

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2245 of 2023

Arising Out of PS. Case No.-496 Year-2019 Thana- ARA NAWADA District- Bhojpur

Kanhaya Singh @ Kanhaiya Singh, Son of Late Jawala Singh, Resident of
Village-Bara Basantpur, Police Station-Muffasil Ara, District-Bhojpur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Bindhayachal Singh, Senior Advocate

Kumar Awnish Ankit, Advocate

Mr. Nikhil Kumar, Advocate

For the Respondent/s : Mr. Anand Mohan Prasad Mehta, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 19-09-2024

This appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') challenging the impugned judgment of conviction dated 12.04.2023 and order of sentence dated 18.04.2023 respectively passed by learned Additional District and Sessions Judge-VI-cum-Special Judge, POCSO, Bhojpur at Ara in POCSO Case No.43 of 2019 arising out of Ara Nawada P.S. Case No.496 of 2019, whereby the concerned Trial Court has convicted the appellant/convict for the offences punishable under Section 377 of the Indian Penal



Code (for short 'I.P.C.') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months for the offence punishable under Section 6 of the POCSO Act and rigorous imprisonment for ten years with fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months under Section 377 of the I.P.C. All the sentences have been ordered to run concurrently.

2. The case of prosecution, in brief, as available through written information of informant, namely, A. K. Singh (PW-3) given to the S.H.O., Ara Nawada alleging, *inter alia*, that his grandson, namely, A.K. is a student of Class-IX in DAV Dhanupur. He is also interested in sports. His son-in-law (damad), namely, U. Singh is working as Police Inspector with Uttar Pradesh police. It is further alleged that when the father of victim boy came to Ara at his residence, informant/PW-3 narrated about the hobby of the



boy. Whenever the father of the victim boy came to Ara, he always used to take him for playing cricket at Jain College, Ara. It is further alleged that in the meanwhile, the father of the victim boy came into contact with appellant/accused, Kanhaiya Singh, who was posted as P.T.I. in Jain College, Ara and requested the appellant to train the victim boy. On 04.07.2019 at 3.00 pm, when the victim boy went to play cricket at Jain College, Ara by bicycle, met with the appellant, who took him to Zim room and after closing the door from inside, committed penetrative sexual assault/unnatural sex upon victim forcefully. Anyhow, the victim managed to escape and came near to the door, which was found closed, thereafter, he started to make hue and cry but, no one came to rescue him. Thereafter, the victim returned to home. After arriving at home, the victim explained the occurrence to his mother, grand-mother and other family members. Occurrence alleged to be committed upon at 3:30 P.M. on 04.07.2019.

3. On the basis of aforesaid written information of the informant, the police registered F.I.R., being Ara Nawada



P.S. Case No.496 of 2019 dated 04.07.2019 for the offences punishable under Section 377 of the IPC as well as Sections 4 and 6 of the POCSO Act against the appellant.

4. After completion of investigation and on the basis of materials collected during investigation, the Investigating Officer of this case submitted charge-sheet No.268 of 2019 dated 26.09.2019 under Section 377 of the IPC & Sections 4 and 6 of the POCSO Act against the appellant before the learned Trial Court.

5. The learned trial court after supplying the police papers under Section 207 of the Code framed charges under Section 377 of the IPC, Section 4 and 6 of the POCSO Act against the appellant-convict, which were explained to the appellant/convict, to which, he pleaded not guilty and claimed to be tried.

6. To substantiate its case, the prosecution has examined altogether five witnesses. They are:-(i) **PW-1 victim;** (ii) **PW-2 Mother of the victim;** (iii) **PW-3 Cousin grandfather of the victim;** (iv) **PW-4 Manindar Kumar,** the Investigating Officer of this case; and (v) **PW-5**



Dr. Sri Kishun, who has examined the victim.

7. Apart from the oral evidence, the prosecution has also relied upon following exhibits/documentary evidences, which are:-

Sl. No.	No. of exhibits	Name of documents exhibited
1.	Exhibit-1/PW-1	Signature of the victim upon statement recorded u/s 164 of CrPC.
2.	Exhibit-2/PW3	Signature of informant upon written application.
3.	Exhibit-3/PW-3	Signature of the informant upon seizure list.
4.	Exhibit-4/PW-4	Signature upon charge-sheet.
5.	Exhibit-5/PW-5	Signature (endorsement) of I.O. upon written application.
6.	Exhibit-6/PW-5	Medical report and signature of witness on it.
7.	Exhibit-7	F.S.L. Report

8. The appellant/convict in order to prove his innocence examined three defence witnesses. They are (i) DW-1 Vikash Kumar; (ii) DW-2 Manish Kumar; and (iii) DW-3 Sumit Sinha.

