

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1223 of 2018**

Arising Out of PS. Case No.-26 Year-2017 Thana- BHABHUA District- Kaimur (Bhabua)

Kapil Bind Son of Shivbhajan Bind R/o Village Dihrama, P.S. Sonhan,
Distt.-Kaimur at Bhabua

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Tribhuwan Narayan

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 16-07-2024

1. Heard Mr. Tribhuwan Narayan, the learned Advocate for the appellant and Mr. Sujit Kumar Singh, the learned APP for the State.
2. The appellant has been convicted for the offences under Sections 376 (2)(i) of the Indian Penal Code and Section 4 of the POCSO Act, 2012 vide judgment dated 20.08.2018 passed by the learned 1st Additional Sessions Judge -cum-Special Judge, POCSO Act, Kaimur at Bhabhua in POCSO



Case No. 19/2017, registration no. 19/2017 arising out of Bhabhua Mahila P.S. Case No. 26/2017. By order dated 27.08.2017, he has been sentenced to undergo R.I. for twenty years along with a fine of Rs. 20,000/- for the aforesaid offence and in default of payment of fine, to further suffer imprisonment for six months.

3. The victim, a 10 years old girl is said to have been raped by the appellant on 18.04.2017 at about 12 'O' clock in the day while she was alone in her house.
4. The written report has been lodged by the victim herself, addressed to the Officer-in-Charge of Mahila Police Station, Bhabhua on 18.04.2017 alleging that she was tied by her wearing apparel and thereafter was raped by the appellant. During the act, she became senseless. Later, when she regained her consciousness, she found that her aunt/Dharmshila Devi (not examined) had arrived in the house. She lifted her and also shouted which



attracted many persons of the neighbourhood.

Thereafter her parents were informed about the occurrence. Her mother had gone to a different place whereas her father was working on somebody else's field at the time of the occurrence.

5. On the basis of the afore-noted written report, Bhabhua Mahila P.S. Case No. 26/2017 dated 18.04.2017 was registrar for investigation under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act, 2012.

6. The victim has claimed that she was ten years of age at the time of occurrence.

7. The police after investigation submitted chargesheet against the appellant whereupon he was tried.

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

9. Before the Trial Court, in her examination in chief, the victim has supported the case lodged by



her. She was examined by the Doctor. However, before going to the doctor her mother had made her bathe and her clothes were also washed. She wore another pair of clothes before going for medical examination. At the time of occurrence, she claims to have been alone in the house as his sister also had gone to her maternal grandfather's house. In her cross-examination, she has stated that she has an aunt, who resides separately. The aunt had gone to Siwan. When the victim approached her, she could not understand as she was sleeping. When she shouted for help, then she was gagged by the appellant. Nobody came at that time. She had become unconscious and when she regained consciousness, she found her aunt standing there in the room. She had suffered a wound in her private parts. When she was taken to hospital, the private parts were bandaged. When she had gone to the police station, she was still bleeding and had shown the wound to the Officer-in-Charge of the police



station.

10. According to her, the Investigating Officer visited her house after 3 to 4 days of the occurrence.

11. The Doctor, however, did not find any sign of rape. The victim was examined on 18.04.2017 only by Doctor Meena Pathak (PW4), who did not find any evidence of any sexual assault on the victim. No tear or patch was seen. There were no marks of violence over her body. Even in the external examination of the genitalia, she found no bleeding or tear or any other sign of injury. The vaginal swab disclosed nothing which would even remotely indicate towards any sexual attack on the victim. With respect to the age of the victim, the assessment of PW4 was on the basis of ossification test and her age was assessed to be 13 to 14 years.

12. The parents of the victim, however, have made very contradictory statements especially with respect to the victim having remained in hospital for three days. This very claim of the parents of the victim



clearly demonstrates that a false case was instituted against the appellant. None of them otherwise also have also claimed to be the eye-witnesses of the occurrence.

13. The Investigator, namely, Kumari Anchala (PW5) has stated in her cross-examination that she had not found any sign of rape on the victim. The victim had come with an already written application. The victim had visited the police station in the evening of the same day. When the I.O. had visited the house of the victim, she could find no trace of any physical violence or of the victim having been subjected to sexual attack.

14. Mr. Tribhuwan Narayan, the learned Advocate for the appellant has argued that the Trial Court did not assess the age of the victim and relied upon the medical evidence based on ossification test. Thus, he had no jurisdiction to try this case as a Special Court.

15. From the records, we find that there has been



no objection with respect to the age of the victim at the trial. In such a circumstance, the afore-noted objection at this stage would not be relevant.

16. It has further been argued on behalf of the appellant that shortly after the incident, the victim along with her parents had visited the police station and hospital. Neither the Investigating Office nor the Doctor had found any sign of any recent sexual intercourse. In fact, the victim did not appear to have been violated in any manner whatsoever. Apart from this, Mr. Narayan has drawn the attention of this Court to the evidence of parents of the victim who have contradicted themselves in a manner which makes their testimony absolutely untrustworthy.

17. The claim of the victim of having remained in the hospital for three days, therefore, stands completely belied.

18. True it is that there could not be any direct evidence of rape and the ocular testimony has



always to be given precedence over medical evidence; but if the medical evidence improbably disproves the ocular testimony, the medical evidence has to prevail. Apart from this, Dharmshila was the first person, who saw the victim after the occurrence. For no reason which has been explained by the prosecution, she has not been brought to the witness- stand.

19. From the conspectus of the entire of evidence on record, we find that the prosecution has not been able to prove the case beyond all reasonable doubts.
20. The appellant is required to be given the benefit of doubt.
21. Giving benefit of doubt to the appellant, his conviction and sentence are set aside.
22. The appellant is in jail since 27.04.2017. He is directed to be released from jail forthwith if his detention is not required in connection with any other case.
23. The appeal stands allowed.



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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
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