

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1142 of 2019

Arising Out of PS. Case No.-134 Year-2018 Thana- BIHIA District- Bhojpur

Chandan Singh, Son of Dadan Singh, Resident of Village-Shivpur, P.S.-
Dhangai, District- Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1168 of 2019

Arising Out of PS. Case No.-134 Year-2018 Thana- BIHIA District- Bhojpur

Ramjee Singh, Son of Lalan Singh, (wrongly stated 50 years in judgment),
Resident of Village - Shivpur, P.S.- Dhangai, District - Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1169 of 2019

Arising Out of PS. Case No.-134 Year-2018 Thana- BIHIA District- Bhojpur

Yuvraj Singh, Son of Ram Dayal Singh, (wrongly stated 75 years in
judgment) Resident of Village-Shivpur, P.S-Dhangai, District-Bhojpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1142 of 2019), (In CRIMINAL APPEAL (DB)
No. 1168 of 2019) & (In CRIMINAL APPEAL (DB) No. 1169 of 2019)

For the Appellant/s : Mr. Vikramdeo Singh, Advocate

Mr. Sada Nand Roy, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Spl. P.P.

For the Informant : Mr. Dhanendra Chaubey, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 05-09-2023

The present appeals have been filed by the



appellants-convict under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 21.08.2019 and order of sentence dated 26.08.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge POCSO Act & SC/ST Act, Bhojpur, Ara in POCSO Case No.65 of 2018 arising out of Bihia P.S. Case No. 134 of 2018, whereby the concerned Trial Court has convicted the appellants for the offences punishable under Section 376-D of the Indian Penal Code (hereinafter referred to as 'I.P.C.'), under Section 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act' and under Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as 'SC and ST Act'). They have been sentenced to undergo rigorous imprisonment till natural life and to pay a fine of Rs. 15,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year under Section 376-D of the I.P.C., life imprisonment and to pay a fine of Rs.15,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one year under Section 6 of the POCSO Act and life imprisonment with a fine of Rs.15,000/- each and in



default of payment of fine, to further undergo rigorous imprisonment for six months under Section 3(2)(va) of the SC and ST Act.

2. The factual matrix of the present case is as under:-

“On 04.10.2018 in the evening at about 7:00 PM, the victim went with her niece Parvati Kumari for natural call in the field of one Raj Kumar Singh. In the meantime, the accused, namely, Chandan Singh, Yuvraj Singh and Ramjee Singh caught hold of her and after pressing her mouth took her out of that field where they committed rape one by one on her. On hue and cry made by the victim and her niece, Parvati Kumari, the villagers gathered there and then the accused left her and ran away. Thereafter, the victim went to her house and narrated about the incident to her father.”

3. After the registration of the F.I.R. the Investigating Officer carried out the investigation and recorded the statement of the witnesses and also collected the documentary evidence, prepared various *panchnamas* and the clothes of the victim were also sent to the FSL. After conclusion of the investigation, the Investigating Officer filed the charge-sheet against all the appellants before the concerned Magistrate court. As the case was exclusively triable by Court of Sessions and as the provisions of POCSO Act and SC & ST Act are



applied, the case was committed to the concerned Special Court.

4. Before the concerned Trial Court, the prosecution had examined five witnesses and produced documentary evidence. Further, statement of the appellants-accused were recorded under Section 313 of the Code. After conclusion of the trial, the Trial Court passed the impugned judgment of conviction as observed hereinabove. Against the impugned judgment and order, the appellants have preferred these appeals, which were admitted and now same is taken for final hearing.

5. Heard Mr. Vikramdeo Singh, learned advocate for the appellants, Mr. Sadanand Paswan, learned Special Public Prosecutor for Respondent-State and Mr. Dhanendra Chaubey, learned advocate for the informant.

