

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2628 of 2023

Arising Out of PS. Case No.-176 Year-2021 Thana- RAJNAGAR District- Madhubani

Shyam Sundar Sharma Son Of Yogendra Sharma Resident Of Village -
Raima, P.S. - Saharghat, Distt. - Madhubani

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anshul, Adv. Mr. Aditya Kr. Singh, Adv.
For the Respondent/s	:	Mr. Ramchandra Singh, APP
For the Informant	:	Mr. Gagandeo Yadav, Adv. Mr. Ravi Prakash, Adv. Mr. Udeshya Kumar Yadav, Adv.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 03-10-2024

Heard the parties.

2. This appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging impugned the judgment of conviction dated 29.04.2023 and order of sentence dated 04.05.2023 passed by learned Additional District and Sessions Judge- VI- cum Special Judge, POCSO, Madhubani in POCSO G.R. Case No. 44 of 2021 (arising out of Rajnagar Police Station Case No. 176 of 2021) whereby the concerned Trial Court



has convicted the appellant/convict for the offences punishable under Section 376, 506 of the IPC and Section 4 of the POCSO (in short Protection of Children from Sexual Offences) Act and he has been sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 10,000/- (Rupees Ten Thousand) and in default of payment of fine, further undergo simple imprisonment for three months for the offence punishable under Section 4 of the POCSO Act (read with 376 of the IPC as per provision of Section 42 of the POCSO Act). Further the convicts sentenced to undergo R.I. for six months and fine of Rs. 3,000/- and in default of payment of fine, further undergo simple imprisonment for 15 days for the offence under Section 506 of the IPC. Both the sentence run concurrently.

3. The case of prosecution in brief is that the informant/victim aged about 16 years was unwell and was not getting cured by the Doctor and that on night of 12.06.2021-13.06.2021 her aunt and her brother took her to the shop of the accused/appellant who use to treat people through "*Jharphuk*". It is further alleged that the



accused was in the braided state and he took victim behind the shop in the name of treatment and there tied her hands and leg and stuffed cloth in victim's mouth and committed rape upon her. It is further alleged that the accused threatened the victim that if she would disclose incidence to anyone she will be killed. After arriving home, victim informed her family members about the incident, thereafter, they went to the accused to lodge their complaint, where accused threatened them to kill through his "*Mantras*". It is further stated that the accused was assaulted by the local people and subsequently he was arrested by the Police.

4. On the basis of aforesaid written application the police registered a case, as Rajnagar P.S. Case No. 176 of 202 for the offence punishable under Sections 376, 504 and 506 of the IPC and under Sections 4 of the POCSO Act, where after the investigation, the police submitted charge-sheet.

5. To substantiate its case, the prosecution has examined altogether seven witnesses. They are:-



Prosecution	
Witnesses No(s).	Names
P.W. 1	Victim
P.W. 2	Sita Devi
P.W. 3	Ganesh Thakur
P.W. 4	Kumod Kumar Thakur
P.W. 5	Arjun Thakur
P.W. 6	Dr. Shaheda Farooque
P.W. 7	Lilawati Devi (I.O.)

6. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Signature of informant cum victim on written application.
Exhibit-1/1	Signature of Sita Devi on written application.
Exhibit-2	Registration of FIR
Exhibit-3	Medical Report
Exhibit-4	Formal FIR
Exhibit-5	Statement under Section 164 Cr.P.C.
Exhibit-6	Original Matriculation



	Certificate of victim
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7. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all the evidences as surfaced against him and claimed his complete innocence and false implication.

8. Three defence witnesses were also examined by appellant/convict during the trial in defence but no document was exhibited in support. Defence witnesses are:-

Defence Witnesses No(s).	Names
D.W. 1	Rambilash Yadav
D.W. 2	Md. Allauddin
D.W. 3	Amar Thakur
D.W. 4	Manoj Sharma
D.W. 5	Manju Devi

9. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned trial court convicted appellant/convict and passed order of sentence, as stated hereinabove.



