

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.254 of 2022

Arising Out of PS. Case No.-40 Year-2019 Thana- MAHILA P.S. District- Siwan

Laddan Miyan, Son of Late Ali Asgar, R/O Village- Sheikh Mohalla, P.S.-
Siwan Town, District- Siwan

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arbind Kumar Singh, Advocate

For the Respondent/s : Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-11-2024

1. We have heard Mr. Arbind Kumar Singh, the learned Advocate for the appellant and Mr. Satya Narayan Prasad, the learned APP for the State.

2. The appellant has been convicted under Section 376(AB) of the Indian Penal Code and Sections 4, 6 and 8 of the POCSO Act, 2012 *vide* judgment dated 08.02.2022 passed by the learned Additional District and Sessions Judge-VI-cum-Special Judge POCSO, Siwan in Special POCSO Case No. 153 of 2019, arising



out of Siwan Mahila P.S. Case No. 40 of 2019. By order dated 18.02.2022, he has been sentenced to undergo R.I. for twenty years and to pay a fine of Rs. 10,000/- under Section 376(AB) of the IPC; R.I. for ten years and to pay a fine of Rs. 5,000/- under Section 4 of the POCSO Act, 2012; R.I. for twenty years and to pay a fine of Rs. 10,000/- under Section 6 of the POCSO Act, 2012; and R.I. for three years and to pay a fine of Rs. 3,000/- under Section 8 of the POCSO Act, 2012.

3. The sentences have been ordered to run concurrently.

4. The appellant is alleged to have raped a ten years old girl.

5. The FIR has been lodged by the mother of the victim. She had submitted a written report addressed to the Mahila Police Station, Siwan, alleging that on 23.06.2019, her 11 years old daughter (P.W. 1) had gone to the shop of the appellant to purchase chocolates. The appellant took her upstairs and



committed rape on her in his kitchen. When the daughter of the informant came back, she narrated about the occurrence. When the informant accosted the appellant, he and his wife shouted at her and said that her daughter (victim) was a mad girl.

6. On the basis of the afore-noted written report, a case *vide* Mahiha P.S. Case No. 40 of 2019 dated 24.06.2019 was registered for investigation under Section 376(AB) of the IPC and Sections 4, 6 and 8 of the POCSO Act, 2012.

7. The police after investigation submitted chargesheet, whereupon cognizance was taken and the appellant was tried.

8. The learned Trial Court, after having examined eight witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

9. It may be stated at the outset here, that the mother of the victim, who is the informant of this



case, has turned hostile during the trial. She has stated that the victim had become angry because she was not given chocolate by the appellant.

10. The appellant is her neighbour.

11. The victim, however, has supported the accusation, but if her statement is analyzed, it would appear that the accusation is not trustworthy. According to her, she had gone to the shop of the appellant, who is a *kirana* shop owner, and had asked for chocolates. Finding the shop closed, she had climbed upstairs to look for the appellant so that she could procure the chocolates, but the appellant sexually assaulted her.

12. A similar occurrence, according to P.W. 1, had happened with her when one Shankar had violated her modesty, but no case was lodged. She also admitted that she had got money from Shankar. She prevailed on the Court to avoid taking the name of Shankar in the proceedings. This, itself, could not have been sufficient to discard her testimony as being correct fact.



13. The victim was subjected to medical examination on 24.06.2019 by Dr. Kaushar Alim (P.W. 2). He was clearly of the opinion that the hymen was not torn; though there were redness and inflammation of vulva. All the microscopical reports tested negative for spermatozoa. No blood was found on the private parts of the victim.

14. This definitely demonstrates that the victim was not sexually assaulted.

15. But then, even if an accused attempts to outrage the modesty of a minor, that would come within the parameters of the offence. Nonetheless, with this background, we need to examine the evidence rather carefully.

16. An aunt of the victim, viz., Reshma Khatoon (P.W. 3) though has supported the prosecution case, but her evidence is not damaging so far as the appellant is concerned. She expressed complete ignorance about any occurrence in the past with the



victim by one Shankar. She also denied the suggestion that the victim and her mother were habitual in making such accusations against persons and then withdrawing the case after extracting money from them.

17. The mother of the victim (P.W. 4), as already noted, has turned hostile. She has stated that there was some dispute because of the appellant having refused to give chocolates to her daughter as the shop of the appellant was closed at that time.

18. Afrida Khatoon (P.W. 5), Nizamuddin (P.W. 6) and two of the neighbours have also turned hostile at the trial. Their statements were also not recorded by the Investigator during the course of investigation.

19. This takes us to the evidence of the Investigator/Ganga Prasad Singh (P.W. 7). According to him, the victim was produced before the Officer-in-Charge, viz., Manju Singh, who had not found any injury of any kind on the person of the victim. Even the clothes



were absolutely spotless. He had got the statement of the victim recorded by a Magistrate. However, nothing substantial was done by him towards investigating this case. He had not recorded the statement of anyone of the family members of the appellant who were present in the house at the time of the occurrence. In fact, the investigation revealed that the appellant had given his house on rent to several persons. None of those persons were also examined by the police to certify whether the accusation was correct. The appellant stayed in that big household with three to four of his agnates, who too were never questioned or asked about the incident.

20. It, however, appears from his deposition that there was a compliance of Section 53A of the Cr.P.C. as the medical examination report of the appellant is present on record.

21. Thus, from an overall analysis, it appears that there could have been some dispute between the two families over the issue of giving chocolates when the



shop was closed. There could also be a possibility of hyper-ventilating small misdemeanour.

22. In ultimate analysis, we do not find the deposition of the victim to be beyond suspicion.

23. We are conscious of the fact that the evidence on record is of a ten years old girl. Nonetheless, there has been no assessment of age of the victim by the Trial Court. No objection also, though, had been raised by the appellant against her minority. Nonetheless, finding the case to be lacking in material particulars for us to affirm the judgment in appeal, we set aside the judgment and order of conviction, giving benefit of doubt to the appellant.

24. The appeal is allowed.

25. The appellant is in jail since 25.04.2019. He is directed to be released forthwith from jail, if not detained or wanted in any other case.

26. Let a copy of this judgment be dispatched



to the Superintendent of the concerned Jail forthwith for compliance and record.

27. The records of this case be returned to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

Sauravkrsinha/
Praveen-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2024
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