6. Learned counsel for the appellants has referred to the deposition given by the prosecution witnesses and, thereafter, submitted that the case of PW-2 victim is not supported by the medical evidence. Learned advocate has referred to the deposition of PW-2 and PW-4, the doctor, who had examined the victim immediately after 5 hours and 45 minutes from the time of occurrence. After referring to the same, it is submitted that the present appellants have been



falsely implicated in the occurrence in question because of the enmity.

6.1. Learned counsel for the appellants, thereafter, submitted that the prosecution has failed to prove the age of the victim by leading cogent evidence before the Trial Court. It is pointed out from the deposition of the prosecution witnesses that as per the case of PW-1, father of the victim, she was studying in standard-IX, whereas as per the case of PW-2 victim, she was student, who had cleared the examination of standard-VIII. Thus, it is a case of the appellants that the victim was studying in the school. In spite of that, the prosecution has not produced any evidence before the Trial Court with regard to the age of the victim. Thus, in absence of any evidence with regard to the age of victim, it cannot be said that victim was minor at the time of the occurrence. Learned counsel, therefore, urged that the Trial Court has committed grave error while convicting the appellants under the provisions of the POCSO Act. In support of the aforesaid contentions, learned counsel has referred to Section 34 of the POCSO Act, Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Rule 19 of the Bihar Juvenile Justice (Care and Protection of Children) Rules.



6.2. Learned counsel for the appellants, thereafter, placed reliance upon the decisions rendered by the Hon'ble Supreme Court in the cases of (i) **Jarnail Singh vs. State of Haryana**, reported in **2013 Cr.L.J. 3976**, (ii) **Rajak Mohammad vs. State of H.P.** reported in **(2018) 9 SCC 248**, (iii) **Sunil vs. State of Haryana** reported in **AIR 2010 SC 392** (iv) **State of M.P. vs. Munna @ Shambhoo Nath** reported in **(2016) 1 SCC 696**.

6.3. At this stage, learned counsel has also placed the reliance upon the decision rendered by the Division Bench of this Court in the case of **Anil Kumar and Anr. vs. State of Bihar** reported in **2023 (4) BLJ 562**.

6.4. Learned advocate for the appellants further submitted that though the niece of the victim, namely, Parvati Kumari, was present at the place of occurrence and as per the case of prosecution, she immediately reached to the house of the victim and informed the parents, the said Parvati has not been examined by the prosecution. It is also pointed out, at this stage, that though the statement of victim was recorded under Section 164 of the Code in which the victim has specifically informed to the learned Magistrate that Parvati Kumari be kept present when her statement is recorded, surprisingly, the said Parvati has not



been examined for the reason best known to the prosecution. Learned counsel, therefore, urged that on this ground also, the case of the prosecution may not be believed.

6.5. Learned counsel thereafter submitted that there are major contradictions and improvements in the deposition of the prosecution witnesses and, therefore, the appellants be acquitted by quashing and setting aside the impugned judgment and order passed by the learned Trial Court.

6.6. Learned counsel for the appellants would further submit that even the provisions of the SC and ST Act as alleged by the prosecution are also not attracted and prosecution has failed to prove that the appellants have committed alleged offences under the said Act and, therefore, the learned Trial Court has committed an error while recording the conviction under the SC and ST Act. He, therefore, urged that the impugned judgment and order of conviction passed by the learned Trial Court be quashed and set aside and thereby the appellants be acquitted.

7. On the other hand, learned counsel for the Respondent-State duly assisted by learned counsel for the informant have opposed these appeals. Learned counsel have also referred to the depositions of prosecution witnesses and the



FSL report. After referring to the same, it is submitted that from the deposition of the doctor, it is revealed that the age of victim is between 16-18 years. It is also submitted that blood-stained clothes of the victim were also seized by the investigating agency and the same were sent to necessary analysis to the FSL. The FSL has given the opinion that the blood was found of human and group of blood is 'A'. Learned counsel, therefore, urged that the prosecution has proved the case against the appellants-accused beyond reasonable doubt by leading cogent evidence before the Trial Court and, therefore, the Trial Court has rightly passed the order of conviction against the appellants herein. Learned counsel, therefore, urged that all these appeals be dismissed.

