

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.70 of 2024

Arising Out of PS. Case No.-337 Year-2022 Thana- JHAJHA District- Jamui

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Santu Paswan @ Sintu Paswan, Son of Bhim Paswan, R/o Village -
Dumarphokhar, P.S. - Jhajha, Distt. - Jamui (Bihar).

... .. Appellant/s

Versus

- 1. The State of Bihar.
- 2. Milu Devi, W/o Pramod Paswan, R/o Village - Dumarphokhar, P.S. - Jhajha,
District - Jamui.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Pathak, Adv.
For the Informant : Mr. Satya Prakash Parasar, Adv.
For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-10-2024

Heard the learned counsel for the

parties.

2. The sole appellant/Santu Paswan @

Sintu Paswan been convicted for the offences under



Section 376 of the Indian Penal Code (*in short the IPC*) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (*in short the POCSO Act, 2012*) *vide* judgment dated 05.12.2023 passed by the learned Addl. Sessions Judge-I-Cum-Special Court, S.C./S.T. & POCSO Act, Jamui in POCSO Case No. 38 of 2022, arising out of Jhajha P.S. Case No. 337 of 2022. By order dated 11.12.2023, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 25,000/- and in default of payment of fine, to further suffer R.I. for a period of two years for the offence under Section 4 of the POCSO Act, 2012.

3. The victim (P.W. 1), who claimed to be of sixteen years of age at the time of the occurrence, has alleged that she was enticed away by the appellant, who kept her in confinement for two days, *i.e.*, from 10.08.2022 to 12.08.2022, and during this period, she was raped by him. Later, the



appellant is said to have brought her near the village road and left her there.

4. The F.I.R. has been lodged by the mother of the victim, who has been examined as P.W. 2. She, in her written report addressed to the Officer-in-Charge of the Jhajha Police Station, has alleged that the appellant took away her sixteen years old daughter. Since she or other family members had no clue about the victim, they waited for two days. The victim came back home on 12.08.2022.

5. Thereafter, on 14.08.2022, the written report was lodged, which gave rise to Jhajha P.S. Case No. 337 of 2022, dated 14.08.2022, instituted for the offences under Sections 366(A) & 376 of the IPC and Section 4 of the POCSO Act, 2012.

6. The victim (P.W. 1) in her statement under Section 164 Cr.P.C. also has supported the



prosecution case of her having been raped by the appellant for two days.

7. At the trial, the victim narrated the same story.

8. However, we have found certain features in her deposition, which makes it absolutely unreliable.

9. The victim was enticed away by the appellant on 10.08.2022 at around 06:00 P.M. from near her house. Thereafter, she was brought to a desolate place where she was raped. The victim was then taken to another place where also she was raped. On 12.08.2022, the appellant is alleged to have left her on the main road near her house. The victim came back home and narrated about the occurrence to her mother. In fact, the appellant, according to the victim, offered to marry her, but she refused straightaway. She was also threatened that in case she reported the matter or supported the



case, she, her brother and father would be killed. While she was coming back home from *Dhuatoli*, a nearby place, she was abducted by the appellant. She was asked to sit on a motorcycle. Instead of taking her to any known destination, she was taken to a lonely place. All this while, it appears that she did not raise any alarm. The appellant is alleged to have told the victim that he had some work elsewhere. This was the only reason for the victim not to doubt the appellant at that point of time. Later, according to the victim, finding no one around, he raped her. However, the victim could not locate the place where the occurrence took place. She was then taken to a house. The victim, till the time of her cross-examination, did not have any idea as to the ownership of the house. She has also not spoken about any other member present in the house. In that house, the victim claims to have been raped. She did not tell anybody in that house about



the occurrence. When she was brought back by the appellant and left near the main road, then also she did not raise any alarm. She informed nobody else except her mother. She could not assign any reason for two days' delay in reporting the matter to the police.

10. The victim has admitted in her cross-examination that she did not receive any injury on her body. Sometimes prior to her deposing before the Court, the uncle and aunt of the appellant had threatened her grand-parents.

11. What is further noticeable is that the victim has admitted that while she was going along with the appellant on his motorcycle, they crossed through a pond and railway station. But she did not raise any hue and cry nor did she attempt to alight from the motorcycle. She claimed to be studying in standard-VIII. Her father is a member of the police force, posted at Patna. Her father never



came to the police station nor has he chosen to be a witness in this case. She has denied the suggestion that her parents wanted the appellant to marry her, but the appellant refused and that was the reason for her mother to lodge this case against the appellant.

12. The victim (P.W. 1) was recalled for further cross-examination. On recall, she changed her story and said that when for the first time she was being enticed away by the appellant, she had raised some alarm. At that time, she was gagged by the appellant. However, she admitted again that the place where she was raped was not known to her. She did not give any location of that place to the police nor asked the police to visit that place. The house in question where she was raped stood as a stand alone house in a desolate place. When she was left on the main road near her house on 12.08.2022, she did not shout for help. Neither did she tell any passerby about what had happened. She



again denied the suggestion that because of the refusal of the appellant to marry her, she got this false case lodged against him.

13. The mother of the victim (P.W. 2) admits that no complaint was made to anybody, much less to the police when the victim disappeared on 10.08.2022. She had but informed the *Mukhiya* of the locality orally about her daughter going missing. She also, despite learning from the victim, no idea about the place from where she was abducted and the place where she was raped and confined for two days. She has also denied the suggestion of there being a motive for false implication.

