

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.198 of 2021

Arising Out of PS. Case No.-11 Year-2018 Thana- DHAMDAHA District- Purnia

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Babloo Mandal, Son of Late Anandi Mandal, R/O Village- Madrouni, P.S.-
Dhamdaha, Dist.- Purnia Appellant

Versus

The State of Bihar Respondent

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Appearance :

For the Appellant/s : Mr. Kumar Praveen, Advocate
For the State : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-11-2024

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. Even though we find that the informant has entered
appearance through his Advocate but no one has appeared on
behalf of the informant.

3. This appeal has been preferred for setting aside the
judgment of conviction dated 21.12.2020 (hereinafter referred to
as the ‘impugned judgment’) and the order of sentence dated
05.01.2021 (hereinafter referred to as the ‘impugned order’)
passed by the learned Additional Sessions Judge, 7th-cum-Special
Court (POCSO), Purnia (hereinafter referred to as the ‘learned
trial court’) in Spl. (POCSO) Case No. 06/2018 (C.I.S. No.
06/18) arising out of Dhamdaha P.S. Case No. 11 of 2018.



4. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code (in short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and by the impugned order, the appellant has been ordered to undergo rigorous imprisonment for 20 years with a fine of Rs. 50,000/- under Section 376 IPC and in default of payment of fine, he shall further undergo simple imprisonment for one year and further ordered to undergo rigorous imprisonment for 20 years with a fine of Rs. 10,000/- under Section 4(2) of the POCSO Act and in default of payment of fine, he shall further undergo simple imprisonment for one year.

Prosecution Case

5. As per the prosecution story, the informant (P.W.-4) has alleged that in the evening of 16.01.2018, the victim girl was playing outside her house and when she did not return, then he along with his wife went in search of his daughter. In course of search, they reached near the house of the appellant where he heard the sound of cry of his daughter (X) whereafter he ran into the courtyard of the appellant's house and found that the room was bolted from inside and the victim girl was crying from inside the room. The informant claimed that when he knocked the door then this appellant came out and fled away. P.W.-4 has further



stated that his daughter (X) came outside the room and he found that she was bleeding from her private part and from that he believed that the appellant had committed rape upon his daughter. His daughter had also disclosed that the appellant had committed rape on her. In his written application dated 18.01.2018 (Ext.1), P.W.-4 has explained the delay in lodging of the F.I.R. saying that when he reached the police station on 17.01.2018, he found that all the police officers had gone in the duty of the Chief Minister to Jalalgarh whereafter he returned with his daughter and on 18.01.2018, he lodged the F.I.R.

6. On the basis of the written application (Exhibit '1'), Dhamdaha P.S. Case No. 11 of 2018 dated 18.01.2018 was registered under Section 376 IPC and Section 3 and 4 of the POCSO Act. After investigation, Police submitted chargesheet bearing no. 60 of 2018 dated 27.06.2018 against the appellant under Section 376 IPC and Section 3 and 4 of the POCSO Act. On the basis of this chargesheet, learned trial court took cognizance on 31.07.2018 under Section 376 IPC and Section 4 of the POCSO Act. On 27.11.2018, charges were framed against the appellant under Section 376 IPC and Section 4 of the POCSO Act. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

7. In course of trial, the prosecution examined seven



witnesses and exhibited two documents to prove the prosecution case. The list of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

P.W.-1	wife of informant and mother of the victim girl
P.W.-2	Sonelal Mandal (Co-villager)
P.W.-3	Anuj Mandal (Hearsay)
P.W.-4	Informant and father of the victim girl
P.W.-5	Parshuram Mandal (Co-villager/Hearsay)
P.W.-6	Barmeshwar Singh (I.O.)
P.W.-7	Dr. Shiv Priya Singh (conducted medical examination of the victim girl)

List of Exhibits

Exhibit ‘1’	Signature of S.H.O. DMD of Sri Anmol Kumar in forwarding of fardbeyan of Spl.No. 6/18
Exhibit ‘2’	Injury report of victim

Findings of the Learned Trial Court

8. After analyzing the evidences of the prosecution witnesses and the arguments advanced on behalf of the prosecution and the defence, learned trial court found that the mother of the victim (PW-1) has supported the prosecution case and there is no contradiction in her statement. She had told the



Doctor that a man had tried to assault the victim girl when he found her alone but in her cross-examination, she denied the suggestion that she had said this to the Doctor.

9. It has been noticed by the learned trial court that Sonelal Mandal (PW-2) is an independent witness who has clarified that he found the victim girl crying and she had told him that Babloo had committed crime with her. The learned trial court has found that although the Doctor (PW-7) has said that no evidence of rape was found during the investigation but the Doctor had not ruled out the possibility of any such incident with the victim girl.

