

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.497 of 2023

Arising Out of PS. Case No.-70 Year-2020 Thana- Nasriganj District- Rohtas

Dilip Kumar, aged about 24 years old, Gender-Male, Son Of Satyendra Singh,
R/V- Pokhraha, P.S.- Nasriganj, District- Rohtas

... .. Appellant

Versus

1. The State Of Bihar
2. Ajay Kumar Singh, Son of Sri Munshi Singh Resident of Mauza, Pakharaha,
P.S.- Nasriganj, District- Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Chaudhary, Sr. Advocate Mr. Anil Kumar Tiwari, Advocate Mr. Raj Kumar Chaudhary, Advocate
For the State	:	Mr. Mukeshwar Dayal, APP
For the Informant	:	Mr. Amar Kumar, Advocate Mr. Jai Prakash Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 26-07-2024

The present appeal has been preferred against the impugned judgment of conviction and order of sentence dated 17.12.2022 and 22.12.2022, respectively passed by Ld. Additional District and Sessions Judge-VIIth-cum-Exclusive Special Judge (POCSO), Sasaram in POCSO Case No. 26 of 2020, arising out of Nasriganj P.S. Case No. 70 of 2020, whereby the sole appellant has been found guilty of offence punishable under Sections 376 and 341 of the Indian Penal Code and Section 4 of the POCSO Act and sentenced to undergo R.I. of 10 years and a fine of Rs.1,00,000/- payable to the victim and



in case of default to pay the fine, to undergo additional S.I. of one year under Section 4 of the POCSO Act and pay a fine of Rs.500/- payable to the victim and in case of default to pay the fine, to undergo further S.I. for five days under Section 341 of I.P.C. Learned Trial Court has also directed DLSA, Rohtas to pay a compensation of Rs.4,00,000/- to the victim.

2. On the basis of the *fardebayan* of the Informant/Victim, the FIR bearing Nasriganj P.S Case No. 70 of 2020 was registered on 02.05.2020 at 12:50 O'clock against the sole accused/appellant Dilip Kumar for the offence punishable under Section 376 of the Indian Penal Code and Section 4 of POCSO Act.

3. The prosecution case as emerging from the *fardebayan* of the victim/informant is that she was 14 years old at the time of occurrence. At 6:30 P.M. on 01.05.2020, when she was cooking at her home, her co-villager Dilip Kumar, aged about 22 years, came and closed her mouth and took her to the field situated behind her home and committed rape upon her. She started crying and weeping. Hearing the sound of weeping, her father and mother and other villagers came over there. Seeing them, the accused/appellant fled away. Due to lock down, she could not go to police station. Next day on 02.05.2020 at 12:15



P.M., she went to Nasriganj Police Station and gave her *fardebayan*.

4. After registration of the FIR, the investigation commenced and charge-sheet bearing No. 82 of 2020 dated 30.06.2020 was filed against the Appellant, Dilip Kumar under Sections 376 of the Indian Penal Code and Section 4 of POCSO Act. Subsequently, cognizance was taken and charges were framed against the accused under Section 376, 341 and 323 of the Indian Penal Code and Section 4 of POCSO Act facing the Trial. The charges were read over to the accused/appellant to which he pleaded not guilty and claimed to be tried.

5. During trial, the following five witnesses were examined on behalf of the prosecution:

- (1) **P.W.-1** – Father of the victim/informant
- (2) **P.W.-2** – Mother of the victim/informant
- (3) **P.W.-3** – Victim
- (4) **P.W.-4** – Jay Kishore Singh (I.O)
- (5) **P.W.-5** – Dr. Bina Rani (Doctor)
- (6) **P.W.-6** – Ajay Kumar (Assistant Director, FSL)
- (7) **P.W.-7** – Dr. Kameshwar Nath Tiwari (CS-cum-CMO)