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

11. Hence, the present appeal.

Argument on behalf of the appellant/convict:

12. Mr. Ansul, learned counsel appearing on behalf of the appellant/convict submitted that in view of deposition of PW-5 it can be safely gathered that brother of the victim was not present at place of occurrence with whom she deposed to arrive at place of occurrence on motorcycle alongwith her aunt i.e., PW-2. It is also pointed out that there are major contradictions in the version of victim herself what she raised regarding occurrence through FIR *qua* her statement made under section 164 of the Cr.P.C. and also as she deposed being PW-1 during the trial. It is pointed out that in view of major contradictions as surfaced out of the testimony/statement of victim, she cannot be said "sterling witness" *qua* occurrence, making the allegation of penetrative sexual assault doubtful which is essential ingredient to make out a case under Section 3 of



the POCSO Act. It is also submitted that medical report of the victim negates any sexual assault upon her which further approved by PW-6, who is a doctor and examined victim immediately after the occurrence. It is also pointed out that purely on imaginary ground due to wage related disputes, as the uncle of the victim was working at the shop of appellant, the present false implications was raised, where victim was made instrumental. It is submitted that in view of aforesaid, it cannot be said that prosecution established its case beyond all reasonable doubt during the trial and therefore the conviction as recorded by learned trial court *qua* appellant be quashed/set aside who is in custody since 14.05.2021.

13. In this context, it would be apposite to take a guiding note *qua* **"sterling witness"**, as per ratio laid down by Hon'ble Supreme Court in the case of ***Santosh Prasad vs. State of Bihar, (2020) 3 SCC 443*** where the Hon'ble Apex Court held in paragraph 5.4.2 and 5.4.3 categorically held that who can be said to be a **"sterling witness"**. It is observed and held as under:



"5.4.2. *In Rai Sandeep [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] , this Court had an occasion to consider who can be said to be a "sterling witness". In para 22, it is observed and held as under: (SCC p. 29)*

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied,



can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

5.4.3. *In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61], it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality."*

14. Learned APP duly assisted by learned counsel for the informant while opposing the prayer of appeal submitted that the victim was proved "child" during the trial within the meaning of Section 2(1)(d) of the POCSO Act, as her original matriculation certificate as issued by Bihar School Examination Board was brought on record as Exhibit-6 by the prosecution, which was not objected by appellant during the trial. It is submitted that



the document in original is a prescribed document in view of Section 94(2) of the Juvenile Justice Act, 2015, which may be relied upon for proving date of birth/age of any victim of crime in question as approved by Hon'ble Supreme Court also through **Jarnail Singh Vs. State of Haryana**, reported in **[(2013) 7 SCC 263]**. It is pointed out that minor contradictions are bound to be surfaced during the trial and therefore once victim is proved as a "child" within Section 2(1)(d) of POCSO Act, presumption as available under Sections 29 and 30 of the POCSO Act was rightly imported by learned trial court. It is submitted that victim specifically deposed that appellant after tying her hand committed rape upon her.

15. 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.

16. As to re-appreciate the evidences, while



dealing with present appeal, it would be apposite to discuss the evidences as available on record, which are as under :-

17. From the perusal of record, it appears that, P.W.-1 is victim who is also the informant of this case. It is submitted that she categorically stated that at the time of occurrence her age was 16 years, and occurrence took place on intervening night of 12-13 June, 2021. It was stated that she was ill and was suffering from continuous pain in her head and stomach, she visited several doctors but was not benefited, whereafter her uncle, namely, Ganaur Thakur (not examined), who was working at the shop of appellant/convict told her that appellant is a black magic practitioner which may treat her for her ailments. Upon said information she along with her aunt, namely, Sita Devi (PW-2) and her brother Kumod Kumar Thakur (PW-4) came to the shop of appellant, located near to patwara chowk. Appellant stopped her brother and aunt on his shop itself and taken her to an isolated place behind his shop. He was in drunken condition, where he tied up her



hand and legs with rope and also closed her mouth and, thereafter, on the point of knife committed rape upon her. She was also threatened as not to disclose the occurrence to others failing which he may kill her by using black magic. She did not disclose regarding incidence to her aunt and brother (PW-3 and PW-4) but after returning home, when she felt pain/problem, thereafter, she reported this incidence to her family members. She lodged a case regarding incidence in Rajnagar police station, where her information regarding incidence was written by her father namely, Ganesh Thakur (PW-3), which she identified during the trial before the court and upon her identification it was exhibited as exhibit-1. She also identified her signature on her statement as recorded under Section 164 of Cr.P.C. which upon her identification was exhibited as exhibit-2. She identified appellant during the trial.

