

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1299 of 2018**

Arising Out of PS. Case No.-42 Year-2017 Thana- DHARHARA District- Munger

Laxmi Narayan @ Nankha, Son of Arjun Mahto, Resident of Village-
BahaChauki, P.S. Hemjapur O.P, Dharhara, District- Munger.

... .. Appellant

Versus

1. The State of Bihar
2. X, wife of Mukesh Kumar, Resident of Village- Bahachauki, PS- Dharhara,
Dist- Munger.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ajit Kumar Singh, Advocate
For the State	:	Ms. Shashi Bala Verma, Add.PP
For the Informant	:	Dr. Mantu Kumar, Advocate
		Mr. Dhananjay Kumar Tiwary, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 28-10-2024

Heard learned counsel for the appellant, learned counsel
for the informant as well as learned Additional Public Prosecutor
for the State.

2. This appeal has been preferred for setting aside of the
judgment of conviction dated 23.08.2018 (hereinafter referred to
as the ‘impugned judgment’) and order of sentence dated
24.08.2018 (hereinafter referred to as the ‘impugned order’)
passed by learned Additional Judge-I-cum-Special Judge, Sexual
Offences Act, (POCSO), Munger (hereinafter referred to as the
‘learned trial court’) in Dharhara P.S. Case No. 42 of 2017, G.R.

No. 707 of 2017, POCSO Case No. 09 of 2017 whereby and whereunder the appellant has been convicted for the offence under Section 376 of the Indian Penal Code (in short 'IPC') and Section 3/ 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and he has been ordered to undergo rigorous imprisonment for life with a fine of Rs.25,000/- under Section 376 IPC and rigorous imprisonment for life with a fine of Rs.25,000/- under Section 4 of the POCSO Act. In default of payment of fine, he has to undergo further imprisonment for six months. Both the sentences are to run concurrently.

Prosecution Case

3. The present case is based on the written application submitted by the informant (PW-1) to the Hemjapur O.P., P.S.-Dharhara. In her written application, PW-1 has stated that on 28.03.2017 in between 6-7:00 PM, this appellant who is the son of her cousin father-in-law allured the victim girl aged between 6-7 years, took her to his room on the pretext of facilitating her to watch TV, gave him a note of Rs. Ten and committed rape on her. It is alleged that when the victim girl tried to cry, this accused gagged her mouth by his hands. The informant saw her daughter weeping outside and she was in pool of blood whereafter she went inside the latrine but did not come out for a long time whereafter

the informant went inside and found that plenty of blood were spread on the floor. Upon inquiry, informant's daughter told the entire story while weeping. Thereafter the informant took her to Medini Chowki for treatment.

4. On the basis of this written application, Dharhara P.S. Case No. 42 of 2017 dated 29.03.2017 was registered under Section 376 IPC and Section 3/ 4 of the POCSO Act. After investigation of the case, Police submitted a chargesheet bearing No. 51 of 2017 dated 30.04.2017 against the appellant under Section 376 IPC and Section 3/ 4 of the POCSO Act. Learned Chief Judicial Magistrate, finding the case under the POCSO Act, transferred the case to POCSO Court where POCSO Case No. 9 of 2017 was registered. On 09.05.2017, learned Additional District Judge 1st-cum-Special Judge, POCSO Act took cognizance of the offence under Section 376 IPC and Section 3/ 4 of the POCSO Act against the appellant. Thereafter, on 20.06.2017, charges were framed against the appellant under Section 376 IPC and Section 3/ 4 POCSO Act. The charges were read over to the appellant in Hindi. The appellant denied the charges and claimed to be tried.

5. In course of trial, prosecution examined altogether eight witnesses and exhibited several documents. The list of prosecution witnesses and the exhibits produced on behalf of the

prosecution witnesses are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Mother of the victim (informant)
PW-2	Mukesh Kumar
PW-3	X (victim)
PW-4	Dr. Ravindra Kumar Gupta
PW-5	Dr. Nirmala Kumari Gupta
PW-6	Rita Kumari
PW-7	Chandan Kumar
PW-8	Baleshwar Paswan (I.O.)