8. We have considered the submissions canvassed by the learned counsel appearing for the parties. We have also perused the evidence produced by the prosecution witnesses before the Trial Court.

9. PW-2 is the victim, aged about 15 years. The victim has stated in her examination-in-chief that the incident took place before six months from the date of the said deposition and the incident of rape took place prior to six months. She further stated that she can identify the persons who



have committed the offence of rape. It is further stated that she went for call of nature in the evening and the three accused, namely, Chandan Singh, Yuvraj Singh and Ramjee Singh, committed rape on her one after another. Thereafter, she came to her house and told about the incident to her mother. Thereafter, she was taken by her mother to the police station from where, they were sent to Mahila Police Station where the complaint was registered and she had signed the complaint. It is further stated that thereafter she was taken to the hospital and again back to the police station after her medical examination. It is further stated by the victim that thereafter she was taken to the court for recording her statement before the Magistrate. The clothes, which she was wearing during the incident, has been given to the police and the seizure memo was also prepared. The victim identified all the three accused, who were present in the Court.

9.1. During the course of cross-examination, she has stated that she had cleared standard-VIII examination and she will take admission in the next standard. She has also stated that there is no toilet in her house. She has also stated that there is no case pending with the family of the accused. She had further stated that the accused were waiting for her before she



reached to the field along with her niece and as soon as they reached, the accused caught hold of the said victim and pressed her mouth and thereafter she was taken to another place in different field, where there was only one house belonged to one Shankar Dayal. It is further stated that she could not save herself when all the three accused was committing rape on her, as she was tied. All the three accused committed rape one after another and it lasted for approximately fifteen minutes. During that incident, she also sustained injury on her back and on her hands. Her clothes were also torn at various places during that incident. She has further stated during cross-examination that her house is at the distance of 2-3 minutes from the place of occurrence and when she was returning from the place of occurrence to her house, she did not find anybody. It is further stated that her father had written the complaint whatever she dictated in the police station and thereafter she had signed the said complaint. She has further stated that when she reached the hospital at about 1:00 AM, she had pointed out about the injuries sustained by her to the doctor. She had denied the suggestion that because of the enmity with the accused, they were falsely implicated.

10. It is pertinent to note at this stage that statement of victim was recorded under Section 164 of the Code



by the concerned Magistrate. We have perused the said statement, and from the said statement, it is revealed that when the learned Magistrate had asked her, the victim gave her consent that her relative Parvati Kumari be kept present while her statement is recorded. Therefore, relative of victim namely, Parvati Kumari remained present when the statement of the victim under Section 164 of the Code was recorded by the learned Magistrate. The victim has stated in the said statement that the incident took place on 04.10.2018 at about 7-8 PM. At that time, she alongwith her niece Parvati, went for call of nature. When they moved post the call of nature, three accused came at the said place. Parvati managed to run away from the spot and thereafter three accused caught hold of the victim and took her to compound near the house of Shankar Dayal and tied her hands and pressed her mouth. It is further stated that the accused raped her one by one and it lasted around one hour. However, during that time she could not shout for help. She has further stated that she can identify the accused, who are residing in the same village. She had named all the three accused. She further stated that she was taken to the doctor from the police station, where she has been examined by the doctor.

11. PW-1 Shiv Dayal Ram is the father of



victim. The said witness has stated that the victim is her daughter and she came crying in the evening and told the said witness about the incident. Thereafter, they went at the place of occurrence. At that time, he found that the accused were running from the place of occurrence. Thereafter, the victim was taken to the police station and complaint was lodged. The clothes of the victim were given to the police and the seizure memo was prepared wherein the said witness has signed.

11.1. During cross-examination, the said witness has specifically stated that his daughter is in standard-IX. After the incident took place, they went to the police station and his daughter had written the complaint and the same was given to the SHO at around 10:00 PM. Thereafter, they were sent to Mahila Police Station at about 11:00 PM and returned back to the village in the morning by 11:00 AM. The said witness has admitted that he has not seen the incident in question. However, he had seen the accused running away from the place of occurrence but, he did not inform about the same to the police when his statement was recorded by the police.

