

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2146 of 2023

Arising Out of PS. Case No.-62 Year-2014 Thana- TAJPUR District- Samastipur

Sunil Kumar @ Sunil Kumar Jha, Son of Ram Kumar Jha, resident of Village
- Morwa Mohanpur @ Morwa Dih, Ward No. 09, P.S. - Tajpur, Distt-
Samastipur

... .. Appellant

Versus

1. The State of Bihar
2. Ramchandra Jha S/o Late Gulab Jha R/o vill - Morwa Mohanpur @ Morwa Dih, ward no. 09, P.S.- Tajpur, Distt. - Samastipur

... .. Respondents

Appearance :

For the Appellant	:	Mr.Bam Bahadur Jha, Advocate
For the State	:	Mrs.Abha Singh, APP
For the O.P. No. 2	:	Mr.Niraj Lochan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 23-07-2024

Heard learned counsel for the appellant-original informant and Mrs. Abha Singh, learned A.P.P. for the State and learned counsel for the respondent no. 2.

2. The present appeal has been filed under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") by the appellant-original informant against the impugned judgment and order of acquittal dated 21.03.2023 passed by learned Additional District & Sessions Judge-VIth -cum – Special Judge, POCSO Act, Samastipur in connection with T.R. No. 28/23 @



POCSO Trial No. 28/2023 arising out of Tajpur P.S. Case No. 62 of 2014 registered under Section 447, 341, 323, 504, 506/34 of the Indian Penal Code and under Section 10 of the POCSO Act, whereby and whereunder the learned Judge has pleased to acquit accused/respondent no. 2.

3. The brief facts of the case is that on 03.03.2014, the respondent no. 2 allured the five years old daughter of the appellant-original informant and taken away in tobacco field and misbehaved with her after undressing her, while she was playing at about 4 P.M. The daughter of the appellant-original informant came house crying and narrated the whole story. Thereafter, appellant-original informant called the nearby people and told them regarding the occurrence. The appellant-original informant further alleged that in the night at about 8:00 P.M., all the accused persons except respondent no. 2 herein gathered at the door of the appellant-original informant and abused him and threatened that if he'll go before the panchayat or has taken legal action, then all the family members will be killed.

4. On the basis of aforesaid statement, the formal



FIR came to be registered as Tajpur P.S. Case No. 62 of 2014 under Sections 447, 341, 323, 504, 506/34 of the Indian Penal Code and under Section 10 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the "POCSO Act") against respondent no. 2 and other accused persons. After investigation, the Investigating Officer submitted charge-sheet against the respondent no. 2 and other accused persons under Sections 447, 341, 323, 504, 506/34 of the Indian Penal Code and under Section 10 of the POCSO Act, vide charge-sheet No. 78/14 dated 31.07.2014. Thereafter, cognizance has been taken under aforesaid sections by learned Special Court of original jurisdiction.

5. The learned special trial court, on the basis of the materials collected during investigation, framed charges against respondent no. 2 and others under Sections 376/511, 341, 323, 504, 506 of the I.P.C. and under Section 6 of the POCSO Act read with Section 120-B of the I.P.C.

6. Before the learned trial court, the prosecution



had examined altogether nine witnesses. They are (i) PW-1 the Victim; (ii) PW-2 Sunil Kumar Jha; (iii) PW-3 Veda Nand Jha; (iv) PW-4 Tara Kant Jha; (v) PW-5 Sumer Jha; (vi) PW-6 Jagdish Jha; (vii) PW-7 Umesh Jha; (viii) PW-8 Kavita Devi and (ix) PW-9 Phulendra Prasad Singh (I.O. of this case).

7. The defence has also produced six witnesses who are (i) DW-1 Subodh Jha; (ii) DW-2 Shanti Devi; (iii) DW-3 Baby Devi; (iv) DW-4 Vikash Kumar Jha; (v) DW-5 vishwanath Jha and (vi) DW-6 Grand-mother of the victim.

8. The further statement of respondent no. 2 and others under Section 313 of the Cr.P.C. came to be recorded. After conclusion of trial, the learned trial court acquitted the respondent no. 2 and others from the charges levelled against them.

9. Hence, the Present appeal.

10. It is submitted by learned counsel appearing on behalf of the appellant that victim/PW-1 categorically deposed against respondent no. 2 namely, Ramchandra Jha, that he took her in nearby tobacco field and opened her pant



with an intention to commit rape upon her and as she cried out of the act committed by aforesaid respondent, Veda Nand Jha/PW-3 came over there, upon which respondent no. 2 fled away. It is pointed out that this testimony of victim remains un-rebutted upon her cross-examination and during the trial and, therefore, acquittal of aforesaid respondent no. 2 through the impugned judgment is completely perverse and bad in the eyes of law.

11. It is further submitted by learned counsel that one of the reasons as supplied by the learned trial court in favour of acquittal is "non-establishment of victim as a child" within the meaning of section 2(1)(d) of the POCSO Act. In this context, it is submitted that in view of Section 34(2) of the POCSO Act , it is the duty of the learned trial court/special court to satisfy itself whether the victim is child or not and moreover, this fact was not disputed by respondent no. 2 during the trial.

12. It is also pointed out that the defence witness, who are grand-father and grand-mother of the victim deposed during the trial in favour of respondent no. 2 as the



matter was compromised between the parties, on that point of time.

