

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.912 of 2024

Arising Out of PS. Case No.-83 Year-2016 Thana- KADAMKUAN District- Patna

Sunil Kumar, son of Late Umashankar Prasad, Resident of Flat No 410 Nawal Kala Appartment Park Road, P.S. - Kadamkuan District -Patna.

... .. Appellant

Versus

1. The State of Bihar
2. Suraj Kumar, son of Late Bishundeo Prasad, Resident of Village- Baikunth Dham, Park Road, Ps- Kadamkuan, Dist- Patna.

... .. Respondents

Appearance :

For the Appellant	:	Mr.Vindhya Keshri Kumar, Sr. Advocate Mr.Madhusudan Rai, Advocate
For the State	:	Mr.Anita Kumari Singh, Addl.PP
For the Resp. No. 2	:	Mr.Suraj Kumar, (In-Person)

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 13-11-2024

Heard Mr. Vindhya Keshri Kumar, learned senior counsel duly assisted by Mr. Madhusudan Rai, learned counsel for the appellant, Mrs. Anita Kumari Singh, learned Additional Public Prosecutor for the State and Mr. Suraj Kumar, respondent no. 2, appearing In-Person.

2. The present appeal filed on behalf of the appellant/informant under Section 372 of Code of Criminal Procedure, 1973, which has been preferred against the judgment of acquittal dated 05.12.2023 rendered by learned Additional District & Sessions Judge-VI-cum-Special Judge, POCSO Act, Patna in connection with Special (POCSO) Case



No. 29/2016 arising out of Kadamkuan P.S. Case No. 83 of 2016, whereby and whereunder the present respondent no. 2 has been acquitted from the charges levelled against them.

3. Brief facts of prosecution case, as appearing from the statement of the informant (PW-1), is that on 23.02.2016, while the informant was searching his son, aged about 13 years, his relative asked him to reach immediately at Hotel Regency, Janak Kishore Road, Kadamkuan, Patna. When the informant reached there, he found his son frightened and tortured. The victim boy informed the informant that the owner of the Hotel has tortured him sexually. The informant stated that his son reached at the Hotel on 23.02.2016 at about 3 p.m. and went on to third/fourth floor of the Hotel, where two of his relatives were staying, but they had vacated the hotel premises at about 12/1 p.m. The informant alleged that when his son was returning from hotel, at the Reception, Suraj Kumar (Respondent No. 2) stopped him, sexually harassed and beaten him. Due to injury, blood started oozing from his mouth. The informant further stated that accused persons



threatened the victim boy that he will kill him, if he made any complaint.

4. After recording aforesaid information, the formal FIR being Kadamkuan P.S. Case No. 83 of 2016 dated 23.02.2016 was registered under Sections 341, 323 and 504 of the Indian Penal Code and Section 12 of the POCSO Act. The Investigating Officer carried out the investigation, and submitted charge-sheet against the accused Suraj Kumar on 18.08.2016 under Section 341, 324, 504 of the I.P.C. and Section 12 of the POCSO Act.

5. The learned Special Judge, POCSO Act, Patna has taken cognizance in the aforementioned sections, where charges have been framed against the accused/respondent no. 2 on 07.03.2016, which the accused/respondent no. 2 pleaded not guilty and claimed to be tried.

6. The prosecution has examined altogether four witnesses, they are (1) Sunil Kumar (PW-1/father of the victim boy); (2) Pawan Kumar @ Amit Prabhakar (PW-2); victim boy (PW-3) and Srikand Paswan (PW-4/I.O. of the case).



7. The prosecution has also produced certain documents, which are as under:

- (1) Exhibit-1 Written statement;
- (2) Exhibit-2 Registration of offence;
- (3) Exhibit-3 Formal FIR and
- (4) Exhibit-4 Marksheet of class Xth of the victim.