12. PW-3, Reeta Devi, is the mother of the victim. She has stated in her examination-in-chief that the incident took place at 7:00 PM on 04.10.2018. At that time, she



was in her house. Her daughter went with Parvati for call of nature. At that time, all the three accused committed rape on her daughter. She has further stated that the three accused picked up her daughter and took her to the hut near the house of Paras Nath and committed rape on her. She further deposed that Parvati came to the house of the said witness and informed her about the incident and, thereafter, they reached to the place of occurrence, which is just opposite to the house of the said witness on the other side of the road. At that time, her daughter came and informed about the name of the accused, who have committed rape on her. It is further stated that thereafter, they went to the Mahila Police Station and registered the case. Thereafter, the blood-stained clothes of her daughter were handed over to the police and necessary papers were prepared by the police, wherein she as well as Parvati have put their signature. Seizure list was also signed by her. She has identified her signature. She has also identified the accused who were present in the court.

12.1. During cross-examination, she has stated that the government has given them Rs. 4 lakhs, as they have registered the case. She is also a member of Panchayat. She had given the name of *Sarpanch*. She further stated that she does not



know Surendra Singh, who is uncle of accused Chandan Singh. She has further stated that the victim came to the house and immediately, thereafter, around 300 people of the village gathered. She has also stated that the complaint was given by her daughter in Mahila Police Station. She has also denied the suggestion that because of the enmity with the accused, the false case has been registered against them.

13. PW-4 is Dr. Madhubala Sinha, has stated in her examination-in-chief that on 05.10.2018, she was posted as Medical Officer in Sadar Hospital, Ara. On that day, she examined the victim aged about 15 years at 12.40 AM. On examination, she found “secondary sexual character well developed. No any injury on any of body. Hymen is rupture. Rupture is old one. Admit one finger. Advice X-ray, elbow, pelvis and wrist. According to the report, she is aged between 16 to 18 years. Vaginal swab is taken. Send to pathology Sadar Hospital, Ara. No spermatozoa either alive or dead”. She has further stated in her examination-in-chief, according to above report, it is not clear whether rape is committed or not and the victim is menstruating. The said report is written and signed by her, which was produced as Exhibit-5.

13.1. During cross-examination, the said doctor



has further stated that no injury was present on any part of the body of the victim and there was no complain of any injury. She further stated that no sign of any rape was found.

14. PW-5, Ranjana Sinha, is the Investigating Officer, who had carried out the investigation. The said witness has stated that after the registration of the FIR, she had recorded the statement of the witnesses, visited the place of occurrence, the victim was sent to the hospital for necessary examination, her statement was also recorded under Section 164 of the Code by the concerned Magistrate and, thereafter, the charge-sheet came to be filed against the accused.

14.1. During cross-examination, the Investigating Officer has specifically stated that the victim brought the written complaint and, thereafter, it was handed over to her. It is further stated that the victim came to the police station with the clothes which she had worn at the time of occurrence and the said clothes were changed in the police station and, thereafter, the same were seized. During cross-examination, she has further stated that when she had visited the place of occurrence, no incriminating material was found. The said witness has also admitted in cross-examination that witness Sheo Dayal had not stated in his statement that he has seen the accused fleeing away



from the place of occurrence.

15. From the aforesaid evidence produced by the prosecution before the Trial Court, it would emerge that the prosecution had not examined any witness with the view to prove the age of the victim. PW-4 Dr. Madhubala Sinha has only stated that according to report, she is aged between 16-18 years. However, though the victim was a student who had cleared std.-VIII examination, the prosecution has not produced her birth certificate or any other certificate from which it can be proved that the victim was a minor girl.

