

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.969 of 2022**

Arising Out of PS. Case No.-425 Year-2017 Thana- RAMNAGAR District- West Champaran

Sukat Sah, son of late Yamuna Sah, Resident of Village - Narayanpur,
P.s.- Ramnagar, Distt.- West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Ravishankar Sahay, Advocate Ms.Pruna Anand, Advocate
For the Respondent	:	Mr.Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 08-01-2024

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

2. The present appeal has been preferred challenging the impugned judgment of conviction dated 19.02.2022 and order of sentence dated 21.02.2022, respectively passed by learned Additional Sessions Judge – VIIth-cum-Special Judge (POCSO), West Champaran, Bettiah in connection with Ramnagar P.S. Case No. 425 of 2017, whereby and whereunder the appellant/accused was found guilty under Section 376 of the Indian Penal Code (in short the ‘I.P.C.’) and Section 4 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the ‘POCSO Act’) and sentenced him to undergo rigorous imprisonment



for a period of seven years and R.I. for ten years with a fine of Rs. 20,000/-, and in default of payment of fine, to further undergo imprisonment for one month.

3. The prosecution case in brief is that on 09.11.2017, while the informant had gone to attend the call of nature at 6:00 P.M. in the field of sugarcane behind her house, one villager namely, Sukat Sah (the appellant), who was there from before, caught her and dragged in the sugarcane field and after shutting her mouth, committed rape upon her. The appellant kept her whole night, but anyhow she managed to escape from there and narrated the whole story to her parents, thereafter her father brought her to police station and filed written information in this regard.

4. On the basis of aforesaid information, police registered a case as Ramnagar P.S. Case No. 425 of 2017 dated 10.11.2017 for the offences under Section 376 of the Indian Penal Code and 4, 6 of the POCSO Act, whereafter investigation the charge-sheet was submitted on 31.12.2017 under the above-mentioned sections and thereafter charges were framed on 28.02.2019, which he pleaded “not guilty” and claimed trial.

5. To substantiate it's case, prosecution examined



total of two witnesses in support of it's case, who are Chhotelal Choudhary (PW-1), who is the father of the victim and Sarita Devi (PW-2), who is the mother.

6. On the basis of evidences/incriminating circumstance as surfaced during the trial, statement of accused was recorded under section 313 of the Cr.P.C. by explaining those evidences/ circumstances to him, for which he shows his complete innocence.

7. No witness was examined in defence.

8. After conclusion of trial, the learned trial court has awarded the sentence as stated hereinabove, being aggrieved of which, appellant/convict preferred the present appeal.

9. Hence, the appeal.

10. Learned counsel appearing on behalf of the appellant-convict submitted that the trial court has failed to appreciate the fact that the parents of the victim, who were examined as PW-1 and PW-2, were not supported the case of the prosecution rather denied the offences. It is submitted that neither the manner nor the place of occurrence has been found proved as Investigating Officer and doctor were not examined. It is stated that the learned trial court has erred in



recording finding of conviction as most important witness i.e. victim of this case has also not been examined in this case.

11. Learned Additional Public Prosecutor while arguing for the State submitted that learned trial court has rightly convicted the appellant/convict under section 376 of the I.P.C. and section 4 of the POCSO Act. Learned A.P.P. submitted that the mother of the victim has supported the case of the prosecution and victim has given her statement under Section 164 Cr.P.C. that rape/penetrative sexual assault was committed upon him by the appellant/accused.

12. Lower Court records and proceeding was perused and also upon consideration of arguments as raised by learned counsel appearing on behalf of the parties, it appears apposite to discuss evidence for the sake of re-appreciation which is as under:-

13. PW-1 namely, **Chotelal Choudhary**, who is the father of the victim deposed through his examination-in-chief that on the alleged date of occurrence, the age of his daughter was 14 years, she had gone to attend the call of nature but did not return back. PW-1 stated that his daughter had returned home herself on next day and she stated that Sukat Sah (the appellant) had abducted and taken her in



sugarcane field and committed rape upon her. PW-1 further stated that he had submitted an application before the S.H.O. and signature of his daughter is there on the application and he had put his thumb impression on the application which is exhibited as Exhibit -1. He further stated that statement of the victim under Section 164 Cr.P.C. was recorded in the court of Bagaha and his daughter was medically examined by the doctor at M.J.K. Hospital, Bettiah.

13.1. In Cross examination, PW-1 stated that no rape has been committed with the victim. He has filed a case against the villagers of his village and the thumb impression, which he had put on the application, was put in the village. He further stated that there was a quarrel in the village and people of the village had lodged the case. He denied that he had gone to the police station, police had never taken his statement and the case, which was filed, he is giving his statement, whereas this type of incident never happened.

14. PW-2 namely, Sarita Devi, who is the mother of the victim, deposed through her examination-in-chief that the victim is her step-daughter and the incident is more than one year. The alleged occurrence has taken place at 7:00 P.M. She further alleged that Sukat Sah has committed rape upon



her daughter while she had gone to attend the call of nature. She stated that she received this information from one Madhu Sah not from the victim. She further deposed that she recognised Sukat Sah (the appellant), who is present in the court.

14.1. In her cross examination, PW-2 deposed that She knows Sukat Sah (the appellant) because he resides in her neighbourhood. She deposed that she had no knowledge about the alleged occurrence personally. She states that the victim doesn't tell her anything because she scold her every time and she further deposed that one Madhu Sah had given the alleged information at 7:00 P.M.

15. It appears from the testimony of PW-1 and PW-2, who are the father and mother of the victim respectively, is not supporting the prosecution case. In cross-examination, PW-1 clearly denied the allegation of rape committed upon the victim. He has stated that no rape has been committed with the victim/his daughter. PW-1 stated that he had put his thumb impression on the application in village and lastly he has again denied the allegation of rape committed by the appellant. PW-2 who is the mother of the victim, has deposed in her cross examination that she knows Sukat Sah because he



is her neighbour and she had no knowledge about the alleged incident.

16. It further appears from perusal of impugned judgment that the conviction was made by considering the statement of victim as made under Section 164 Cr.P.C. It is well settled law that the statement under Section 164 Cr.P.C. can be used only for purpose of corroboration/contradiction and is not a substantial piece of evidence, on the basis of which conviction can be secured. Moreover, the place of occurrence also not appears to establish in this case as the Investigating Officer of this case was not examined. Doctor was also not examined. Interestingly, the victim was also failed to examine in this case.

17. Having aforesaid evidence in hand, it cannot be said that prosecution established it's case during trial beyond reasonable doubt and, as such, the judgment of conviction and order of sentence is hereby quashed and set-aside.

18. Accordingly, the present appeal is allowed.

19. The impugned judgment of conviction dated 19.02.2022 and order of sentence dated 21.02.2022 respectively passed by learned Additional Sessions Judge – VIIth-cum-Special Judge (POCSO), West Champaran, Bettiah



in connection with Ramnagar P.S. Case No. 425 of 2017 is set-aside

20. The appellant/convict is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his detention is required in any other case. Fine, if any, paid be also returned to appellant-convict immediately.

21. LCR of this case along with copy of the judgment be returned to learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	11.01.2024
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