6. The prosecution also brought on record the following documentary evidence:

- (i) **Ext. 1** – Signature of Ajay Kumar Singh on *fardebayan*;
- (ii) **Ext. 1/1** – Signature of the victim on *fardebayan*;
- (iii) **Ext. 2** – Signature on the Statement of the victim under Section 164 Cr,PC;
- (iv) **Ext. 1/2** – Signature of the Officer-In-charge on *fardebayan*;



- (v) **Ext. 3-** Seizure list
- (vi) **Ext. 4** – Medical report;
- (vii) **Ext. 5** – Signature of Suhani Jain on Serological report;
- (viii) **Ext. 5/1** – Signature of Ajay Kumar on Serological report;
- (ix) **Ext. 6** – Medical report;

7. After closure of the prosecution evidence, accused was examined under Section 313 Cr.PC confronting him with incriminating circumstances which came in the prosecution evidence, so as to afford him opportunity to explain those circumstances. During this examination he stated that he had heard the evidence of the prosecution, but he did not explain any circumstances. However, he denied the charges and claimed to be innocent.

8. The accused/appellant, however, has not examined any witness, nor has brought any documents on record in his defence.

9. Learned Trial Court, after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence, finding that the victim was below 18 years of age at the time of alleged occurrence. He also found that the prosecution has proved its case against the appellant under Section 376 and 341 of the Indian Penal Code and Section 4 of the POCSO Act. Accordingly, the impugned judgment and order



were passed.

10. I have heard learned counsel for the appellant and learned counsel for the State as well as learned counsel for the Informant.

11. Learned counsel for the appellant has submitted that the impugned judgment of conviction and the order of sentence passed by learned Trial Court are not sustainable in the eye of law or on facts. Learned Court below has not applied its judicial mind. It has failed to properly appreciate the evidence on record.

12. To substantiate his claim, he has submitted that the prosecution has failed to prove that the alleged victim was minor at the time of alleged occurrence. The prosecution has also failed to prove its case beyond reasonable doubts against the appellant. He has further submitted that no independent witnesses have been examined and the private witnesses of the prosecution are relative and interested witnesses and they cannot be relied upon for conviction of the appellant. He has also submitted that witnesses are not consistent in their statements. There are various discrepancies and contradictions in their statements. He has also submitted that as per the medical evidence, no sign of any rape on the alleged victim was found.



13. *Per contra*, learned Additional Public Prosecutor for the State and learned counsel for the informant have defended the impugned judgment of conviction and order of sentence submitting that the alleged victim was way below 18 years of age at the time of occurrence and the prosecution has amply proved its case against the appellant as per law. There is no illegality or infirmity in the impugned judgment and order of sentence.

14. As the appellant has been found guilty under the POCSO Act also, it is required to take note of Sections 29 and 30 of the POCSO Act which provide for mandatory presumptions against the accused. Such presumptions are exceptions to the general rule of the presumption of the innocence of the accused in any criminal trial. Sections 29 and 30 of the POCSO Act read as follows:-

"29. Presumption as to certain offences - Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

30. Presumption of culpable mental state -

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to



be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation - In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

15. From the reading of these Sections, it clearly transpires that Section 29 provides for reverse burden on the accused, facing prosecution under Sections 3, 5, 7 and 9 of the Act, to prove his innocence. Section 30 stipulates that if *mens rea* on the part of the accused is required for his prosecution under the Act, the Court is required to presume such *mens rea*. The accused has been, however, given right to rebut the presumptions raised against him.

16. Now the question is what would be the effect of such presumptions. Do these Sections absolve the prosecution to prove its case against the accused beyond all reasonable doubts fastening the accused with burden to prove his innocence?

17. This question is no longer *res integra*.

18. Hon'ble Supreme Court in **Babu Vs. State of Kerala, (2010) 9 SCC 189**, has held that presumption of innocence is a human right, though the exception may be created by statutory provisions. But even such statutory presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in



Articles 14 and 21 of the Constitution.