16. At this stage, we would like to refer the provisions contained in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, which provides as under :-

“94. Presumption and determination of age.-

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has



reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

17. Rule 19 (1) and (2) of the Bihar Juvenile Justice (Care and Protection of Children) Rules, which provides as under:-

“19. Procedure for inquiry.- (1) The Committee shall inquire into the circumstances under which the child is produced and accordingly declare



such child to be a child in need of care and protection.

(2) The Committee shall, *prima facie* determine the age of the child in order to ascertain its jurisdiction, pending further inquiry as per Section 94 of the Act, if need be.”

18. Section 34 of the POCSO Act provides as under:-

“34. Procedure in case of commission of offence by child and determination of age by Special Court.- (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the [Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)].

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

19. If the aforesaid provisions are read together, it is revealed that age of the child in conflict with law can be determined by producing the evidence in the form of date of



birth certificate from the school or matriculation or equivalent certificate from the concerned examination board and in absence thereof birth certificate given by corporation and municipal authority or panchayat and in absence of both the aforesaid, the age shall be determined by ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

20. At this stage, this Court would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Jarnail Singh** (supra) wherein the Hon'ble Supreme Court after considering the aforesaid provisions of law has observed in para-20 that even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, the aforesaid statutory provisions should be the basis for determining age even for a child who is a victim of crime. It is further observed that there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime.

21. At this stage, it is pertinent to note that in the said case the Hon'ble Supreme Court has considered Rule 12 of Juvenile Justice (Care and Protection of Children) Rules, 2007, which is *pari materia* to Rule 19 of Bihar Juvenile Justice (Care



and Protection of Children) Rules.

22. Thus, from the aforesaid, it is clear that the prosecution has failed to prove the age of the victim and, therefore, the conviction of the accused-appellants under the provisions of POCSO Act cannot be sustained.

23. At this stage, we would also like to refer the decision rendered by Hon'ble Supreme Court in the case of **Rajak Mohammad** (supra) wherein the Hon'ble Supreme Court observed in para-9 and 10 as under:-

“9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

10. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.”



24. In the case of **Sunil** (supra), the Hon'ble Supreme Court has observed in para 29, 30 and 31 as under:-

“**29.** The short question in the facts and circumstances of this case that remains to be determined is whether the prosecutrix was a minor? Dr. Sadhna Verma, PW 1 who examined the prosecutrix referred her for verification to the dental surgeon and the radiologist. The failure of getting the prosecutrix examined from the dental surgeon or the radiologist despite the fact that she was referred to them by Dr. Sadhna Verma, PW 1 is a serious flaw in the prosecution version. We are not laying down as a rule that all these tests must be performed in all cases, but in the instant case, in the absence of primary evidence, reports of the dental surgeon and the radiologist would have helped us in arriving at the conclusion regarding the age of the prosecutrix.

30. The prosecution also failed to produce any admission form of the school which would have been primary evidence regarding the age of the prosecutrix.

31. The School Leaving Certificate produced by the prosecution was also procured on 12-9-1996, six days after the incident and three days after the arrest of the appellant. As per that certificate also, she joined the school in the middle of the session and left the school in the middle of the session. The attendance in the school of 100 days is also not reliable.”



25. In the case of Munna @ Shambhoo Nath

(supra), the Hon'ble Supreme Court has observed as under:-

“9. From the x-ray report of the ossification test, the doctor opined that the age of the prosecutrix could not be more than 14 years. However, since the doctor was never examined, the x-ray report is not sufficient to prove the age of the prosecutrix. The prosecutrix was examined as PW 5 but the prosecution failed to question the prosecutrix on her age, therefore, no fact could be gathered from her regarding the issue of age. PW 6 Malti Devi, mother of the prosecutrix, was examined where she stated the age of prosecutrix to be 13 years. However, in her cross-examination, she stated that her marriage was performed about 20 years ago and after two years of her marriage the elder daughter (Sunita) was born, and 2-3 years thereafter the prosecutrix was born. It means that the prosecutrix was aged about 15-16 years at the time of the incident. But this is not sufficient to come to any conclusion about the exact age of the prosecutrix. It appears that the ossification test x-ray report is not sufficient to prove the age of the girl. Further, the mother of the prosecutrix also was not able to give the exact age of the prosecutrix. No question was also asked to the prosecutrix by the prosecution about her age. Taking into account all these facts, the High Court correctly came to the conclusion that the prosecution has totally failed to prove beyond reasonable doubt that the girl was less than 16



years of age at the time of the incident. Therefore, the High Court presumed that the girl was more than 16 years of age and was competent to give her consent.