8. The statement of the respondent no.2/accused was recorded under Section 313 of the Code, where he denied the evidences surfaced against him and claimed his complete innocence. In his defence, he has produced three witnesses, they are (1) Deepak Prakash (DW-1); (2) Saraswati Barnwal (DW-2) and (3) Suraj Kumar/accused (DW-3). Thereafter, the defence has also produced certain documentary evidence in his support, which are as under:

Number of Exhibits	Details of documents
Exhibit-D1	Photocopy of PAN Card
Exhibit-D2	Original copy of booking by Mayank Raj
Exhibit-D3	Receipt of booking dated 21.10.2015
Exhibit-D3(1)	Second receipt of booking dated 08.02.2016
Exhibit-D4	16 photograph who is total in three pages
Exhibit-X Mark	Photocopy of entry registration of Hotel.
Exhibit-M.O.	Pen Drive
Exhibit-D5	The application has been given to the senior superintendent of police.
Exhibit-D6	A document of treatment and discharge of AIIMS, Delhi.
Exhibit-7	A photocopy of temporary residence certificate of



	Digvijay Prakash.
Exhibit-D8	A receipt of Indira Gandhi Cardiology Institute of Patna.
Exhibit-D9	Provisional entry letter and official order by Indira Gandhi Cardiology Institute, Patna of Digvijay Prakash.
Exhibit-10	A photocopy of Memorandum of AIIMS, Delhi and the original form of reporting in the light of the memorandum.

9. After the conclusion of trial, the learned Trial Court acquitted the respondent no.2/accused through impugned judgment from the charges levelled against him. Being aggrieved, with aforesaid order of acquittal, appellant/informant preferred the present appeal.

10. Hence, the present appeal.

11. It is submitted by Mr. Vindhya Keshri Kumar, learned senior counsel appearing on behalf of appellant that the victim was 13-14 years old at the time of occurrence and he was minor. It is submitted that the victim being PW-3 supported the occurrence of sexual harassment during the trial, where nothing appears out of his cross-examination to disbelieve his version and, therefore, the judgment of acquittal as passed by learned trial court appears bad in the eyes of law.



12. It is also pointed out by learned senior counsel that the occurrence was given a colour of general dispute arising out of payment of bill, but same is only to mitigate the allegation. It is submitted that during the occurrence, victim has received physical injury also.

13. Learned senior counsel further submitted that learned trial court completely overlooked the testimony of prosecution witnesses which is almost consistent, even no contradiction was made out from the deposition of I.O. who examined as PW-4 during the trial.

14. It is submitted that totality of evidences and testimony of victim in particular was sufficient to establish the foundational aspect of the crime in question as to import the provision of Sections 29 & 30 of the POCSO Act, which was completely overlooked by the learned trial court and, therefore, the finding of learned trial court is completely perverse and required to interfere.

15. Heard learned Additional Public Prosecutor for the State and respondent no. 2 in-person.

16. It is submitted by learned A.P.P. that relative of



the victim boy booked room in the Hotel Regency. It is submitted that they are neighbours and due to differences of some payment arising out of room charge and other materials, which was tune of Rs. 12,540/-, the present false case was lodged. It is submitted that at the time of occurrence the Hotel Regency was under watch of CCTV footage and respondent no. 2 produced all such footage during the trial, which clearly shows that at the time of alleged occurrence, the victim was not available in the Hotel. It is also pointed out by learned A.P.P. and respondent no. 2 that there are major contradictions regarding time and the manner of occurrence, which can be easily gathered from the testimony of prosecution witnesses and, therefore, the learned trial court rightly recorded the judgment of acquittal.

17. In support of his submission, the learned A.P.P. and also respondent no. 2 relied upon the legal report of Hon'ble Supreme Court as available through **Babu Sahebagouda Rudragoudar Vs. State of Karnataka** reported in **2024 SCC Online SC 561**; and **Chandrappa and Others Vs. State of Karnataka [(2007) 4 SCC**



415].

18. I have perused the Trial Court Records carefully and gone through the evidence available on record as also considered the rival submissions canvassed by learned counsel appearing on behalf of the parties.