10. The learned trial court has further observed that the argument on behalf of the defence side is not consistent as it is sometimes based on rural politics, sometimes it is based on money transaction and sometimes it is the illegal relationship of the informant's wife with the accused. The learned trial court found that such inconsistencies in arguments make the defence argument weak. The defence side has failed to bring any such contradictions in the cross-examination of the informant.

11. The learned trial court has further found that the victim girl has not been examined in this case, however, defence has not put much emphasis on this point. It has been observed that the I.O. has stated that in the year 2018, the victim girl was



4-5 years old, she was unable to tell about the incident. She was brought to the court for her Section 164 CrPC statement but her statement could not be taken. Even she could not give her statement in Mahila Police Station. The learned trial court has held that when such occurrence takes place with such a young girl then it seems very natural that she would get scared and not be able to say anything in front of the Magistrate or police officer. Therefore, considering the circumstances, the absence of the statement under Section 164 CrPC does not seem a serious fault in the prosecution.

12. Therefore, the learned trial court after close scrutiny of the evidences available on the record came to a conclusion that the prosecution has been able to prove its case against the appellant Babloo Mandal beyond all reasonable doubts and held the appellant guilty for the offences punishable under Section 376 IPC and Section 4 of the POCSO Act.

Submissions on behalf of the appellant

13. Learned counsel for the appellant submits that on a bare reading of the evidences of the prosecution witnesses, it would appear that they have given different versions at different stages. The informant (P.W.-4) alleged in his written application (Exhibit '1') that when he heard the screaming of his daughter, he ran into the courtyard of the appellant and found that the room



was bolted from inside and the victim girl was crying from inside the room. In his application, he has stated that he knocked the door then the appellant came out and fled away whereafter his daughter (X) came outside the room. She was bleeding from her private part. In course of his examination-in-chief, however, he improved upon his earlier version and stated that when he reached near the house of the appellant and opened the gate then he saw that the appellant was committing rape with his daughter.

14. Learned counsel submits that the mother of the victim has been examined as P.W.-1. She had taken the victim to the Doctor (P.W.-7). P.W.-7 has prepared the injury report of the victim which has been marked Exhibit '2' and on perusal of Exhibit '2', it would appear that the Doctor has recorded the history as provided by the mother of the victim. According to the mother of the victim, she was at work and her daughter was alone at home. On 16.01.2018 at 05:00 PM, one man came and tried to commit physical assault. The Doctor has recorded that the victim is not giving any history. It is, thus, submitted that the place of occurrence as well as the manner of occurrence have been changed by the prosecution witnesses in course of trial.

15. Learned counsel further submits that the informant has not explained in his written application (Exhibit '1') the reasons for not lodging the case for two days and the initial



treatment particulars of the victim has not been proved in course of trial.

16. Learned counsel submits that the injury report which has been prepared by the Doctor (P.W.-7) would show that there was no evidence of any sexual assault at the time of her medical examination. The Doctor found that there was no perforation of clitoris and hymen, no bleeding and no evidence of bodily injury on private part of the body. It is, thus, his submission that there is not even a prima-facie evidence of commission of rape upon the victim.

17. Learned counsel submits that in this case, the prosecution has failed to lay down the foundational facts which would be required to attract the presumption of Section 29 of the POCSO Act.

18. On these grounds, the appellant seeks setting aside of the impugned judgment and order.

Submissions on behalf of the State

19. On the other hand, learned Additional Public Prosecutor for the State has opposed the appeal.

20. It is submitted that the learned trial court has held that the informant and the mother of the victim have fully supported the prosecution case and no contradiction may be found in their statements. P.W.-2 is an independent witness who



had seen the victim girl weeping and the victim girl had told him that Babloo had committed crime. It is submitted that even as the Doctor has not found any evidence of rape but it has been opined that the possibility of rape cannot be ruled out. It is lastly submitted that the plea of the defence that the accused has been falsely implicated is not fit to be accepted as no cogent evidence in this regard has been brought on the record. It is submitted that the learned trial court's judgment needs no interference.

Consideration

21. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also perused the trial court records.

22. This Court finds from the evidence on the record that the informant (P.W.-4) in his examination-in-chief has stated that when he reached near the house of the appellant and opened the gate then he saw that the appellant was committing rape with his daughter. He tried to catch hold of him but he fled away after setting himself a free. He had gone to the lady doctor who had sent him to police station but when the case was not lodged in the police station then he again returned to the Doctor from the victim was referred to Sadar Hospital, Purnia. He submitted the written application in the police station only after his return to his home. He was suggested in course of cross-examination by the



defence that the appellant had illicit relationship with his wife and P.W.-4 had some dealing of money transactions with the appellant and only in order to usurp the money of the appellant, he had lodged this false case.