10. This Court in *Birad Mal Singhvi v. Anand Purohit* [1988 Supp SCC 604] , has held:

“17. ... the entries regarding dates of birth contained in the scholar's register and the secondary school examination have no probative value, as no person on whose information the dates of birth of the aforesaid candidates were mentioned in the school record was examined.”

11. Further, it was held by this Court in *Sunil v. State of Haryana* [(2010) 1 SCC 742 : (2010) 1 SCC (Cri) 910] that: (SCC p. 750, para 26)

“26. ... In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe to base conviction on an approximate date.”

12. In view of the evidence on record and the rationale in the aforementioned cases, we are of a considered view that the prosecution has totally failed to prove beyond reasonable doubt that the girl was less than 16 years of age at the time of the incident. Therefore, it can be held that the girl was more than 16 years of age and she was competent to give her consent as held by the High Court. Hence, in the present case, the question of rape does not



arise as consensual intercourse has been proved.”

26. Recently, the Division of this Court in the case of **Anil Kumar and Anr.** (supra) has once again considered the aforesaid provisions of law and, thereafter, observed in para 24, 31, 34, 35, 37 and 42 as under:-

“24. Coming now to the medical evidence as regards the age of the victims; the Medical Board opined that the age of the victims could be between 16 to 18 years. In our considered view, the prosecution thus failed to conclusively prove at the trial that the victims were below 18 years of age as on the date of occurrence. In order to attract the penal provisions under the POCSO Act, it is obligatory on the part of the prosecution to prove, with cogent evidence, the fact that the victims were under 18 years of age. We are, therefore, of the considered view that the conviction of the appellants for the offence punishable under Section 6 of the POCSO Act cannot be sustained.

31. Coming next to the appellants’ conviction recorded by the trial court of the offences punishable under Section 376-DA of the IPC; since we have held that the prosecution failed to prove conclusively the fact that the victims were below 18 years of age, the conviction of these appellants for the offences punishable under Section 376-DA of the Indian Penal Code cannot be upheld as the said penal provision is attracted only if the prosecution proves gang rape on a



woman under 16 years of age. Be it noted that the charges in the present case were framed under various sections of IPC including Section 376 thereof. The trial court has held the appellants guilty of the offence punishable under Section 376-DA treating them to be under 16 years of age.

34. Further, the medical evidence does not support the prosecution's case of gang rape. PW-4 and PW-5, who were members of the medical board, in their depositions at the trial, proved the reports of the medical examination conducted on the victims on 21.06.2019. The medical board did not find any external or internal injuries on the body of the victims. PW-5, in her evidence, also deposed that no external or internal injuries were found on the private parts of the victims nor any sign of struggle was present on the persons of the victims. In her cross examination, PW-5 deposed that the victims were habituated to regular sex or intercourse and it was difficult to say whether rape had occurred or not. In response to the queries on behalf of the appellants during the cross examination, PW-4 and PW-5 answered that in case of gang rape, there must be struggle signs on external and internal part of the body of the victims, which had not been found.

35. We are conscious of the principle that no corroboration by the medical evidence is essential in a case of charge of rape, if the victims of rape appear to be truthful witness of sterling quality. The Court, however, cannot completely



brush aside the medical evidence, if it is contrary to the accusation made by the victim and the evidence led at the trial.

