

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.339 of 2022**

Arising Out of PS. Case No.-80 Year-2020 Thana- SABAUR District- Bhagalpur

=====

SUNIL KUMAR SINGH S/o Poshan Singh @ Binod Singh Resident of
Village- Badi Jameen, P.S.- Goradih, District- Bhagalpur.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Radheshyam Sharma, Adv.

For the Respondent/s : Mr.Abhimanyu Sharma. APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-11-2024

1. Heard Mr. Radheshyam Sharma, the learned Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State.
2. The appellant has been convicted for the offence under Section 4 of the POCSO Act, 2012 by judgment dated 22.03.2022 passed by the learned Exclusive Special Court (POCSO -II)-cum-7th Additional District and Sessions Judge, Bhagalpur in POCSO Case No. 38 of 2020 arising out of Sabour (Goradih) P.S. Case No. 80/2020. By order dated 25.03.2022, he has been



sentenced to suffer rigorous imprisonment for twenty years along with a fine of Rs. 20,000/- and in default of payment of fine, to further suffer simple imprisonment for six months for the aforesaid offence.

3. The case arises out of a complaint lodged by the victim, who has been examined as PW4 at the trial.

4. A Complaint Case No. 16/2020 was lodged by the victim (PW4) alleging that while she had come out of her house to ease herself, the appellant gagged her and on point of pistol, committed rape on her. She ran away from that place with great difficulty and informed about the occurrence to her family members as also to her neighbours. When the appellant and his family members were accosted, they misbehaved with her family members and the villagers who had wanted to intercede with the appellant. A vague statement appears to have been made in the complaint that the family of the appellant had told the family of the victim that if any wrong act had been committed by one Jitendra, there would be no difficulty in getting the



victim married to Jitendra which shall be accepted by the family of the appellant. Since by that time, it had become quite late in the night, therefore, no complaint could be made on that day i.e. on 29.01.2020. A panchayati also was convened but the appellant and others were not ready to abide by the decision of the Panchayat. Ultimately, the victim visited the police station with her family members on 30.01.2020 but the case was not registered and the victim was asked to have another panchayati organized. Earlier also, the appellant had committed the same kind of act but the villagers left him after chastising him. Since no case was lodged by the local police station, the victim was compelled to lodge the aforementioned complaint on 03.02.2020. The aforementioned complaint was sent to the concerned police station whereafter a case vide Sabour (Goradih) P.S. Case No. 80/2020 was registered on 15.03.2020 under Sections 322, 504, 506, 376 and 34 of the IPC and Section 4 of the POCSO Act, 2012.

5. It appears that the police after investigation



submitted chargesheet against the appellant who faced trial.

6. At the trial, six witnesses were examined on behalf of the prosecution and two on behalf of the defense.
7. On a conspectus of entire evidence on record, the Trial Court thought it fit to convict and sentence the appellant as aforesaid.
8. While assailing the judgment of conviction and order of sentence, Mr. Sharma, the learned Advocate for the appellant has drawn the attention of this Court to the various inconsistencies in prosecution case, making the same absolutely unacceptable as reliable evidence against the appellant. He firstly pointed out that the complaint on the basis of which, the F.I.R. was lodged, was filed after 4 to 5 days of the occurrence. The victim claims to have gone to the police station but the case was not registered. This was the opportune time for the victim or her family members to have immediately proceeded to the court and made a



complaint about the case not being registered.

Secondly, it has been argued that the manner in which the narration has been made in the complaint petition, it appears that there is a motive behind such accusation.

9. Be that as it may, with the passage of so many days, there would be no use of referring to the medical report and the evidence of doctor who examined the victim.

10. Nonetheless, it has been argued that the victim was subjected to medical examination on 17.03.2020 by the Doctor Alpana Mitra (PW2). The Doctor did not find any physical injury on her body including her private parts. The vaginal swab were sent to the pathological department of JLNMCH, Bhagalpur for detection of spermatozoa. The X-ray of various body parts were also sent to the dental department of the hospital for determination of age of the victim. The reports were received by PW2 on 24.03.2020. The assessment of age of the victim on the basis of radiological report was between 14 to 15 years.