List of Exhibits produced on behalf of the Prosecution

Exhibit ‘1’	Signature on the written report
Exhibit ‘1/1’	Signature on the written report
Exhibit ‘1/2’	Written report
Exhibit ‘2’	Signature at 164 CrPC
Exhibit ‘3’	Medical Report
Exhibit ‘3/1’	Medical Report
Exhibit ‘4’	Statement of victim recorded by Mahilla P.S. Munger
Exhibit ‘5’	Signature on seizure list
Exhibit ‘X’	R.T.I. on seizure list
Exhibit ‘6’	Signature on FIR
Exhibit ‘7’	Statement under Section 164 CrPC under Section 294 CrPC

Findings of the learned Trial Court

6. Learned trial court after analysing all the evidences available on the record found that the informant (PW-1) has

supported her case. Learned trial court found that the appellant is close relative of the victim and the house of the victim and the appellant are side by side, so in normal course not noticing by any witness regarding visit of victim to the house of accused is not of much importance. Learned trial court found that defence has submitted that the appellant is a juvenile and is not capable of committing crime. In relation to this, learned trial court observed that Juvenile Justice Board, Munger assessed the age of the appellant on the date of occurrence as 17 years 7 months and 13 days and he was physically and mentally capable of committing crime and he also knew the consequences of the commission of crime. The learned trial court has, therefore, tried him as an adult.

7. Learned trial court has found that the place of occurrence is room of the appellant. Learned trial court found that the victim has categorically stated in her statement under Section 164 CrPC that she went to watch TV at the place of accused and while she was watching TV, the appellant grabbed her hand and pulled her, thereafter, he locked the door and committed wrong act. The statement of the defence that the place of occurrence has not been established is completely wrong. Learned trial court opined that non-examination of Mukhiya Simple Kumari and the non-examination of the doctor from Medini Chowki who gave first aid

to the victim coupled with the non-availability of the FSL report cannot be the basis to throw out the prosecution. Learned trial court did not find any material from the side of defence to form an opinion that the accused has not committed the alleged kind of occurrence. Learned trial court took note of the evidence of the victim who has categorically stated in her evidence that she went to watch TV at the place of accused and while she was watching TV, the appellant grabbed her hand and pulled her, thereafter, he locked the door and committed wrong act and further she stated that after the occurrence she went in the bathroom of her house where her mother noticed bleeding and she took her to a clinic in Medini Chowki for treatment. Thereafter, she went to police station and lodged this case. The learned trial court after close scrutiny of the evidence available on the record came to a conclusion that the prosecution has been able to prove its case against the appellant beyond all reasonable doubts and held the appellant guilty for the offence committed under Section 376 IPC and Section 3/ 4 of the POCSO Act.

Submissions on behalf of the Appellant

8. Learned counsel for the appellant has assailed the impugned judgment and order on the ground *inter alia* that there is a delay of 19 hours in lodging of the first information report. It is

submitted that the alleged occurrence is said to have taken place on 28.03.2017 in between 6-7 PM but the mother of the victim who has been examined as PW-1 in this case submitted her written application to the police station only on 29.03.2017. The formal FIR has been registered on 29.03.2017 at 14:30 hours. It is his submission that the delay in submission of the written application to the police station would prove fatal to the prosecution.

9. Learned counsel submits that in her written application (Exhibit '1/2'), the informant (PW-1) has stated that her daughter was in pool of blood and she had seen her bleeding whereafter when she inquired from her daughter then she stated while weeping about the occurrence. PW-1 took her to Medani Chowki for treatment. In her deposition, PW-1 has stated that Mukhiya Simple Kumari had written the application and she had put her seal and signature on the same. It has transpired in the evidence of the prosecution witnesses that the victim was firstly taken to Dr. Sanjay, who is a private Doctor, for treatment but this private Dr. Sanjay has not been examined in course of trial.

10. Learned counsel further submits that according to the victim girl, when she was taken inside the room by the accused, his cousin sister was also there. In course of trial, however, the cousin sister of the accused has not been examined. It

is further submitted that the accused was arrested only next day of the occurrence but despite this being a case of rape, he was not medically examined as required under Section 53A CrPC. The I.O. of Mahilla Police Station (PW-6) has stated that on 29.03.2017, she had made the seizure list of the seized articles. The seizure list has been marked Exhibit '5'. It bears the signature of PW-1 and PW-7. The seizure list has been marked Exhibit '5' but PW-6 has stated that she had not found any blood stain on the panty and frock of the victim girl. In this case, the Forensic Science Laboratory (in short 'FSL') Report has not been obtained and even as the undergarment of the victim was taken for DNA examination by police with one piece of stand slide and swab of her vagina, the FSL Report in this regard was not obtained.

11. Learned counsel submits that the victim girl in this case has deposed as PW-3. Her statement was also recorded under Section 164 CrPC and her signature on statement under Section 164 CrPC has been marked Exhibit '2' but learned Magistrate who examined the victim girl has not been examined. It is his submission that the learned Magistrate who recorded the deposition of PW-3 has not tested the mental condition of the victim to speak the truth and as such, no reliance may be placed on the evidence of the victim girl.