9. Appellant in order to prove his innocence exhibited one document also, which is Exhibit-D1, certified



copy of the sale deed dated 29.05.2019.

10. On the basis of evidences/circumstances as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the Code, where he completely denied all the evidences surfaced during the trial and claimed his complete innocence and false implication due to land dispute.

11. Taking note of the evidence as surfaced during the trial and after considering the arguments as advanced by both the parties, the learned Trial Court has convicted the appellant/convict/accused for the offences under Section 377 of IPC as well as Section 6 of the POCSO Act and sentenced him in the manner as indicated above.

12. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

13. Hence, the present appeal.

Argument on behalf of the Appellant:

14. Mr. Bindhayachal Singh, learned senior counsel appearing on behalf of the appellant/convict



submitted that the victim could not proved during trial as a “child” within the meaning of Section 2(1)(d) of the POCSO Act and, therefore, the conviction as recorded under Sections 4 & 6 of the POCSO Act by learned Special Court is bad in eyes of law. It is submitted that this is not a case of aggravated penetrative sexual assault, as no aggravation as defined within the meaning of Section 5 of the POCSO Act appears to be proved during the trial, moreover the necessary legal ingredients i.e. “penetration” also appears not proved out of deposition of victim, who is a male boy aged about 13 years.

14.1. It is submitted by Mr. Singh that the deposition of victim as PW-1 and deposition of informant (PW-3) and her mother (PW-2) if taken in totality with the statement of victim recorded under Section 164 of the CrPC creates a serious doubt regarding occurrence. It is submitted that immediately after the occurrence, the victim met with one Sumit Sinha, who is cricket coach of the college but, said Sumit Sinha, which could be otherwise a best prosecution witness was not examined either during



investigation or trial, rather he joined trial in support of appellant and was examined as DW-3, where he categorically stated that due to property dispute appellant falsely implicated with this case, as father of the victim, who is working as a Police Inspector and posted at Varanasi could not purchase a piece of land, which was purchased by the appellant by paying comparatively higher consideration from DW-1. It is submitted that the victim in fact made instrumental to lodge present false case and this is a classical case to set an alarm that how the provisions of POCSO Act is being misused in our society, which was otherwise implemented to protect 'child' from sexual offence.

14.2. Mr. Singh further submitted that admittedly the victim is a school going children and, as such, there was all occasion to place his birth certificate from first attending school as to established him a "child" within the meaning of the Act but, same was not brought on record in view of Section 94 (2) of the Juvenile Justice (Care and Protection of Children) Act which also approved by Hon'ble Apex Court through **Jarnail Singh vs. State of Harayana**



[(2013) 7 SCC 263].

14.3. It is further submitted by Mr. Singh that during the course of investigation the undergarment of victim was seized to match with DNA profile. The blood sample of victim and appellant was collected but, upon forensic examination, same was found inconclusive. It is further submitted that the victim was medically examined after few hours of the occurrence i.e. about 9.45 PM on same very day, where doctor did not find anything incriminating, which may suggest that penetrative sexual assault was committed upon him, making the deposition of PW-1/victim, who is the only witness on which the conviction was secured before the trial court makes doubtful. In this context, it is further submitted that the doctor did not mentioned the age of victim on the basis of radiological examination and victim also failed to produce any document in view of Section 94 of the Juvenile Justice (Care and Protection of Children) Act and, therefore, it cannot be said that prosecution has proved the victim as a "child" and, therefore, the import of presumption as available under



Sections 29 and 30 of the POCSO Act also appears bad in eyes of law. In support of his submission, Mr. Singh has referred to the judgments of Hon'ble Apex Court as available through **Rai Sandeep @ Deepu vs. State (NCT of Delhi) [(2012) 8 SCC 21]** and also through **Nirmal Premkumar @ Anr. vs. State Rep. by Inspector of Police [2024 SCC OnLine SC 260]**.