19. After hearing the arguments and upon perusal of record, it appears that the evidence as surfaced during the trial is required to be discussed for the purpose of its re-appreciation for the just and proper disposal of the present appeal.

20. The most important witness of this crime in question is **victim (PW-3)** himself. It appears from his deposition that at present, he is the student of engineering and on the alleged date of occurrence, when he came to the Hotel, no staff were present there and only respondent no. 2/accused was present. It was deposed that respondent no. 2 firstly abused him by taking the name of his 'Mausi', resultantly, he was shocked and he could not raised any alarm. He informed the occurrence to his maternal uncle (Mama) at about 3:00 p.m. After that, he went to car parking



of Nawalkala Apartment, where he met with his maternal uncle. It also appears from his testimony that during occurrence, out of physical assault, he received injury on his lips. He was not treated for said injury. It was dress-up at home. He informed everything about the occurrence to police. He could not say whether his statement was recorded by police or not. He admitted that Mayank Raj is his cousin brother and lives in same apartment. He could not deposed whether any CCTV camera was installed at reception counter of the Hotel Regency. He was not produced before any court for recording his statement by police. He was not in a position to disclosed whether his family members booked 12 rooms in Hotel Regency, which belongs to respondent no. 2/accused, but subsequently he stated that his relatives were stayed there who came on the occasion of marriage of his cousin brother and, for the said reason, he went there to visit his 'Mausi'. He denied the allegation that for payment related dispute, respondent no. 2/accused was falsely implicated with the present case.

21. **PW-1 is Sunil Kumar**, who is the father of



victim and informant of this case. It appears out of his examination-in-chief that the occurrence took place on 23.02.2016 at somewhere between 5 to 5.30 p.m. At that point of time, he was at his home and he received information over telephone as to come Hotel Regency immediately by PW-3. When he went there, he found that his son was badly assaulted by respondent no.2 namely, Suraj Kumar, who also behaved indecently with him. He categorically stated that his son was sexually harassed. He came to know that CCTV camera of Hotel was not working, whereafter he lodged his written information regarding the occurrence with police, which he identified with his signature during the trial and, upon his identification, same was exhibited as **Exhibit-1**. He categorically stated that statement of the victim was not recorded under Section 164 of the Cr.P.C.

21.1. In cross-examination, it appears that he received information somewhere between 5:00 to 5:30 p.m. as to come Hotel Regency. It was stated that victim was weeping in car parking and he was informed regarding the occurrence by his brother-in-law namely, Pawan Kumar @



Amit Prabhakar (PW-2). It was stated that he was not the eye witness of the occurrence. He also stated that his son was not medically treated. It was stated that some persons stayed in the Hotel of accused/respondent no. 2 on the occasion of marriage. The room was booked by one Narendra Kumar. He is not related with Sushma Sao. He denied that due to payment related issue with regard to booking of twelve rooms of the Hotel, he falsely implicated respondent no. 2/accused.

22. PW-2 is Pawan Kumar @ Amit Prabhakar.

He deposed in his examination-in-chief that occurrence is of 23.02.2016 which took place around 3:00 p.m. It was stated that when he came to the parking of his apartment at about 5:00 p.m., he found that victim was weeping near to gate. He found injury on his hand and lips from where the blood was slightly coming out. When he enquired him regarding the occurrence, he found him upset and thereafter he narrated that he visited Hotel Regency before two hours to meet the guest and when he was returning no one was present at the reception except respondent no. 2, who called him and after abusing his relatives, started to assault him and thereafter



started opening his pant and touched his private part.

22.1. Upon cross-examination, it was stated by him that the room was booked from 21.02.2016 to 23.02.2016 in Hotel Regency which belongs to the respondent no. 2/accused. Total twelve rooms were booked there. It was stated that only six cartons water were used by the guest, who were stayed there. He stated not to be an eye witness of the occurrence. He denied the suggestion that some altercation took place regarding rent of six rooms and cost of six cartons of water with respondent no. 2/accused, whereafter the relatives of the victim made vandalism in Hotel and damaged different items, which was kept at the Reception of Hotel and just to save from all such allegations, they implicated falsely accused/respondent no. 2.