19. In Navin Dhaniram Baraiye Vs. State of Maharashtra, 2018 SCC Online Bom 1281, Bombay High Court has held that the presumption under Section 29 of the POCSO Act operates against the accused only when the prosecution proves the foundational facts against the accused in the context of the allegation made against him under the POCSO Act and the accused has right to rebut the presumption, either by discrediting prosecution witnesses through cross-examination or by leading evidence to prove his defence. Rebuttal of the presumption would be on the touchstone of preponderance of probability.

20. Similar view has been taken by Kerala High Court in **Joy V. S. Vs. State of Kerala, (2019) SCC Online Ker 783** and Calcutta High Court in **Sahid Hossain Biswas Vs. State of West Bengal, 2017 SCC Online Cal 5023.**

21. Allahabad High Court in **Monish Vs. State of U.P,** Cri. Misc. Bail Application No. - 55026 of 2021 as decided on 09.02.2023, has also held that the provision cannot be read to mean that the accused shall be presumed to be guilty at the lodgement of the F.I.R. or criminal complaint till proven innocent at the trial. The presumption of innocence which is a



fundamental tenet of criminal jurisprudence cannot be turned on its head by a faulty interpretation of the provision. The prosecution has to establish primary facts after attaining the required standards of evidence to trigger the presumption of culpable intent.

22. Madras High Court in Marriappan Vs. The Inspector of Police, (Crime No.27/2018) CrI.M.P.(MD) No.1396 of 2023 as decided on 08.09.2023, has also held that only after basic and foundational facts of the prosecution case are laid by adducing legally admissible evidence, the burden shifts on the accused to rebut it. The minority of the age of the alleged victim and allegation of sexual assault by the accused are foundational facts required to be proved by the prosecution before the Court raises presumption against the accused.

23. Gauhati High in Latu Das Vs. State of Assam, 2019 SCC OnLine Gau 5947 has also held that the presumption under Section 29 of the POCSO Act does not absolve the prosecution of its usual burden to prove the guilt of the accused beyond all reasonable doubts. It only lessens its burden to some extent and put a corresponding burden on the accused. Initial burden in a criminal case is always on the prosecution to bring on record reasonable evidence and



materials to prove that the accusation against the accused is true. Once such evidence or materials are brought on record, *prima facie*, establishing the case of the prosecution, only then the Court is obliged to raise presumption against the accused and burden stands shifted on the accused to rebut the presumption and if the accused fails to rebut the presumption, the Court is justified to hold the accused guilty of offence under sections 3, 5, 7 and 9 of the POCSO Act.

24. Hence, it clearly emerges that despite statutory provisions of Sections 29 and 30 of the POCSO Act, the prosecution is not absolved of its burden to prove that the alleged victim is a child i.e. below 18 years of age and he/she has been subjected to sexual assault by the accused and such foundational facts have to be proved by the prosecution beyond reasonable doubts and once the presumption is raised against the accused, the accused can rebut such presumption either by cross-examination of the prosecution witnesses or by leading evidence in his/her defence, on the touchstone of preponderance of probability. The presumptions are bats in law. They fly in a twilight, but vanish in the light of facts.

25. Now question is what is proof beyond reasonable doubts. This issue is also well discussed by the Hon'ble



Supreme Court on several occasions. It is settled position of law that the proof beyond reasonable doubts is not necessarily a perfect proof to mathematical precision. All that it requires is the establishment of such a degree of probability that a prudent man may on, its basis, believe in the existence of the facts in issue. The accused are entitled to get benefit not of all doubts, but only of reasonable doubts. Every hesitancy, hunch or doubt are not reasonable doubts. The following Authorities may be referred in this regard:

- (i) **Collector of Customs Vs. D. Bhoormal**, (1972) 2SCC 544,
- (ii) **Kali Ram Vs State of HP**; (1973) 2 SCC 808,
- (iii) **Dharm Das Wadhwani Vs. State of U.P.** (1974)4 SCC 267,
- (iv) **Shivaji Sahabrao Bobade Vs. State of Maharashtra**,
(1973) 2 SCC 793
- (v) **Dilavar Hussain Vs. State of Gujarat**, (1991) 1SCC 253.]
- (vi) **Narender Kumar Vs. State (NCT of Delhi)**,
(2012) 7 SCC 171]

