the informant. The Investigating Officer (PW-5) deposed at the trial that the statement of the witnesses Jitendra Prasad (PW-4), Vikram Prasad (PW-3) and Rajesh Mishra (PW-2) were recorded during the course of investigation. They had disclosed in their statements that there was land dispute between the families of the victim and the appellant because of which the appellant was falsely implicated in a false case.

10. As has been noticed above, PW-2, PW-3 and PW-4 have also been declared hostile. PW-2 and PW-3 in their depositions have stated that because of land dispute, a quarrel had taken place between the family of the victim and the appellant,



because of which, the two families were not on talking and visiting terms.

11. PW-2 deposed that the appellant had been falsely implicated in the criminal case because of land dispute. PW-9 has also been declared hostile at the instance of the prosecution, he having not supported the prosecution's case.

12. The question in the present case is that it is fit case where based on the victim and her father (PW-1), would it be safe for this Court to uphold the conviction as recorded by the trial court. It is noteworthy that the victim reiterated in her deposition what she had disclosed in the FIR. In her cross examination, she did not deny that there was land dispute between the two families, but denied the suggestion that the false case was instituted because of the said land dispute between the two families. The victim (PW-10) also deposed that she was not acquainted with the appellant from before.

13. We are of the opinion that the deposition of the victim in her examination at the trial does not appear to be reliable for two reasons. Firstly, in her written report, which is the basis for registration of FIR, she did not only disclose the name of the appellant, but also his parentage. Secondly, the prosecution's witnesses have consistently deposed at the trial that there was land



dispute between the two families who were co-villagers. It is true that evidence of sole witness, who is a victim of rape, can be the basis for conviction. The evidence is not essentially required to be corroborated by other evidence for the proving of such offence, but only when the witness appears to be of sterling character. We have noticed hereinabove that the victim (PW-10) has not been fully truthful in her deposition on various aspects including her knowledge about the identity of the appellant. The fact that she had disclosed the occurrence, soon after the occurrence had taken place, to her parents and family members, has not been supported by her mother and sister. In the FIR, the informant specifically disclosed that she had narrated the occurrence to her mother after the occurrence had taken place. Mother has denied that part of the assertion of the victim. Father of the victim (PW-1) has supported the prosecution's case to the extent that the victim had disclosed about the occurrence to him in the school where he was sleeping on the date of occurrence.

14. Such being the circumstance, in the Court's opinion, some corroboration was required to establish the serious charge of commission of penetrative sexual assault punishable under Section 4 of the POCSO Act and Section 376 of the IPC. We cannot ignore, in the facts and circumstances noted above the medical



evidence, according to which, there was no recent sign of sexual assault. The victim was examined on 20.07.2019 itself.

15. Furthermore, no procedure was adopted to conclusively prove the age of the victim at the trial in accordance with law. In such circumstance the deposition of such witnesses who have been declared hostile at the instance of the prosecution, in no way supports the prosecution's case rather belie it.

16. Taking into account the evidence of the witnesses and the discussions as noted above, in our opinion, we do not consider it safe to uphold the conviction of the appellant for the offence punishable under Section 376 of the IPC and Section 4 of the POCSO Act. The appellant deserves to be acquitted of the charge of commission of offence punishable under Section 376 of the IPC and Section 4 of the POCSO Act by giving him benefit of doubt.

17. Accordingly, the impugned judgment of conviction dated 09.09.2021 and order of sentence dated 10.09.2021, passed by learned Additional District and Sessions Judge-VII-cum-Special Judge (POCSO), West Champaran, Bettiah arising out of Bairiya P.S. case no. 234 of 2019 are hereby set side. This appeal is allowed.



18. 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)

Suraj/Nishant/-

AFR/NAFR	NAFR
CAV DATE	NA
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