17.1. Upon cross-examination, it was stated that her date of birth is 17.01.2005. It was also stated by her that the distance between her house and the shop of



the appellant is of 30-35 km. It was stated by her that she proceeded at about 9:30 P.M. for the shop of appellant and arrived there by 10 P.M. She proceeded by motorcycle with her brother, Kumod Kumar Thakur (PW-4) and aunt, Sita Devi (PW-2). It was categorically stated by her that when she arrived at shop of appellant/convict she found her uncle Ganaur Thakur (not examined) Awdhesh Thakur (not examined), Arjun Thakur (PW-5) already present there. By disclosing relation she stated that Awdhesh Thakur is son-in-law of her uncle. She never visited to the shop of the appellant prior to the occurrence. It is also stated that she didn't witness anyone in drunken condition prior to the occurrence and as foul smell of alcohol was coming from the mouth of the appellant, she presumed that he was drunk. It was stated that she was sitting while appellant was tying rope in her hand. It was stated that during tying her hand by rope, when she raised alarm her mouth was also stuffed by a *gamacha*, which was of white color. She also stated that during the occurrence she was in her *kurti* and *plazo* and appellant was in pant and shirt. She also



stated that during the occurrence appellant was close to her less than one meter. She did not raised any alarm at that point of time due to threat as advanced by appellant and narrated occurrence after returning home. It took 10 minutes for entire occurrence which took place somewhere between 12 A.M. to 1 A.M. It is categorically stated by her that information regarding incidence was given by her to her parents on next day of the occurrence. She remained at the shop of appellant till 3:30 A.M. She narrated about the incidence to her mother, namely, Jaya Devi (not examined). She went to police station on the next date of occurrence along with her aunt (PW-2), brother (PW-4) and father (PW-3) and lodged present case. Her statement was recorded after three days of the occurrence under Section 164 of the Cr.P.C. i.e., on 15.06.2021.

18. P.W.-2 is Sita Devi, who is the aunt of the victim. She accompanied the victim alongwith PW-4 and arrived together at the shop of appellant on 12.06.2021. The occurrence was said to be committed between 11 P.M.



- 12 A.M. She admitted that her husband was working in the shop of appellant/convict. It was deposed that appellant was a black magic practitioner who stopped them at his shop itself and took victim behind his shop and, thereafter, tied her hand and legs and committed rape upon her. She deposed to went at the shop of appellant along with victim and Kumod Kumar Thakur (PW-4). It was stated that victim narrated about the occurrence after returning home. She also identified her signature on written information which upon her identification was exhibited as exhibit-1/1. It was stated that on the next day at about 5 P.M., she was told about occurrence by victim herself, and she was not the eye witness of the actual occurrence. It was stated that the victim narrated about the incidence firstly to her grandmother i.e., Jaya Devi whereafter she was informed about the incidence by Jaya Devi, she did not disclosed about the incidence to anyone. This part of testimony makes a serious doubt regarding own version of PW-2 that she came to know about the occurrence from the victim herself. She did not stated anything to the police about the



occurrence, and did not noticed any blood stain on the cloth of victim while returning from Patwara chowk. She denied the submission that her husband was under loan and when said loan was demanded by appellant/convict he was implicated with present false case, which she denied.

19. P.W.-3 is Ganesh Thakur, who is the father of the victim, who supported the occurrence but it appears from his deposition that he was not the eye witness of the occurrence rather he came to know about occurrence from the mouth of victim herself i.e., on the next date of occurrence i.e., 13.06.2021. It was stated by him that the place of occurrence is at the distance of 12-13 kms from his house. He came to know from his cousin brother, namely, Ganaur Thakur (not examined) that the appellant/convict is a practitioner of black magic. He also denied the suggestion that due to wage related differences of his cousin brother namely, Ganaur Thakur who was working in furniture shop of appellant/convict the present false case was lodged.



20. P.W.-4 is Kamod Kumar Thakur, who is the brother of victim, it was stated that on intervening night of 12-13, June, 2021, he came at the shop of appellant in connection with treatment of her victim sister (PW-1) along with her aunt (PW-2). It was deposed by him that his uncle was working in the shop of appellant/convict, who told that appellant/convict is also practitioner of black magic and, therefore, they decided to visit him along with his ailing sister/victim in connection with her long existing ailments. It was stated that when they arrived at the shop of appellant/convict they were asked to sit outside but his sister (victim) was taken towards a nearby bush for performing rituals of cutting lemon where she remained with the appellant for about one hour and when she returned she was looking frightened and, thereafter, he returned home along with his sister. On next day his victim sister was not taking her diet properly and also looking frightened whereafter he along with other family members asked her about the happenings whereafter it was told by her that appellant after taking her inside bush committed



rape upon her. When this matter was reported to appellant/convict he started to assault and abuse. It was stated that the place of occurrence is about 12-13 km from his house, he proceeded for place of occurrence about 7:30 P.M. and arrived thereby 8 P.M. It was also stated by him that he was the driver of the motorcycle where the victim (PW-1) and his aunt (PW-2) both were the pillion riders. His uncle was working with appellant/convict and was already present at his shop when he arrived at the shop of appellant/convict by that time 5-6 persons were sitting there. He is not an eye witness of the occurrence of the rape and he deposed on the basis of hearsay input, what he gathered from his sister/victim/PW-1. He came to know about the occurrence on next day. He made his statement before the police during investigation.