26. Now coming to the evidence on record, it is found that the **victim/informant** of the case has been examined as **P.W.-3**. In her **examination-in-chief**, she has supported the prosecution case reiterating her statements as made in her written report. In her **cross-examination**, she has deposed that she studies in Class-8th. At the time of occurrence it was hindi month of *Jyestht*. Onion crops were standing in the field. The occurrence had taken place on the ridge of the field which was about one feet wide. At the time of the occurrence, she was



wearing *Shameez-Shalwar*. She was also wearing pant and Scarf. The accused took 2-4 minutes to commit the crime. She had got injury below her leg. At the time of occurrence, her both hands were on the ground. The grasses were grown on the ridge where occurrence took place. She also received abrasion on her waist. Even blood had come out. Her clothes also got stains of blood. At the time of her medico-legal examination, her whole body was seen by the doctor. The doctor and police had also seen her clothes, which she had worn at the time of the occurrence and the same was seized by the police. She denied the suggestion that no offence was committed by the accused/appellant against her. She also denied that she was not a minor.

27. P.W.-1 is father of the victim. In his **examination-in-chief**, he has supported the prosecution case. He has also deposed that the victim was 14 years of age at the time of occurrence. In his **cross-examination**, he has deposed that the clothes of the victim which were worn by her at the time of the occurrence was seized by the police. The clothes had stains of semen. The clothes were also having blood stains.

28. P.W.-2 is mother of the victim. In her **examination-in-chief**, she has supported the prosecution case. She has deposed that victim was 14 years of age on the date of



occurrence. In her **examination-in-chief**, she has deposed that her first husband was Mantu Singh and she lived with him for 7 years. The victim child was born out of that wedlock and she was born within two years of the marriage with Mantu Singh. Presently she is wife of Ajay Singh for 7-8 years. Ajay Singh married her after death of his first wife. After separating from Mantu Singh, she lived alone for 5-6 years. She could not remember the year of the birth of the victim. She was born at home, but she had no birth certificate. The victim is studying at Pokhaha Government School. She denied the suggestion that the age of the victim was above 18 years at the time of the alleged occurrence.

29. **P.W.-4** is **Jay Kishore Singh**, who is **Investigating Officer** of the case. In his **examination-in-chief**, he has deposed that the clothes worn by the victim at the time of the occurrence was seized as per law. The seized clothes comprised black *Pajama*, grey *Salwar*, black top, pink *Ganji* and orange *Dupatta*. He identified the seizure list also. The seized material were sent to Forensic Science Laboratory, Patna. The report was also received and same has been exhibited as **Ext.-1**. He has further deposed that the place of occurrence was situated at village- Pokhaha in the Nasriganj Police Station. It was a



ridge situated between the house of the informant and fallow field of Permanand Singh. It is surrounded by fallow field of Permanand Singh to the North, house of the informant to the South, field of Arvind Mahto to the East and fallow field of Shivmangal Singh to the West. In his **cross-examination**, he had deposed that he had not seized any material from the place of the occurrence. Medical examination of the victim was conducted on 04.05.2020. He denied the suggestion that investigation done by him was defective.

30. P.W.-5 is Doctor Bina Rani who conducted medico legal examination of the victim on 04.05.2020 at 21:50 P.M. As per medical examination, the following findings were recorded by her:-

“(2) Auxiliary hair present. Breast developed. Pubic hair present.

(3) L.M.P.-(10-14 days back from the day of examination)

(4) Per abdominal examination-Nothing abnormal found.

(5) Vaginal orifice admit one finger with difficulty.

(6) No injury is found anywhere over body or private part.

(7) Mark of identification cut mark near lateral bordering right eye.

Opinion was reserved till the pathological reports were available. The pathological report as provided by Dr. Ajay Kumar Singh has following findings:-

(i) Spermatozoa not found either dead or alive.