Argument on behalf of the State:

15. Mr. Anand Mohan Prasad Mehta, learned APP for the State while opposing the present appeal submitted that PW-1, the victim, categorically deposed against appellant as to commit penetrative sexual assault upon him. It is submitted that even a slightest penetration is sufficient to constitute the offence within the meaning of Section 3 of the POCSO Act. It is submitted that the learned trial court rightly convicted the appellant under Section 5(c) of the POCSO Act, as he was the public servant being PT teacher of a Government college. It is submitted that even non-finding of injury upon victim was not fatal for prosecution, as the testimony of victim/PW-1 in itself appears cogent,



reliable, convincing and trustworthy. In support of his submission, learned APP relied upon legal report of Hon'ble Supreme Court as available through **B.C. Deva vs. State of Karnataka [(2007) 12 SCC 122]**.

16. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

17. After hearing the arguments and upon perusal of records, it appears to this Court that the evidence as surfaced during the trial is required to be discussed for the purpose of its re-appreciation, which also requires for the just and proper disposal of the present appeal.

18. It appears out of record and submission that the most important witness of this occurrence is PW-1/victim, who as per FIR appears 13 years old male boy. It was deposed by him that the occurrence took place on 04.07.2019 somewhere between 3-3:00 PM. On the date of occurrence, he said to reach Jain College at about 2 PM, where he met with one Sumit sir, who was said to be a



cricket coach of college. Other childrens were also present there. It was deposed that after an hour, said Sumit sir came there and hand over a key of room for collecting cricket kit bag and while after collecting said kit bag, while victim was returning, he met with appellant/convict, namely Kanhaiya sir. He paid him respect by touching his feet, whereafter it was said by appellant that first come for PT class, whereafter victim joined him and came with him to PT room where appellant after laying the victim down, committed wrong work after removing his undergarment/*paint*. Anyhow, he managed to escape and came near to the door, which was found closed from inside, thereafter, he started to cry but, no one came to rescue him. In the meantime, getting nervous, appellant/convict thrown key towards him and thereafter, he opened the gate. While he was running from the place of occurrence, he felt some sticky liquid like substance on his back and, thereafter, he came to a hand-pump and washed it and finally, came to his home. After arriving at home, he explained the occurrence to his mother (PW-2), maternal grandfather (PW-3), maternal



grandmother (not examined), whereafter his mother (PW-2) informed the occurrence to his father (not examined), who called the appellant/convict, but he did not respond to his phone. Consequent uppon, his maternal grandfather/PW-3 went to police station and lodged present case. He also said that his statement was recorded before the Magistrate, where he narrated entire occurrence. The statement was read over to him, which upon getting correct signed by him. It was identified during the trial and upon his identification, same was exhibited as Exhibit No.1. He also identified appellant in dock during trial. It was deposed by him that appellant during PT exercise did indecent activities also with other childrens.

18.1. Upon cross-examination, it was stated by victim that at the time of occurrence 20 childrens was playing cricket with Sumit sir. It was stated that the kit bag room and PT room both are differently located. It was also stated that he met with Sumit sir immediately after the occurrence and, thereafter, he went to his house on his bicycle. It was also stated by him that he never went to kit



bag room. It was stated that the hand-pump on which he washed his body was 50 meters away from PT room. His clothes becomes wet but said clothes was not shown to any one and he came in same clothes to his house. It was stated that he went to Jain College on his bicycle. It was categorically stated that no injury was received by him out of alleged occurrence. He narrated about the occurrence firstly to his mother (PW-2), maternal grandmother (not examined) and maternal grandfather (PW-3). He stated to returned home on the date of occurrence somewhere between 4-4:30 P.M. He visited police station somewhere between 5:30-6:00 P.M. on the date of occurrence, where his maternal grandfather lodged written information with police. His statement under Section 164 of the CrPC was recorded on next very day of the occurrence. He did not share anything regarding occurrence with his parents i.e. informant (PW-3) or mother (PW-2) before recording his statement under Section 164 of the CrPC. This statement appears contradictory to the statement that he narrated the entire occurrence to his mother (PW-2) and informant/maternal



grandfather immediately after arriving at home. He said to be annoyed with appellant, as he usually abuse him. It was said by him that he never made statement before the police that he raised his alarm during the occurrence and also none was present there. Attention was drawn whether he made statement before police that appellant thrown key being nervous and thereafter, collecting the said key, he opened the gate and ran away and found sticky liquid on his back and same was washed at hand-pump and, thereafter, he came to his house, which was replied in "yes".

