

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1943 of 2017**

Arising Out of PS. Case No.-89 Year-2014 Thana- SHAHKUND District- Bhagalpur

Md. Perwez, Son of Kadir, Resident of Village- Khaira, P.S.- Shahkund,
District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Siddharth Harsh, Amicus Curiae

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

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

Date : 13-12-2023

1. Learned *Amicus Curiae* Mr. Siddharth Harsh appearing for the appellant and learned APP Mrs. Anita Kumari Singh for the State are present and they are heard on the merit of this appeal.

2. The instant appeal has been filed by the sole appellant Md. Parwez against the judgment of conviction dated 22.03.2017 and order of sentence dated 25.03.2017 passed by the Additional Sessions Judge-I-cum- Special Judge (POCSO), Bhagalpur in G.R. Case No. 2040/14 arising out of Shahkund P.S. Case No. 89/14.

3. The appellant stood charged for the offences punishable under Section 354B of the Indian Penal Code



(hereinafter referred as “IPC”) and Section 8 of POCSO Act and the learned Trial Court convicted him for both the said offences and sentenced him to undergo rigorous imprisonment for four years for the offence punishable under Section 354B of IPC and a fine of Rs. 5,000/- was also imposed upon him for the said offence and he was directed to further undergo additional imprisonment for three months in case of non payment of the fine. No sentence was awarded upon the appellant by the Trial Court for the offence under Section 8 of POCSO Act in view of the provisions of Section 42 of POCSO Act.

4. The substance of the prosecution’s allegation is that on 09.06.2014 at about 11:00 P.M the appellant, who is stated to be a neighbor of the victim, came at the informant’s house and lifted the informant’s minor daughter aged about seven years when she was in sleeping condition. It has been further alleged that the informant raised an alarm on seeing the commission of the said alleged act of the appellant and thereafter started chasing the appellant and in that course, the appellant left the victim in naked condition and thereafter, fled away, after that, the victim was brought back to her home. The informant raised the suspicion that the appellant had taken away her minor daughter



with malice intention and unfastened her payjama but thereafter, fled away when an alarm was raised by the prosecution party.

5. The informant filed a written application at Shahkund police station describing the above allegations, on that basis formal FIR bearing Shahkund P.S. Case No. 89 of 2014 was registered for the offences punishable under Section 354B of IPC and Section 8 of POCSO Act which set the criminal law in motion.

6. After the completion of investigation the police chargesheeted the appellant for the offences under Section 354B of IPC and Section 8 of POCSO Act and thereafter, the learned trial Court took cognizance of the alleged offences and started trial of the appellant by framing charges upon him.

7. During trial the prosecution examined the following four prosecution witnesses:-

P.W.1:- Bibi Roushan, Informant

P.W.2:- Victim

P.W.3:- Dr. Sushila Choudhary, Doctor

P.W.4:- Sri, Niwas Singh, Investigating Officer

8. In documentary evidences the prosecution proved the following documents and got them exhibited which are as follows:-



Ext.1:- Medical Report of the Victim.

Ext.2:- FIR

9. After the completion of prosecution's evidence the statement of the appellant was recorded by the Trial Court in which he denied the main circumstances appearing against him from the prosecution's evidences and claimed himself to be an innocent person and took the defence that he had been falsely implicated.

10. The appellant did not produce any evidence in his defence.

11. It has been submitted by learned *Amicus Curiae* that there is a vital contradiction regarding the manner of occurrence in between the prosecution story described in the FIR and described by the victim herself. As per the statement of the victim, the Investigating Officer did not record her statement during investigation and the doctor who medically examined the victim did not give his concrete medical opinion to establish a connection in between the laceration injury which is said to have been found inside the vagina of the victim and the act of the accused.

12. It has been argued by learned APP appearing for the state that the allegations levelled against the appellant by the



prosecution, stood proved before the Trial Court and the material witnesses including the victim fully supported the said allegations and the victim's Medical Report also proved the case of prosecution and the victim is said to be seven years old at the time of commission of the alleged occurrence and regarding her age no dispute was made by the accused and prosecution fully proved the allegation that the appellant took the victim away with an intention to outrage her modesty and unfastened her payjama but thereafter, he had to flee away as the informant reached at the place of occurrence and raised an alarm and the said allegation attracts the offence punishable under Section 354B of IPC for which the appellant has been convicted, as such, there is no force in the instant appeal and the same is liable to be dismissed.