(ii) Epithelial cells 2-3/HPC

(iii) Urine Pregnancy Test Report- Negative

(8) Final opinion- from above finds it is very difficult



to say whether rape has been committed or not.”

31. She has also deposed that she had not assessed the age of the victim. For this purpose, the victim was referred to Sadar Hospital, Sasaram. She has further deposed that she had not found any injury on the person of the victim.

32. P.W.-7 is **Doctor Kameshwar Nath Tiwari**, who was Chairman of the Medical Board which assessed the age of the victim between 17 and 18 years on the basis of the medical tests. In his **cross-examination**, he has deposed that on the basis of the X-ray report the age of the victim fluctuates only by one or two years. He has denied the suggestion that report was not scientific and proper and the age of the victim was about 20 years.

33. P.W.-6 is **Ajay Kumar**. In his **examination-in-chief**, he has deposed that on 24.11.2020 he was posted as Scientist Assistant Director in the F.S.L., Patna. He has also deposed that Salwar cuttings of the victim was marked as Ext.-1 for serological test and as per the serological test, semen has been detected in the **Ext.-1**. The stain of semen was of human origin and its blood was “O”. This report was prepared in his presence by Shyam Sunder Pandit, Typist. Human sperm can survive for 72 hours without preservation.

34. Now the **first and foremost question** is whether



the prosecution has proved that the alleged victim was child i.e. below 18 years of age on the date of occurrence in terms of Section 2(1)(d) of the POCSO Act. It is one of the foundational facts to be proved by the prosecution, as it is a prerequisite for application of the POCSO Act against the Appellant.

35. No procedure has been provided in the POCSO Act for determination of the age of the victim. Section 34 (2) of the Act only provides that if any question arises whether a person is a child or not, such question is required to be determined by the Special Court after satisfying itself about the age of such person and to record in writing its reason for such determination.

36. However in landmark judgment of **Jarnail Singh Vs. State of Haryana, (2013) 7 SCC 263**, which is still holding the field and being followed by all Courts, Hon'ble Apex Court has held that procedure provided for determination of age of a juvenile in conflict with law should be adopted for determination of the age of the victim of a crime also, because there is hardly any difference, in so far as issue of minority is concerned, between the child in conflict with law and the child who is the victim of a crime.

37. Similar view has been taken by Hon'ble Apex



Court in recent case of **P. Yuvaprakash Vs. State, 2023 SCC onLine SC 846** referring to Section 34 of the POCSO Act and Section 94 of the J.J. Act, 2015.

38. Section 94 of the J.J. Act, 2015, which deals with presumption and determination of age, reads as follows:

“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.”

39. Hon’ble Apex Court in P. Yuvaprakash Case



(supra), has held as follows:

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

“(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”.

(Emphasis supplied)

40. As such, the age of the victim is determined on the basis of birth certificate from the school or matriculation or equivalent certificate, if available. In other words, if the victim was a student of school, the aforesaid certificates have precedence over other mode of proof regarding the age. In the absence of such certificate, birth certificate given by Municipal Authorities or Panchayat is required to be considered for determination of the age of the victim. In the absence of the aforesaid certificates, the age of the victim is required to be determined by ossification test or any other latest medical test. Any other proof is impliedly excluded from consideration for



age determination of the victim.

41. However, it is settled position of law that the ossification test gives only a broad assessment of the age. It cannot give an exact age. There is always possibility of errors of one to two years on higher as well as lower side. Hence, it is required to be considered along with the attending circumstances. It is also settled principle of law that benefit of doubt always goes to the accused. The following authorities may be referred to in this regard:

- (i) Karan @ Fatiya Vs. State of M.P. (2023) 5 SCC 504**
- (ii) Rishipal Singh Solanki Vs. State of U.P., (2022) 8 SCC 602**
- (iii) Rajak Mohammed Vs. State of H.P. 2018 SCC Online SC 1222**
- (iv) Mukarrab Vs. State of U.P., (2017) 2 SCC 210**
- (v) State of M.P. Vs. Anoop Singh, (2015) 7 SCC 773**
- (vi) Abuzar Hossain Vs. State of W.B., (2012) 10 SCC 489**