14. The elder sister of the victim has been examined as P.W. 3. Except for narrating the same story over and over again and speaking about the victim being a minor, she had nothing special to offer to the Trial Court. P.W. 3 was born on



13.04.2003 and the victim, according to her, was younger to her. She has denied the suggestion that at the time of the occurrence, the victim was nineteen years of age.

15. Two independent persons, viz., Jaykishor Paswan and Rajaram Paswan (P.Ws. 4 and 5 respectively) have expressed their complete ignorance about the occurrence. Hence, they were declared hostile.

16. The case was investigated by Gyan Bharti (P.W. 6), who does not claim to have visited the place where the victim was raped and the reason assigned by her is that no location was given by the victim to her to find out where such place existed. With respect to the age of the victim, P.W. 6 had met the Principal of the school in which the victim studied. Her date of birth was found to be 20.02.2005. The date of birth was certified by the Headmaster of the school, who prepared the



certificate in her presence and signed it (Exhibit P-4).

The Investigator candidly admitted that but for taking the statement of few of the neighbours of the victim, nobody else was examined by her. She did not go to the suggested place where the victim was raped. The victim did not know the house in which rape was committed.

17. All these aspects remained uninvestigated because the victim was not forthcoming with any relevant information.

18. Dr. Rakhi Kumari (P.W. 7) examined the victim on 14.08.2022. There was no sign of any injury on any part of her body. The hymen was found to be ruptured, but no bleeding was observed. The vaginal swab was collected and smears were sent for forensic examination. Those were found to be negative. No spermatozoa or RBCs were found in the microscopic examination of the smears. However, a few epithelial cells were seen.



P.W. 7 was of the view that it could not be commented clearly whether the victim had undergone sexual intercourse. The findings were too vague for P.W. 7 to come to any conclusive opinion. Because there was no injury on any part of the body, therefore, P.W. 7 was in a fix whether the accusation of rape was correct.

19. On behalf of the appellant, his wife has been examined as D.W. 1. She has again repeated the same staid version of the refusal of the appellant to marry his son with the victim and that being the reason for falsely implicating the appellant.

20. The allegation, on face of it, does not appear to be correct.

21. The victim did not come out with exact details about the place from where she was taken away. Had it been forceful abduction, she would have shouted for help. The appellant and the victim rode through a pond and railway station,



which is expected to be crowded. The first part of the occurrence is said to have taken place at about 06:00 P.M. It was hardly an unearthly hour for nobody to notice that the victim was being taken away without her volition.

22. Then, is it to be taken as a consensual attempt at elopement?

23. Even, if that be, since the age of the victim is assessed to be less than eighteen years, the appellant would not come out of the mischief of the provisions contained under Section 376 of the IPC and Section 4 of the POCSO Act, 2012.

24. However, for proving the case and for the presumption under Sections 29 and 30 of the POCSO Act, 2012 to get triggered, the prosecution is required to prove the case beyond all doubts.

25. We have noticed that no objection was raised with respect to the minority of the victim. In that situation, the age of the victim stands



admitted, which means that she was a minor at the time of the occurrence.

26. Merely on this account, the conviction under Section 376 of the IPC and Section 4 of the POCSO Act, 2012 cannot be sustained.

27. No details were given by the victim, we repeat, especially, when the victim was slightly less than eighteen years of age at the time of the occurrence. She never shouted or called for any help. There is no explanation for two days' delay in reporting the matter to the police.

28. We have also taken note of the fact that despite the father of the victim being a policeman, he never made any statement before the Investigator nor did he elect to come to the witness-stand to support the case.

29. The appellant, admittedly, is a neighbour of the victim.

30. Three inferences could be drawn



from these set of facts. Either the victim consciously went along with the appellant and when the relationship soured or the liaison objected to by the family members implicating the appellant, a story was spun of enticing her away and then raping her, despite her resistance. The other inference could be that the proposal of marriage from either side did not materialize and, therefore, the retaliator action of framing the appellant. The last of the inferences which can be drawn from the above set of facts is that something went wrong midway when both the parties, *viz.*, the appellant and the victim, thought it fit to call it quits.

31. The prosecution, however, has not been able to pin-point as to what was the reason for the victim to go along with the appellant. That no force was used on her is clear from her deposition. She left with the appellant from near her house.

32. This might come within the



parameters of the offence under Section 366(A) of the IPC, but the Trial Court, finding no evidence to conclude that the victim was abducted, acquitted the appellant of the charge under Section 366(A) of the IPC.

33. It is really unacceptable as a proposition of fact that the victim, who is more than seventeen years of age, could not locate or state about the place where she was raped. If that were a house, then, there would have been some some others also present in that house. If the house was an abandoned building, the victim would have known the location as she was never locked inside the house. The details of what happened to her for two days, *i.e.*, from 10.08.2022 to 12.08.2022, are completely missing from the records.

34. Was she offered food? Did the appellant keep any vigil on her?

35. Was she locked inside the room,



making it difficult for her to escape?

36. There is absolutely nothing on record to come to any conclusion.

37. Thus, we find the accusation against the appellant to be incorrect or at least unsupported by evidence.

38. Giving benefit of doubt to the appellant, we acquit him of all the charges levelled against him.

39. The judgment of conviction and order of sentence, referred to above, is set aside.

40. The appeal stands allowed.

41. The appellant is in jail. He is directed to be released forthwith from jail, if not required or detained in any other case.

42. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

43. The records of this case be



returned to the Trial Court forthwith.

44. Interlocutory application/s, if any,
also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Manoj

AFR/NAFR	NAFR
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