13. Heard learned *Amicus Curiae* and learned APP for the State and also perused the impugned judgment and evidences available on the case record of the trial Court and gone through the statement of the accused.

14. The important facts appearing from the prosecution's story which are relevant to the alleged offences for which the appellant has been convicted are that on 09.06.2014 at about 11:00 pm the appellant forcibly lifted the victim when she was in sleeping condition and thereafter, took her away with an



intention to outrage her modesty. The informant who is stated to be the mother of the victim, claimed to have seen the appellant carrying the victim and on seeing the appellant's act she raised an alarm, due to that reason the appellant had to flee away after leaving the victim. When the victim was found by the appellant her payjama which the victim wore on the day of alleged occurrence, was found being in unfastened condition.

15. In the present matter the most important witness of the prosecution is the victim herself who was examined as P.W.2.

P.W.2:- The victim deposed in the examination-in-chief that the accused firstly lifted her and thereafter, took her at *pokhar* (Pond) where he sexually assaulted her and he also put his private part into her mouth. She further deposed in the cross-examination that there are four brothers and two sisters of her and at the time of the alleged occurrence, she was sleeping with her siblings and mother and the accused was already known to her and when she was being taken by him, she cried and the accused had earlier also committed a wrong with her before the commission of the alleged occurrence of the present matter. She further deposed that after the occurrence she returned back in weeping condition and thereafter, fell asleep and she did not say anything about the occurrence to anyone and from the pond she



returned back alone and till the time of her return, her all family members were sleeping.

16. The material facts stated by the victim before the Trial Court are quite different from the manner of occurrence as described by victim's mother in the FIR, as firstly according to the victim, after the occurrence she returned back alone while as per the informant she was brought from the place of occurrence by the informant herself and secondly, when the victim returned back, all her family members including the informant were asleep and thirdly, according to the victim nobody, even her mother noticed the appellant's act of carrying the victim from her house, when she was asleep. While as per the FIR, the informant noticed the appellant's act as to carrying the victim from her house and then she chased him and raised an alarm. The facts narrated in the FIR and the facts deposed by the victim are completely contradictory to each other which caste a serious doubt in the reliability of the occurrence.

17. As per the FIR, when the accused lifted the victim and started carrying her, the informant noticed the said act of the appellant and thereafter, started chasing him but the accused fled away after leaving the victim in naked position. If we take into account all these events which are said to have happened in one



sequence then it clearly appears that the appellant could not have got sufficient time to sexually assault the victim, as he was being chased by the victim's mother from the moment of carrying the victim by him while as per the victim's evidence, the accused sexually assaulted her in two manners which was not possible if the incident narrated in the FIR is believed to be true.

18. Here it is important to mention that as per the victim's evidence she was sleeping with her mother and siblings but none of her siblings was produced and examined by the prosecution.

19. The victim deposed in the cross-examination that the police did not interrogate her which shows that her statement was not recorded by the Investigating Officer.

20. So far as the medical evidence is concerned, though the Doctor concerned, who was examined as P.W.3, found a laceration inside the vagina of the victim but in the cross-examination she could not explain the proper reason which might be behind such laceration and she did not give any concrete opinion to show that the alleged act of sexual assault committed by the appellant might be a reason behind such injury of laceration.



21. All these contradictions and circumstances appearing from the evidence of material witnesses of the prosecution are completely against the prosecution and are sufficient to caste a serious doubt in the prosecution's allegation.

22. In the light of above discussed facts and evidences available on the case record of Trial Court, this Court forms the opinion that there are so serious contradictions in between the material facts narrated by the informant who is said to be victim's mother and she claimed to be an eye-witness of the alleged occurrence and the facts deposed by the victim herself that the prosecution's allegation does not seem reliable and the accused/appellant is entitled to get a benefit of doubt and there are sufficient reasons discussed above to interfere in the judgment impugned and acquit the accused/appellant of the offences charged.

23. Accordingly, the impugned Judgment and Order convicting and sentencing the appellant for the offences charged are hereby set aside and the present appeal stands allowed.

24. The Judgment Impugned was delivered on 22.03.2017 by the Trial Court and thereafter the accused was taken into custody and during appeal, he was not granted the relief of bail under Section 389(1) of Cr.P.C., hence, the appellant



has definitely served the complete sentence, so there is no need to pass any direction with regard to release of the appellant.

25. Let a copy of the Judgment be sent to the convicting Trial Court and jail Superintendent, for needful information.

(Shailendra Singh, J)

Maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.12.2023
Transmission Date	19.12.2023