21. P.W.-5 is Arjun Thakur who was working in a nearby shop at Patwara chowk. It appears from his deposition he was also the employee of appellant and when he arrived on 15.06.2021 near Patwara chowk, he found that



the informant and appellant both were talking loudly wherein Ganesh Thakur told him that appellant/convict committed rape upon his daughter. It was categorically stated by him that the victim was with Ganaur Thakur (not examined), wife of Ganaur Thakur (PW-2) and his son-in-law (not examined), the distance between the house of appellant and place of occurrence is about 10-12 km. It was stated by him that he stayed at the shop of appellant/convict, at the intervening night of occurrence i.e., 12-13 June, 2021 and on that night there was the brother of appellant, the owner of the house, Ganaur Thakur (not examined), Sita Devi (PW-2), the daughter of Ganaur Thakur and his son-in-law was also there. It was stated by him that he was never in inimical terms with appellant/convict or having any differences arising out of wage related difference. It was stated that he saw appellant performing black magic, and on daily basis appellant/convict perform black magic with 2-3 person. He was not the eye witness of the rape. It was stated that he came to know about the incidence as he was told by victim and her father. It was stated that the dis-



tance between his place of sleeping and actual place of occurrence is of 30-35 feet.

22. P.W.-6 is Dr. Shaheda Farooque (Medical Officer), in her examination-in-chief has deposed that on 15-06-2021, she was posted as Medical Officer at Sadar Hospital, Madhubani. A medical board was constituted under the chairmanship of Dr. D.S. Mishra with following member (1) PW-6 (2) Dr. Bhawana Gurung (3) Dr. D.S.Mishra for the examination of victim, victim was brought and identified by S.I Lilabati Devi, of RajNagar P.S. Dist. Madhubani and found following observations:-

"Height 5 ft 0 inch, 49 kg weight , teeth 14/14, Secondary sexual character well developed. No external or internal injury present over her body or private part. Hymen ruptured old. LMP -29-05-2021. Pathological examination of vaginal swab has done by Dr. K. Kaushal, M.O Sadar Hospital, Madhubani. According to the pathological reports shows no spermatozoa found in vaginal smear. WBC 0-2 HPF, RBC Nil, E-Cell 2 to 4 HPF, others nothing.

2. For the age determination report given by same medical board X-ray done on Brij Health Services India Pvt. Limited Sadar Hospital, Madhubani.

X-ray of both wrist AP view shows all



apiphysis fused.

X-ray of both elbow AP view shows all apiphysis fused.

X-ray pelvis AP view shows apiphysis of illiace crest and ischial tuberosity in complete of fusion.

3. *Opinion about age by Medical Board:- Accordingly radiological findings given by medical board the age of victim is around/about 18 years.*

Conclusion of Medical Board:- According to present physical and pathological examination no medical evidence of sexual assault found at the time of examination and the age of the victim is around/about 18 years.

Note :- M.I- black mole on the nose.

4. *The medical report has been prepared in the presence of the board and beard the signature of all three members of the board which identified by me. The medical report is being marked as Exbt. 3"*

23. P.W.-7 is Leelawati Devi, I.O. of this case who was posted as ASI on 15.06.2021 in Rajnagar P.S. district Madhubani and on same day a case was lodged in Rajnagar P.S. Case No. 175 of 2021 and she recorded the statement of witnesses during the course of investigation and thereafter visited the place of occurrence. She also produced victim before the learned Magistrate for recording



her statement under Section 164 of the Cr.P.C. She also examined victim on 24.06.2021, found this case true and charge-sheet was submitted by her through charge-sheet no. 193/21 dated 10.07.2021 for the offences punishable under Sections 376, 504 and 506 of the IPC against the appellant/convict. She identified the handwriting of in-charge Amrit Kumar Sah regarding endorsement for lodging FIR, which upon her identification was exhibited as exhibit-1/2. The formal FIR was in handwriting of thana *munsif*, which bears her signature, which was identified by her during the trial and upon her identification it was exhibited as exhibit-4. She met with victim first time on 15.06.2021 and last time on 16.06.2021. She visited place of occurrence on 15.06.2021 at about 7:30 P.M. It was stated that in medical report the age of victim was found as 18 years.