19. PW-2 is mother of the PW-1 and **PW-3/informant** is maternal grandfather of the victim. Both these witnesses appears hearsay witness of the occurrence and they narrated the occurrence in the same manner as they received from the narration of PW-1/victim. It appears from the deposition of PW-2 that PW-3 is not her father rather her uncle. PW-2 also supported that on the date of occurrence, her son went to Jain College with bicycle. PW-2 appears to improve her version during trial, as she deposed reason for massage during real occurrence, which was not



narrated ever by PW-1/victim. She categorically stated in her cross-examination in para-10 that on the date of occurrence, her victim son returned to home by 2:15 P.M. making the entire occurrence doubtful on its face. She also stated not to made any statement before the police during the course of investigation and admittedly, she made her statement first time before the court. The non-examination of this witness during course of investigation deprived the appellant from his valuable right as to test her credibility in want of her statement under Section 161 of the CrPC. **PW-3** categorically stated in para-13 of his cross-examination that the victim went outside at about 3:00 P.M. and returned home between 4-4:15 P.M. It tooks 15 minutes from Jain College on bicycle. It was further stated by PW-3 that appellant arrested from his residence on same day somewhere between 6-6:15 P.M. but, nothing available on record, which may suggest that the appellant was examined under Section 53-A of the CrPC. He denied the suggestion that since last 2-3 months, the victim stopped to take any physical training from appellant and was only going college



for cricket game.

20. PW-4 is the Investigating Officer of this case, who said to record the written information of informant/PW-3 on 04.07.2019 at about 7:00 P.M. PW-2 and victim was also accompanied with him and on the basis of written information of PW-3, the present case was lodged as Ara Nawada P.S. Case No.496/2019 dated 04.07.2019 for the offence punishable under Section 377 of the IPC and also under Sections 4 and 6 of the POCSO Act. The written information was given to the S.H.O., and, thereafter, the investigation of this case was handed over to him. It appears from his this part of deposition that the written information was received by SHO, Ara Nawada at 7:00 P.M. but, if the version of PW-3 be taken into consideration, it appears that the appellant was arrested between 6-6:15 P.M. on same day, meaning thereby appellant was arrested before lodging of present FIR, which also makes the allegation doubtful. Immediately, after getting charge of investigation, he recorded the statement of PW-2, the mother of victim/PW-1 and prepared seizure list on 04.07.2019. It appears from his



examination-in-chief that said seizure list was made before PW-3, who signed as a witness. He seized the clothes of victim what he was wearing at the time of occurrence, which was dark red (maroon colour), Macho Brand *kachcha*, where white coloured spot was noticed. The spot was also available at different places of cloth. This seizure list, upon his identification was exhibited as **Exhibit No.3**. In this context, it is important to refer the deposition of PW-1, who deposed during the trial that he washed his body and also his clothes at hand-pump located in front of PT class room at the distance of 50 hands immediately after the occurrence and, thereafter, he came to his home. This Court unable to understand at first instance that how after proper washing of body and clothes, the white spot was noticed on *kachcha* of victim, which was seized and claimed to be wearing by the victim at the time of the occurrence.

20.1. I.O./PW-4 visited the place of occurrence but, did not find anything which may said to be relevant *qua* crime in question. It appears from his deposition that after visiting the place of occurrence, he came to the house of



appellant/convict and arrested him. This makes also a contradiction *qua* deposition of PW-3 regarding the timing of arrest on 04.07.2019. It appears from his deposition that he recorded the statement of one Gulshan Kumar (not examined) on 05.07.2019 and, thereafter, recorded the statement of one witness Abhishek Kumar (also not examined) and, thereafter, the victim was taken to hospital for his medical examination, but, it is apparent from the deposition of PW-5, who examined the victim, that medical examination was conducted on 04.07.2019. He also collected the sperm, blood sample and cloth of appellant/convict, which after taking permission from Special Trial Court were sent for forensic examination. He obtained the medical examination report of the victim on 16.08.2019 and thereafter, he finally submitted charge-sheet bearing No.268 of 2019 dated 26.09.2019 for the offences under Section 377 of the IPC and under Section 4/6 of the POCSO Act, which was in his hand-writing and bearing his signature, which upon his identification, exhibited as **Exhibit No.-4**. He also signed on written information, which upon his



identification exhibited as **Exhibit No.-5** and also identified the endorsement of S.I., Shambhu Kumar, which upon his identification was exhibited as **Exhibit-5/1**.