According to the dental X-ray, the age of the victim was assessed between 15 to 17 years. There was no evidence of any spermatozoa in the vaginal swab. PW2, therefore, concluded that there was no evidence with regard to any recent sexual assault on the victim.

11. As has already been conceded by the learned counsel for the appellant, this medical report and the deposition of PW2 would not be sufficient for determination of guilt of appellant because of passage of long time between the occurrence and the medical examination.

12. Nonetheless, the other evidence on record clearly falsifies the prosecution case.

13. Kailash Mandal, who is the father of the victim has been examined as PW1. A brief statement was made by him supporting the accusation that when his daughter had gone out of her house to attend to the call of nature, the appellant made her sit on the trailer of a tractor and was taken to a nearby poultry-farm where she was raped. The victim came back home and



narrated about the occurrence. PW1 was not cross-examined any further for the reason of his age and his reluctance to come to the Court and stand in the dock. Nonetheless his introduction of a story of use of a tractor and trailer in the occurrence is not in sync with the basic fabric of the prosecution case.

14. The Investigator of this case namely, Arun Kumar Singh, has been examined as PW-3. He had visited the place of occurrence and had for some time found the appellant absconding from his house. Prior to the lodging of the case, there was no information to the Police Station about any such occurrence. This is relevant in the context of the victim having made statement in the complaint that on 31.01.2020, the victim along with her family members had visited the Police Station for lodging the case but instead of registering the case, she was advised to go back to the village and get a Panchayati convened for redressal of her grievances. The victim had not stated about her age before him.



15. Though the victim (PW-4) supported the prosecution case but has deposed that she was taken to the poultry-farm on a Bolero vehicle and at the poultry-farm, she was raped. She admitted of having made her statement before the Magistrate under Section 164 Cr. P.C.
16. There is yet another fact which has been introduced by her in the prosecution case at the trial only. According to her, she was kept in confinement for about 2-3 hours. She proceeded for her home on foot and met her brother/Sushil Mandal (not examined) on way. The villagers had seen the victim along with the appellant sometimes prior to the occurrence.
17. Jitendra Kumar (PW-5) about whom reference has been made in the original complaint petition has turned hostile, though he has said that he learnt from someone that the victim was raped.
18. The mother of the victim (PW-6) has talked about the occurrence; the Panchayati and the appellant's reluctance to accept the verdict of the Panchayat and



thereafter the lodging of the case. However, in her cross-examination, she admitted that if the appellant would have married the victim, there would have been no necessity of filing the case.

19. This, Mr. Sharma has argued, completely exposes the mind-set of the mother of the victim. It was only for the reason of the appellant's reluctance to enter into any marital alliance with the victim that this false case has been lodged.

20. The two defence witnesses who are in know of the development in the village, namely, Rajendra Singh (DW-1) and Bipin Bihari Singh (DW-2) have talked about the false implication of the appellant because of the appellant not agreeing to marry to the victim. In fact, they have disclosed before the Trial Court that a rumour was afloat in the village that the appellant has falsely been implicated in this case.

21. What is very disquieting is that the Trial Court did not take into account the fact that in her 164 Cr.P.C. statement, the victim has given the sufficient



indication of the fact that the appellant had refused to enter into any matrimonial bond with her.

22. For the reason of the vague statement made by the victim; the delayed lodging of the F.I.R; the medical report not being in conformity with the accusation ;and on top of it, no cogent evidence of the minority of the victim except for her own claim and the general assessment of the doctor on the basis of the radiological examination and dental X-ray, leaving great doubt about the competence of the Special Court to try the appellant, the prosecution appears to have tottered at the seams.

23. Thus, giving benefit of doubt to the appellant, we set aside the judgment of conviction and order of sentence finding it to be merit less.

24. The appellant is acquitted of the charges.

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

26. The appeal stands allowed.



27. Interlocutory application/s, if any, also stands disposed of.
28. Let a copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.
29. The records of this appeal be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.11.2024
Transmission Date	20.11.2024