42. In the case on hand, it is found that the prosecution has withheld birth certificate from school despite availability of such certificate. As per the evidence on record, the victim was studying at Pokhaha Government School. It gives rise to adverse inference against the prosecution in regard to the age of the victim. Hence, benefit of doubt regarding the age of the victim would go to the accused. As per the ossification test, age of the victim has been assessed between 17 and 18 years. In view of the adverse inference and possibility of error of two years even on higher side, the age of the victim is



assessed to be 18 years plus two years, i.e 20 years.

43. Hence, it is found that the victim was not a child at the time of alleged occurrence. Hence, the POCSO Act does not get applied in the case on hand.

44. Now only question is whether the prosecution has proved the charge framed under Section 376 and 341 of the Indian Penal Code.

45. From the perusal of the prosecution evidence on record, it is found that the prosecution witnesses are natural and consistent in their statements. They appear to be trustworthy. There is no major discrepancy or contradiction in their testimony. There is no reason to implicate the Appellant falsely. No suggestion of any enmity or any other reason was given by the Defence for false implication. It is true that in the medical examination done after three days of the occurrence, no injury or spermatozoa has been found on the private part of the victim. However, such findings are not fatal to the prosecution case. Injury or semen are not always found on the private parts of the victims, particularly when she was medically examined after three days of the occurrence. Moreover, semen of human origin and blood have been detected on the salwar cuttings of the victim as per the FSL report.



46. Hence, the prosecution has successfully proved its case against the Appellant under Section 376(1) and Section 341 of the Indian Penal Code beyond all reasonable doubts. However, no charge under the POCSO Act has been proved.

47. In view of the facts and circumstances of the case, the minimum sentence of R.I. for ten years as provided under Section 376(1) of the Indian Penal Code would meet the ends of justice. The applicant is also liable to pay fine of Rs. 500/- under Section 341 of the Indian Penal Code and in case of default to pay the fine, to undergo additional Simple Imprisonment of five days.

48. The Appellant is accordingly convicted and sentenced modifying the Impugned judgment of conviction and the order of sentence.

49. The informant is no doubt victim in terms of section 2(wa) of the Cr.PC, 1973. Hence, she is entitled to compensation under Section 357 and 357A of Cr.PC, 1973.

50. As the appellant has been found guilty under Section 376(1) of the Indian Penal Code, and fine has not been imposed by this Court, he is directed to pay rupees one lac to the victim under Section 357(3) of the Cr.PC within 90 days, failing which he would be liable to undergo additional Simple



Imprisonment of six months. Hon'ble Supreme Court in **Hari Singh Vs. Sukhbir Singh (1988) 4 SCC 551** has held that Court may enforce order of compensation by imposing sentence in default.

51. The compensation of rupees one lac payable by the Appellant to the victim is no doubt insufficient to rehabilitate her. Hence, she is also entitled to compensation under part-II of the Bihar Victim Compensation Scheme, 2014 as framed under Section 357A Cr. PC., 1973.

52. Hence, Bihar State Legal Services Authority is recommended to pay compensation to the victim as per part-II of the Bihar Victim Compensation Scheme, 2014 within two months of the receipt of this order, if not already paid to the victim as per direction of learned Trial Court or pay additional compensation if the amount of the compensation paid is less than her entitlement under part-II of the Compensation Scheme.

53. Here, it would be apposite to refer to **Sunil Kumar Jha Vs. State of Bihar (2024 SCC Online Pat 960)** as decided by **Division Bench of this Court** after referring to relevant statutory provisions and various case laws. Para Nos. 105 to 108 of this case read as follows:

“105. It clearly emerges from the aforesaid statutory provisions and case laws that the Court conducting a criminal trial is duty bound to pass reasoned



order, on the conclusion of the trial, regarding compensation to victims as per Section 357 and Section 357 A Cr.PC, irrespective of conviction, acquittal or discharge. Such order has to be passed by the Trial Court even when the victim has not filed an application for compensation. In such order, the Court is required to give finding whether the alleged offence has been committed or not, and if committed who is victim of the committed offence, and if there is any victim in terms of Section 2 (wa) Cr.PC, whether victim is entitled to compensation under Section 357 and Section 357 A Cr.PC and if yes, how much and from whom.