37. The clothes of the victims and the accused persons, which were seized by the police during investigation, were sent to the Office of the Director, Regional Forensic Science Laboratory, Muzaffarpur. The report of the Forensic Science Laboratory with the results of serological evidence has been marked as exhibit 12. We consider it apt to reproduce the description of articles contained in the parcels sent by the police to the FSL and the result of examination: -

“It contained nine plastic boxes marked as ‘A’, ‘B’, ‘C’, ‘D’, ‘E’, ‘F’, ‘G’, ‘H’ and ‘I’ respectively.

The box marked ‘A’ contained one janghiya and one kurti said to be of victim (V-1). They were further marked as ‘1’ and ‘2’ respectively in this laboratory.

1. The old dirty coffee colour said to be brown janghiya marked ‘A/1’ bore reddish brown stains over small areas. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultraviolet light.

2. The maroon colour said to be red embroidered kurti marked ‘A/2’ bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultraviolet light.

The box marked ‘B’ contained one janghiya and one kurti said to be of V-2. They



were further marked as '1' and '2' respectively in this laboratory.

3. The old maroon colour janghiya marked 'B/1' bore reddish brown stains over small areas. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

4. The old red-blue kurti marked 'B/2' bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

5. The box marked 'C' contained one old dirty grey colour janghiya said to be of accused Kamlesh Kumar. It bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluoresce in ultra violet light.

6. The box marked 'D' contained one coffee colour janghiya said to be of accused Sujit Kumar. It bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluoresce in ultra violet light.

7. The box marked 'E' contained one black-grey colour janghiya said to be of accused Parshu Ram Kumar. It bore a dot of reddish brown stain. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluoresce in ultra violet light.

8. The box marked 'F' contained one old navy blue colour janghiya said to be of accused Raj Kumar @ Thakma. It bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white



fluoresce in ultra violet light.

9. The box marked 'G' contained one sky-blue janghiya said to be of accused Gobinda Kumar. It bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluoresce in ultra violet light.

10. The box marked 'H' contained one old blue janghiya said to be of accused Nagendra Kumar. It bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluoresce in ultra violet light.

11. The box marked 'I' contained one old maroon colour janghiya said to be of accused Anil Kumar. It bore brownish stains. It also bore greyish white stains which were neither stiff to feel and which produced characteristic bluish white fluoresce in ultra violet light.

Result of Examination

1. Blood has been detected in the exhibits as noted below: -
 - (a) Exhibit marked 'A/1' - over small areas.
 - (b) Exhibit marked 'B/1' - over small areas.
 - (c) Exhibit marked 'E' - Blood too small.
2. Semen has been detected in the exhibit marked 'I';
3. Blood could not be detected in the exhibits marked 'A/2', 'B/2', 'C', 'D', 'F', 'G', 'H' and 'I'.
4. Semen could not be detected in the exhibits marked 'A/1', 'A/2', 'B/1',



‘B/2’, ‘C’, ‘D’, ‘E’, ‘F’, ‘G’ and ‘H’.

5. Blood detected in the exhibit marked ‘E’ was too small for serological test.

6. Serological report on origin and group of blood and semen would follow.”

42. There being glaring inconsistencies in the prosecution’s case, as disclosed by the victim, and as developed at the trial by PW-3, we are of the opinion that it would not be safe to uphold the conviction of these appellants based on evidence of such witnesses, particularly when the charge of commission of gang rape is not supported by the medical evidence nor by the result of forensic examination. Non-examination of the mother of the victims, who, according to the prosecution’s case, was present in the house and to whom the victims had disclosed about the occurrence first, in our opinion, is fatal to the prosecution’s case. We are of the considered view that it is the duty of the prosecution to prove beyond all reasonable doubts commission of rape within the meaning of Section 375 of the IPC to constitute offence of rape punishable under Section 376 of the IPC. It is obligatory on the part of the prosecution to establish essential ingredients of rape. In the Court’s opinion, the prosecution has not been able to prove beyond all reasonable doubts commission of offence of rape or gang rape punishable under Section 376 or 376-D of the IPC. The statements of a rape victim cannot always be treated to be a gospel truth in all circumstances. In the facts and circumstances, as



discussed hereinabove, we are of the view that there are compelling reasons in the present case, which necessitate looking for corroboration of the statements of the victims. We are accordingly of the view that the appellants deserve to be given benefit of doubt. The finding of conviction recorded by the trial court, in our opinion, is not sustainable and requires interference.”