Conclusion

24. It is well settled principle of criminal jurisprudence that presumption as available under law can



be imported only after establishing of foundational aspects of crime in question. In present case the allegation of rape/penetrative sexual assault was said to be committed under garb of black magic practice by appellant/convict. The foundational aspect which is bound to prove in present fact is penetration to any extent "within the meaning of Section 3 of the POCSO Act" or "within the meaning of Section 375 of IPC". Besides aforesaid the important fact which is further required to consider is whether the victim can be said "sterling witness" as in present case the conviction of appellant was made by learned trial court on her sole testimony without having any corroboration.

25. In view of aforesaid issues, it would be apposite to take note of the testimony of PW-5, who is Arjun Thakur and was one of the employee of appellant and was present on intervening night at the shop of appellant/convict, who in his examination-in-chief deposed that beside victim, there was one Ganaur Thakur (uncle of victim), wife of Ganaur Thakur (PW-2) and his brother-in-



law was present at shop of appellant/convict. The noticeable fact out of his depositions is that he remains silent about the presence of Kumod Kumar Thakur (PW-4) at the place of occurrence, despite of giving the details of every person who were present on intervening night at the shop of appellant/convict.

26. With aforesaid fact, now coming to the deposition of PW-4, it appears that on intervening night he along with victim/PW-1 and PW-2 proceeded for the shop of appellant at about 7:30 PM which is at the distance of 12-13 km. This fact was also affirmed by PW-1 herself that she arrived at place of occurrence along with PW-4 and PW-2 and when she came to the shop of appellant found Ganaur Thakur (not examined), Awdesb Thakur (not examined), Arjun Thakur (PW-5). It was stated by her that Awdesb Thakur is the son-in-law of Ganaur Thakur.

27. The straightway implication of the deposition of PW-1, is that PW-5 was at the shop of



appellant, who by his testimony negate the presence of PW-4 at the shop of appellant. If this is the factual position then certainly the presence of victim and PW-2 at place of occurrence appears doubtful as they arrived at the place of occurrence on motorcycle with PW-4.

28. The reason for disclosing about the incidence is also appearing different as PW-1 categorically deposed that she disclosed occurrence to her parents only when she failed uneasiness (problem) on next day of the occurrence, but PW-4 and PW-2 deposed that when they asked victim why she was looking frightened it was told that appellant committed rape upon her.

29. It also appears from the deposition of PW-5 that he was just sleeping at distance of 30-35 feet from the actual place where the rape was alleged to be committed. Victim deposed that she raised alarm when her hand was tied up by appellant, but no such alarm was heard by PW-5. It also appears from the depositions of PW-2 and PW-4 that they were present at the shop of



appellant, behind which alleged black magic was performed near a bush. The entire process in terms of deposition of PW-1 took 10 minutes somewhere between 12-1 A.M.. It appears highly doubtful that PW-2 and PW-4 who are aunt and her own brother did not noticed anything abnormal and they remained together till 3:30 A.M. at the shop of appellant and even by that time nothing was disclosed to PW-2 and PW-4 regarding incidence.

30. The victim was examined on 15.06.2021, upon medical examination "hymen" was found ruptured (old) she was found about 18 years, where nothing abnormal detected which may suggest that rape was committed upon her within 36 hours of her examination.

31. Hence, totality of testimony of all such witnesses coupled with medical examination report of the victim, makes the occurrence doubtful on its face.

32. It appears from the perusal of record that the compliance of Section 364-A of Cr.P.C., which is regarding medical examination of victim of rape not



appears followed in its spirit, which is otherwise a mandatory legal provision.

33. In view of aforesaid factual discussions, when presence of victim appears doubtful at place of occurrence, in absence of PW-4 and further by taking note of none corroborating medical reports, as discussed above, she cannot be said as "sterling witness". Allegation of "penetration to any extent" appears doubtful and, therefore, prosecutions not able to make out any case under Section 3 of POCSO Act and 375 of IPC as to import presumption available under Sections 29 and 30 of the POCSO Act, 2012.

34. In view of aforesaid discussed, legal ratio and factual aspects, it can be said safely that prosecution failed to establish its case during the trial, beyond all reasonable doubts as to convict the appellant/convict for the charges leveled against him.

35. Accordingly, appeal stands allowed.

36. The impugned judgment of conviction dated



29.04.2023 and order of sentence dated 04.05.2023 passed by learned Additional District and Sessions Judge- VI- cum Special Judge, POCSO, Madhubani in POCSO G.R. Case No. 44 of 2021 (arising out of Rajnagar Police Station Case No. 176 of 2021) is hereby set aside/quashed.

37. Appellant namely, Shyam Sundar Sharma is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case. Fine, if any paid, by appellant, be returned to him immediately.

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

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.10.2024
Transmission Date	08.10.2024