20.2. Contrary to his aforesaid deposition, it was stated by him that he firstly met with informant of this case (PW-3), victim and his mother (PW-2) only after receiving the charge of investigation. He started to write case diary onwards 7:20 P.M. He visited the place of occurrence at 8:30 P.M. and when he visited the place of occurrence, it was found open. He did not obtain any permission to visit the place of occurrence from college administration. It was stated that he mentioned in case diary that he visited the place of occurrence after getting it opened. He did not received any medical report of appellant/convict even on request, where no specific request was made to examine the private part of the appellant/convict, rather it was requested for general medical check up. It was stated that the appellant was lodged in police station lock up at about 8:45 P.M. This statement again appears contradictory to the version of PW-3 that arrest was made between 6-6:15 P.M.



on the date of occurrence and if it was so, then whereabouts of the appellant, between said time gap of about two and half hours remains unexplained by the prosecution during the trial.

21. PW-5 is Dr. Shree Kishun, who has examined the victim/PW-1. He stated in his examination-in-chief that on 04.07.2019, he was posted as Medical Officer at Sadar Hospital Ara, Bhojpur and on that day, he examined the victim at 9:45 P.M. and found following injuries:-

"On examination inspection-itching, rashes on 3/2 both buttocks.

Per rectal examination-No any pain and tear of rectus.

Local examination - No any anal injury seen and no any staining seen.

Anal swab taken and handed over to the police for the forensic laboratory examination.

Mark of Identification - 1. A mole on right hand."

He stated that he kept his opinion reserved in want of forensic science laboratory report. He further deposed that he has prepared the report from his own pen and made



signature on it, which upon his identification, was exhibited as **Exhibit No.-6**.

21.1. During cross-examination, it was deposed by him that he did not mention about any police requisition for examination of the victim nor on back of report, there is any requisition. It was deposed by PW-5 that he did not received any forensic lab report and also did not find any mark of sexual offence on the person of the victim.

22. The deposition of defence witnesses also appears relevant to discuss in present case.

23. DW-1 is Vikash Kumar, who deposed that the appellant and father of victim Ajay Singh both approached him for purchase of his land of two decimal, where the consideration amount offered by appellant was in higher side and therefore, he sold his land to the appellant. The sale deed was executed by his mother and aunty in favour of appellant on 29.05.2019, which upon his identification, exhibited as **Exhibit-D1**. He categorically deposed that after execution of sale-deed, a quarrel took place between the parties, where Ajay Singh threatened the



appellant to teach him a lesson, whereafter, he came to know that the present case was lodged.

23.1. Upon cross-examination, he furnished the details of land, which was sold to the appellant. The quarrel took place between the parties in the month of June. He denied the suggestion that he deposed to save the appellant.

24. DW-2 is Manish Kumar, who is also one of the witness before Disciplinary Committee, which was constituted by the college in furtherance of allegation, where appellant was posted as P.T.I. teacher in Jain College, Ara. It was deposed that after inquiry, the appellant was exonerated for the reason that he was a man of good character and having good morale.

25. Interestingly, **DW-3 Sumit Sinha,** who is the same person with whom victim met immediately after the alleged occurrence. It was deposed that he knows victim as he usually come to him for learning cricket and he was also his trainer. It was deposed by him that the victim was not coming to college since last ten days for learning cricket before the date of occurrence and on 04.07.2019 also, he



did not come to him. He deposed categorically that the appellant was falsely implicated. It was stated that Jim room/PT room of the college only remains opened between 6-8:30 A.M. and, thereafter, it becomes closed. He said that he has personal knowledge that the father of victim made the victim instrumental to lodge present case due to land dispute.

Conclusion:-

26. It is apparent that the victim was not the student of Jain College, Ara and he came to the appellant for physical training out of own acquaintance. There is no relation of student and teacher. From the deposition of PW-1/victim, it appears that immediately after he released from the clutches of the appellant during the course of occurrence, he rushed towards the gate, which was found locked from inside, when he also felt that some sticky like substance is on his back and therefore, he realized that some wrong work was committed upon him. The allegation of penetration to any extent is not appears available from his deposition, which is the only essential legal ingredient to



make out a case under "penetrative sexual assault". Merely presence of semen does not lead to a conclusion *ifso facto* that penetrative sexual assault was committed. Moreover, the wearing *kachcha* and other clothes at the time occurrence, which was alleged to be seized by I.O./PW-4, make it doubtful that whether any semen like substance was available, as in view of deposition of PW-1 itself, immediately after the occurrence and meeting with DW-3, he came to hand-pump and washed his back and also his clothes what he was wearing at the time of occurrence. There is no scientific evidence available on record, which may suggest that the semen was present at the wearing clothes of the victim during the occurrence and moreover FSL report also found inconclusive.