13. It is submitted by learned counsel that recently after acquittal, respondent no. 2 given a legal notice to the informant of this case for paying Rs. 20 Lakhs as compensation to lodge the false case.

14. It is further submitted that learned trial court also failed to import "presumption" as available under Section 29 and 30 of the POCSO Act, in the present facts and circumstances where prosecution appears to established the fundamental aspects of the case.

15. Heard learned A.P.P. for the State. Learned counsel appearing on behalf of the respondent no. 2 submitted that victim girl/PW-1 is a school going child and was a student of Class-IV, therefore, it was the prime duty of the prosecution to bring the register of the school on record in support of the age of the victim. It is submitted that non-production of said document and also in want of any radiological examination, learned trial court correctly held that the "victim" not established as a "child" within the



meaning of Section 2(1)(d) of the POCSO Act, which is the basic foundation of the proceeding under POCSO Act. In support of his submission, learned counsel referred the legal report of Hon'ble Supreme Court as passed in the matter of **Jarnail Singh vs State of Haryana [(2013) 7 SCC 263]**, wherein it is categorically held by Hon'ble Supreme Court that the age of victim child to be ascertained in view of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

16. It is submitted by learned counsel that land dispute is admitted position where out of said dispute, respondent no. 2 was assaulted by the family of victim-child and when a case for said occurrence was lodged, he was implicated falsely with the present case making the victim as an instrument. It is a glaring example that how POCSO Act is being misused to settle score in land dispute cases and also in criminal cases of other nature.

17. It is also submitted by learned counsel appearing on behalf of respondent no. 2 that PW-3 is in litigating/inimical terms with respondent no. 2. It is



submitted that several defence witnesses, who were examined in this trial, specifically stated that informant of this case was working as a labour with PW-3 for more than 15 years, who are in litigating terms with respondent no. 2. In this context, the deposition of DW-6 namely, Rita Devi appears relevant, who is none but the grand-mother of the victim, who categorically stated in her examination-in-chief that on the date of occurrence between 1:00 P.M. to 5:00 P.M. the victim was with her. Prosecution failed to rebut her deposition as surfaced during her examination-in-chief and, therefore, the deposition of this defence witness cannot be discarded. It is submitted by learned counsel that presumption, as available under Section 29 of the POCSO Act, cannot be applied where prosecution failed to establish primary facts constituting the offence. In support of his submission, learned counsel relied upon the report of Hon'ble Calcutta High Court in the matter of **Subrata Biswas and another Vs. State [2019 SCC Online Cal 1815]**.

18. Learned counsel appearing on behalf of the respondent no. 2 made statement at Bar that no such notice



as to ask for compensation of Rs. 20 Lakhs was ever given to informant/appellant of this case on instance of respondent no. 2 or for that matter on behalf any of the respondents.

19. I have considered the submissions as canvassed by the learned counsel appearing for the appellant as well as learned A.P.P. for the State and also by learned counsel appearing on behalf of respondent no. 2. I have also perused the copy of the depositions of prosecution witnesses and defence witnesses.

20. From perusal of record, it appears that PW-1/victim was a student of Class-IV at the time of occurrence and she was school going, but her school register as to prove her date of birth as to establish primary facts that she is a child within the meaning of Section 2(1)(d) of the POCSO Act was not produced during the trial. It is also apparent from the deposition of PW-9, who is none but the Investigating Officer of this Case, it appears that statement of victim was not recorded under Section 164 of the Cr.P.C. and she was also not examined medically. The pant of victim was also not seized by the I.O.



21. It would be apposite to reproduce para '22' of the legal report of Hon'ble Supreme Court in **Jarnail Singh's Case (supra)** which reads as under for a ready reference:

"22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the 2007 Rules"). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

"12.Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;



(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

22. From deposition of prosecution witnesses



particularly deposition of PW-3, who claimed to be an eye witness of the occurrence beside the victim/PW-1, it appears that respondent no. 2 was in litigating terms with PW-3 with whom the father of victim was working since last 15 years having several land dispute and other enmities. It also appears from DW-6, the grand-mother of the victim that at the time of occurrence the victim was with her and this fact was not questioned in cross-examination by appellant/informant, therefore, there is no occasion to disbelieve the said statement. It appears that the establishment of victim as a child is a primary fact which prosecution bound to established to import the presumption available under Section 29 and 30 of the POCSO Act, which appears to be failed in the present case and, therefore, the trial court rightly acquitted the respondent no. 2 beside the aforesaid discussed evidence as available on record.

23. At this stage, I would like to refer the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa & Ors. vs. State of Karnataka** reported in **(2007) 4 SCC 415** wherein the Hon'ble Supreme Court in



Para-42 has laid down the general principles regarding powers of the appellate court while dealing with the appeal against the order of acquittal. It observed as under:-

"42. From the above decisions, in our considered view, the following general principles regarding powers of the 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 emphasise 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 is 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.”

24. 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 that 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.

25. 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, I am of the view that the Trial Court has not committed any error while passing the impugned order and, therefore, no interference



is required in the present appeal.

26. Accordingly, the appeal is dismissed.

27. LCR, if any, be returned to learned trial court along with copy of this judgment.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	
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