106. The Appellate and Revisional Court are equally duty bound to pass such order regarding compensation to the victims in their final judgments even if the appeals/revisions have been filed by a party other than the victim, only condition being that appeal or revision or any other proceeding arising out of the crime is pending before the Court.

107. Moreover, victims are entitled to benefits under State Victim Compensation Scheme made under Section 357A Cr.PC even when the concerned offence has been committed prior to the scheme coming into force if the trial, appeal or revision are pending on or after the scheme came into force.

108. In case of conviction of the Accused, compensation payable to the victim may be imposed upon the convict as per his paying capacity either by way of fine or otherwise under Section 357 Cr.PC and if the compensation directed to be paid under Section 357 Cr.PC is not sufficient to rehabilitate the victim, the Court is empowered to recommend the Legal Services Authority to pay the compensation to the victim from the State fund created under Victim Compensation Scheme made under Section 357A Cr.PC. In case of acquittal of the Accused-Appellant, the Court is duty bound to resort to Section 357A Cr.PC to recommend Legal Services Authorities to pay compensation to the victim as per Victim Compensation Scheme of the State as made under Section 357A Cr.PC.”

(Emphasis supplied)

54. Here, it would be also relevant to refer to Dev Narayan Yadav Vs. State of Bihar (2024 SCC Online Pat 3010) as decided by Division Bench of this Court dealing with



compensation to rape victims who are not covered under the
POCSO Act. The relevant para of this case reads as follows:

“59. Here, it would be pertinent to mention that Bihar Victim Compensation Scheme, 2014 was made under Section 357A Cr. PC providing for compensation to victims from State fund named as “Victim Compensation Fund”. The schedule annexed to the Scheme describes the offence/injuries or loss for which compensation is to be paid. Such offences include offences against women also. It also specifies the minimum and maximum amount of compensation provided for specific offences or injuries. The discretion to decide the quantum of compensation has been left with State/District Legal Services Authority as per the Scheme. The Scheme was amended in 2018 enhancing the amount of compensation payable to the victim. In 2019, by way of Bihar Victim Compensation (Amendment) Scheme, 2019, the compensation scheme for women victims/survivors of sexual assault/other crimes, 2019 was added in the Bihar Victim Compensation Scheme, 2014 as its part-II in view of the direction of Hon’ble Apex Court in Civil Writ No. 565/2012 titled “Nipun Saxena and Ors. Vs. Union of Indian and Ors.” and approval of “the compensation scheme for women victims/survivors of sexual assault/other crimes-2018 prepared by NALSA.”

.....
61. It is also relevant to mention that part-I of the Scheme of 2014 and newly added part-II of the Scheme, at times, overlap because Part-I of the Scheme also deals with offences against women, but the quantum of the compensation provided in part-I is less than what has been provided in part-II. Hence, after addition of part-II, specifically dealing with compensation to women victims, part-I of the Scheme has become redundant to the extent the offence is covered by Part-II and the State is duty bound to apply part-II of the Scheme in case payment of compensation to women victims is covered by both parts of the scheme.”

(Emphasis supplied)

55. The appeal is accordingly disposed of, modifying the impugned judgment of conviction and order of sentence, and recommending Bihar State Legal Services Authority to pay



compensation as per the above-noted direction.

56. Office is directed to send a copy of this order to Secretary of Bihar State Legal Services Authority for information and needful.

(Jitendra Kumar, J.)

S.Ali/Shoaib/
Chandan-

AFR/NAFR	AFR
CAV DATE	12.07.2024
Uploading Date	26.07.2024
Transmission Date	26.07.2024