27. Hence, in view of all such evidence, it cannot be said out of the deposition of the victim that any penetrative sexual assault was committed upon him and therefore, the presumption as available under Sections 29 and 30 of the POCSO Act cannot be imported to the facts of present case.



28. In this context, it would be apposite to reproduce paragraph-26 of the legal report of Hon'ble Supreme Court as available through **Nirmal Premkumar & Anr. vs. State represented by Inspector of Police [2024 SCC Online SC 260]**, which is as under:-

"26. We quite agree with the submissions of learned senior counsel for the State that an act of sexual harassment of a girl student (who is also a minor) by any teacher would figure quite high in the list of offences of grave nature since it has far-reaching consequences, which impact more than just the parties to the proceeding. At the same time, it is axiomatic that reputation is earned by a teacher upon rendering service over the years and an accusation like the present would remain as an indelible mark marring his entire future life. Care has, therefore, to be taken so that his right to live a life of dignity and personal liberty are not put to jeopardy on the basis of half-baked evidence."

29. Besides above, the case of prosecution also appears doubtful from deposition of its witnesses, which can be gathered on its face. It appears from the deposition of



PW-1/victim that after washing his clothes, he came to home running and, thereafter, disclosed the entire occurrence to his mother (PW-2), whereas as per the deposition of PW-2 and PW-3, it appears that the victim returned to the house by bicycle. PW-1/victim has stated in his statement recorded under Section 164 of the CrPC that he proceeded for Jain College, Ara from his house at 2:45 P.M. but, in his examination-in-chief, he deposed that he reached Jain College at 2:00 P.M., which is contrary to the deposition of mother of the victim (PW-2) also that on the date of occurrence, his son returned to home from school at 2:00 P.M., which makes the entire occurrence doubtful on the point of timing. The timing of arrest of appellant is also appearing doubtful as it appears from conjoint reading of deposition of PW-3 and PW-4 that appellant was arrested prior to lodging the FIR. Further, Investigating Officer/PW-4 did not find anything relevant at the place of occurrence. In terms of deposition of PW-1, he met with Sumit Sinha (DW-3) immediately after the occurrence, which was a cricket coach of the Jain College but, he did not disclosed anything



to him regarding the occurrence, though, victim came out from the PT/Jim room (actual place of occurrence) in crying position. Interestingly, said Sumit Sinha, who could be a best prosecution witness regarding occurrence was not examined by prosecution, rather he joined trial in defence of the appellant and deposed that victim was not coming to college since last 8-10 days prior to this occurrence and on the date of occurrence i.e. 04.07.2019, he was also remain absent. DW-1 categorically deposed that there was enmities between the parties out of land issue, which was purchased by appellant against higher consideration, where the father of victim was also one of the prospective buyer. Non-examination of the father of victim, who is also a police officer, having all knowledge about the occurrence either during investigation or trial in such a serious offence also creates a doubt *qua* crime in question.

30. The medical report of victim, which was affirmed by PW-5, who is a doctor and examined the victim on the same day of occurrence, speaks that he did not find anything incriminating upon victim, which may suggest that



penetrative sexual offence was committed upon him. The medical report of victim was exhibited as **Exhibit No.-6**. He categorically deposed that there was no any pain and tear of rectus. Upon local examination also, no any anal injury was seen and no any staining was found, which *prima facie* suggest that no penetrative sexual assault was committed and, as such, false implication of the appellant with present case cannot be ruled out straightway in the background of land dispute, as discussed above. The appellant also stated regarding land dispute while he was examined under Section 313 of the Cr.P.C.

31. In view of aforesaid factual and legal discussions and upon re-appreciation of evidence, it appears that the prosecution has failed to established its case beyond reasonable doubt.

32. Accordingly, the present appeal stands allowed.

33. The impugned judgment of conviction dated 12.04.2023 and order of sentence dated 18.04.2023 respectively passed by learned Additional District and



Sessions Judge-VI-cum-Special Judge, POCSO, Bhojpur at Ara in POCSO Case No.43 of 2019 arising out of Ara Nawada P.S. Case No.496 of 2019 is hereby quashed and set aside. Consequently, the above-named appellant is acquitted from the charges levelled against him.

34. Since the appellant is on bail, he is being discharged from his liabilities of bail bonds and sureties.

35. Fine, if any, deposited by the appellant be returned to him immediately.

36. Office is directed to send back the trial court records along with a copy of this judgment to the learned trial court, forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.09.2024
Transmission Date	25.09.2024