23. **PW-4 is Srikant Paswan.** He is the Investigating Officer of the case. It appears from his deposition that he was not sure whether CCTV was installed in the Hotel Regency or not. He could not replied the maximum questions as advanced by respondent no. 2, however, it appears that statement of the victim under Section 164



Cr.P.C. was not recorded by him. It was also stated by him that he found during investigation that Hotel Regency was booked on 20.2.2016 for six rooms against cash of Rs. 7100/- for three days i.e. 21.02.2016 to 23.02.2016, where Rs. 3100/- was received in advance and rest of the amount was to be paid at the time of check-out.

24. It appears from the deposition of DW-2, who is none but the wife of the accused/respondent no. 2 that she produced photographs from the CCTV footage, which was procured by his son, who came to them after the alleged occurrence. As per Exhibit-D4 and MO (Pen-drive) of CCTV footage, victim boy was not found in Hotel at the time of occurrence. It appears from her deposition that his elder son was a pediatric surgeon at Delhi and her second son was the student of second year M.B.B.S. She deposed that her elder son suffered lot of mental agony out of this false implication, which also caused huge financial loss to her in connection with treatment of her son who became a psychiatric patient out of false implication of his father. Due to ill mental health of his son out of occurrence, he loosed his academic year and for



that she paid huge penalty amount to medical college.

25. It appears from all such aforesaid available evidences that the statement of the victim under Section 164 Cr.P.C., which may be a vital piece of documents for purpose of contradiction or corroboration of the occurrence, was not recorded in the present case. In case of physical and sexual assault, statement of victim under Section 164 Cr.P.C. and medical examination of the victim are essential, but both are missing in the present case. The victim and PW-2 stated that the occurrence took place somewhere about 3:00 p.m., whereas as per informant/PW-1, occurrence took place somewhere between 5:00 to 5:30 p.m. From the deposition of victim, at first instance, it appears that this is a case of abuse and simple physical assault, which was given a colour of sexual harassment. It nowhere appears from the deposition of PW-1 that any attempt for removing cloths was made by accused/respondent no. 2. It can be gathered from the deposition of PW-2, who is Pawan Kumar @ Amit Prabhakar that he never informed regarding occurrence to the father of victim, who is informant/PW-1, which makes entire



information doubtful on its face, as PW-1 categorically stated that he received information *qua* occurrence from PW-2 only. Booking of Hotel was also not denied. It was not brought during investigation that the entire booking amount was paid and, therefore, the dispute regarding payment of bill cannot be ruled out straightway.

26. In view of aforesaid contradictions, it can be said safely that prosecution failed to established the foundational aspect of crime in question as to import the presumption of Section 29 & 30 of the POCSO Act, which was correctly appreciated by learned trial court through judgment under challenge.

27. It would be appropriate to reproduce **Para '39'** of the legal report of Hon'ble Supreme Court as available through **Babu Sahebagouda Rudragoudar (supra)** which reads as under:

"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the followed principles;
(a) That the judgment of acquittal suffers from



patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

28. It would further be appropriate to reproduce **Para '42'** of the legal report of Hon'ble Supreme Court as available through **Chandrappa and Others (supra)** which reads as under:

“**42.** From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the



reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

29. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that an appellate court must bear in mind in a case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person is presumed to be innocent unless he is proved guilty by competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial



Court. Further, if two reasonable conclusions are possible on the basis of the evidence on the record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.

30. Keeping in view of the aforesaid principles laid down by the Hon’ble Supreme Court to the facts of the present case, as discussed hereinabove, and examined, I am of the view that the Trial Court has not committed any error while passing the impugned judgment and, therefore, no interference is required.

31. Hence, in view of aforesaid factual and legal discussions, the present appeal, which is preferred against acquittal, is dismissed herewith, at admission stage itself.

32. Copy of this judgment be sent to learned trial court, immediately alongwith TCR, if any.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.11.2024
Transmission Date	29.11.2024