27. Now, if we consider the deposition given by PW-2 victim, it is revealed that when she had gone to the field for call of nature with Parvati, who is her niece (near relative), the incident in question took place. However, the prosecution has not examined Parvati, who is important witness. Further, it is specific case of the victim that all the three accused committed rape on her one after another and in the said incident, she sustained injuries on her back and on her arm. However, at this stage, if the medical evidence is examined, PW-4 Dr. Madhubala Sinha has specifically stated that there was no injury present on any part of the body nor there was complaint of injury. She has further stated that there was no sign of rape, which was found. Though hymen is ruptured, it is specifically observed that it is old one. It is further revealed from the deposition of the doctor that victim is menstruating.

28. Thus, from the aforesaid evidence of the



doctor, we are of the view that the victim has created a false story wherein all the appellants-accused have been implicated.

28.1. It is also relevant to observe, at this stage, that the victim has stated in her deposition that her father has written the complaint and thereafter she had signed the said complaint. PW-1, the father of the victim has specifically stated in para 12 of the cross-examination that the complaint was written in the police station and the said complaint was written by his daughter i.e. the victim. Further, PW-5 Ranjana Sinha, the Investigating Officer of the case has stated in her cross-examination in para 11 that the victim came at the police station with written complaint. Thus, from the aforesaid evidence, it is revealed that with regard to the filing of the written complaint different version has been given by the prosecution witnesses.

29. It is further pertinent to note that the victim has stated in her deposition that incident of rape lasted for 10-15 minutes whereas in her statement recorded under Section 164 of the Code, she has stated that it lasted for one hour. At this stage, it is also relevant to note that the distance between the place of occurrence and the house of the victim is 2-3 minutes and as per the case of the prosecution, Parvati, who was initially present with the victim in the agricultural field immediately came to the



house of the victim and informed about the incident to her parents, it is difficult to believe that if the incident had continued for 15 minutes or one hour, the accused-appellants have remained present at the said place.

30. It is also reflected from the deposition of the witnesses more particularly, cross-examination of PW-5, the Investigating Officer that PW-1 Shiv Dayal Ram, who is father of the victim, had not stated in his statement recorded by the said officer that he had seen the accused fleeing away from the place of occurrence.

31. Looking to all the important aspect of the matter, it can be said that there are major contradictions and improvements in the story of the prosecution and the deposition of the witnesses and when the case of the victim was not supported by the medical evidence and when the deposition of victim is not trustworthy. Looking to the overall facts and circumstances of the present case, the conviction recorded by the Trial Court is required to be interfered with. It is also relevant to note that the prosecution has also failed to prove the case against the appellants for commission of the offences punishable under Section 3(2)(va) of the SC and ST Act.

32. Thus, when the prosecution has failed to



prove the case beyond reasonable doubt, the accused-appellants are required to be acquitted.

33. In view of the aforesaid discussions, the impugned judgment of conviction dated 21.08.2019 and order of sentence dated 26.08.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge POCSO Act & SC/ST Act, Bhojpur, Ara in POCSO Case No.65 of 2018 arising out of Bihia P.S. Case No. 134 of 2018 are quashed and set aside.

34. The appellants, namely, Chandan Singh in Criminal Appeal (DB) No.1142 of 2019, Ramjee Singh in Criminal Appeal (DB) No.1168 of 2019 and Yuvraj Singh in Criminal Appeal (DB) No.1169 of 2019 are acquitted of the charges levelled against them by the learned Trial Court. They are directed to be released from jail forthwith, if their presence is not required in any other case.

35. These appeals stand allowed.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Sanjeet/S.Tripathi

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15-09-2023
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