23. From the evidence of the informant, it appears that he has materially changed his version in course of trial. While in the written application, he has stated that the door was bolted from inside and when he knocked the door then the appellant came outside the room and fled away and his daughter was bleeding from her private part but in his examination-in-chief, he has stated that he opened the gate and found that the appellant was committing rape with his daughter. He has not stated that he found his daughter bleeding from her private part.

24. Further, this Court finds that the reasons provided by him in the written application (Exhibit '1') for not lodging the case for two days has not been stated in his examination-in-chief. He has stated that he had taken his daughter to the lady doctor who sent him to the police station. The prosecution has not proved any medical examination report of the lady doctor to whom the victim was taken on 16.01.2018. The only medical evidence which has been brought on record is the injury report of the victim (Exhibit '2') which has been proved by the Doctor (P.W.-7). On perusal of Exhibit '2', it would show that the Doctor



(P.W.-7) has recorded the history in the following words:-

“According to the victim’s mother she was at work and her daughter was alone at home on 16.01.2018 at 5:00 P.M., one man came and tried for physical assault. (victim is not giving any history)”

25. From this part of the writing on the injury report by the doctor, it appears that the victim did not make any statement of physical assault upon her. Her mother had given the history of the assault and according to her, the physical assault had taken place in her house when the victim was alone at home.

26. This Court further finds from the injury report that on examination of the victim, the doctor noted the following observations:-

“P/A – Soft, non-tender
P/V – No perforation of clitoris and hymen
No bleeding.
No evidence of body injury on private parts of body.
According to radiological reports (done at Sadar hospital by radiologist) of the pelvis joint, wrist joint and elbow joint X-Ray plate no. 532 shows the age of the victim between six years to seven years (6 years- 7 years) and according to dental check up done by the dentist of Sadar Hospital shows the age of the victim above five years and below 7 years. Vaginal swab (done at Sadar Hospital by Pathologist) shows no spermatozoa. So



according to above findings there is no evidence of any sexual assault found at the time of examination. Although its possibilities could not be ruled out.”

27. From the above observations of the Doctor in the injury report, it appears that the Doctor did not find even *prima facie* evidence of any commission of sexual assault upon the victim. There is no finding that labia majora or labia minora were in tender condition rather the doctor has found no perforation of clitoris and hymen and there was no bleeding. There was no evidence of bodily injury on private part of the body. This injury report of the victim (Exhibit ‘2’) completely rules out the statement of the informant (P.W.-4) that he had seen the appellant committing rape upon his daughter.

28. This Court further finds that the victim is though 6-7 years old and the doctor who examined her has recorded that she was conscious, alert and cooperative but this Court finds that the victim was not giving any statement before the doctor. No statement of the victim has been recorded by the I.O. He has stated that the victim was taken to a Judicial Magistrate for recording of her statement but the statement could not be recorded. Why the statement of the victim could not be recorded under Section 164 Cr.P.C. is not known. It is, thus, evident that in



this case, the victim of the alleged crime was though in a position to speak but she was not presented before the competent Magistrate for recording of her statement.

29. Apart from the aforementioned facts, this Court finds from the evidence of the I.O. (P.W.-6) that in his cross-examination, he has stated that the place of occurrence in this case is the house of the informant. Thus, the claim of the informant (P.W.-4) that the appellant was committing rape upon the victim girl in his own house inside the room stands falsified and the place of occurrence itself is not proved. The I.O. has further stated that the written application was submitted by the informant one day after the occurrence.

30. This Court has noticed from the materials on the record that so far as the other prosecution witnesses are concerned they are not material witnesses and had not seen the victim girl in the house of the appellant. No one had even seen the victim girl in the company of this appellant.

31. In the opinion of this Court, the trial court has completely erred in appreciating the evidences on the record. Even the basic foundation of fact which are required to be proved to attract the presumption in terms of Section 29 of the POCSO Act have not been laid by the prosecution in this case.

32. The impugned judgment and order of learned trial



court are not sustainable. This Court, therefore, sets aside the impugned judgment and order and acquit the appellant of the charges giving him benefit of doubt. The appellant shall be released forthwith, if not wanted in any other case.

33. The appeal is allowed.

34. Let a copy of this judgment along with the trial court’s records be sent back to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2024
Transmission Date	NA