Submissions on behalf of the Informant and State

12. On the other hand learned counsel for the informant as well as learned Additional Public Prosecutor for the State have opposed the appeal. It is submitted that in this case, there is no delay in lodging of the FIR as it would appear that the occurrence took place on 28.03.2017 in between 6-7 PM. The victim girl was bleeding and she was first taken to Dr. Sanjay at Medani Chowki for treatment. The matter was also reported to the Mukhiya and on the next day only it could become possible to submit the application in the police station giving rise to the present case. It is submitted that the law is well settled on the point that a mere delay in lodging of the FIR would not result in throwing away the prosecution case. The facts and circumstances of each case would be different and the court has to appreciate the entire circumstances keeping in view the trustworthiness of the prosecution witnesses. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Chotkau vs. State of U.P.** reported in **(2023) 6 SCC 742**.

13. Learned counsel submits that in this case, the written application of the mother of the victim contains the circumstances under which the victim girl was subjected to rape by this appellant. This appellant happened to be her close relative

and the victim girl was going to watch television in his house. She was taken to a room where after giving her allurements of Rupees Ten, she was subjected to rape after gagging her by her mouth. She was bleeding. Attention of this Court has been drawn towards the evidence of Dr. Ravindra Kumar Gupta (PW-4) and Dr. Nirmala Kumari Gupta (PW-5). PW-4 has proved the medical report prepared by him in the presence of Medical Board. He has proved the report prepared by him as Exhibit '3'. PW-5 has stated that she being a medical officer posted at Sadar Hospital, Munger had examined the victim girl on 29.03.2017 at 3:45 PM. She had found that the injuries were caused within twenty four hours. First aid stitch and dressing over the private part of the victim was seen after removal of dressing. Hymen was tethered, parinimum was teared and stitched and the vaginal bleeding was found. The doctor had done redressing and advised medicine. In her impression, she has categorically stated that it is a case of rape but then observed that it is incomplete till the report of DNA test. She proved the medical report as Exhibit '3/1'. In her cross-examination, she has stated that the patient was brought to her after first aid, however, the report of first aid was not brought before her. The victim was brought to her by the police personnel. It is submitted that there are lapses on the part of the I.O. who had

not collected FSL report but that would not result in taking any other view.

14. It is submitted that the victim girl had made her statement under Section 164 CrPC in which though she had not mentioned the name of the accused but she had specifically stated that she had gone to watch TV in the house of her uncle where in course of watching TV, she was pulled up, the door was closed and he committed wrong act with her. She has stated that she was bleeding but on her crying, her mouth was gagged. The victim girl has also withstood the cross-examination in course of trial. She has stated that she had given true statements before the learned Magistrate. It is submitted that on the face of the evidence of the prosecution witnesses, it would be crystal clear that the prosecution has been able to prove the guilt of the accused beyond all reasonable doubts.

Consideration

15. We have heard learned counsel for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State as also perused the trial courts records. The present case is based on the written application submitted by the informant (PW-1) with the Hemjapur O.P. The written application has been proved as Exhibit '1/2' in course of trial. In

her written application, PW-1 has stated that on 28.03.2017 in between 6-7:00 PM, this appellant who is son of the cousin father-in-law of the informant allured the victim girl aged between 6-7 years, took her to his room on the pretext of facilitating her to watch TV, gave her a note of Rs. Ten and committed rape on her. She has further alleged that when the victim girl tried to cry, her mouth was gagged by the accused, her daughter came outside weeping and she was in pool of blood whereafter she went inside the washroom but did not come out for a long time whereafter the informant went inside and found that plenty of blood was coming out. She inquired about the same from her daughter who told the entire story while weeping. Thereafter, the informant took her to Medani Chowki for treatment.

16. In her examination-in-chief, the informant (PW-1) has supported her case. She has proved her signature and the signature of the Mukhiya Simple Kumari on the written application which have been marked Exhibit '1' and '1/1' respectively. She has stated that her daughter was sent to Sadar Hospital, Munger for treatment where report was prepared. She identified the accused in dock. In her cross-examination, she has stated that her daughter was going to watch TV everyday in the house of the accused. The defence suggested that no such

occurrence had taken place and in the election of Mukhiya, she was supporter of Simple Kumari whereas the father of the accused was in support of her rival and for this reason, the present case has been registered. We find from the testimony of PW-1 that she has not only supported her case in her examination-in-chief but has also withstood the cross-examination.

17. PW-2 is the father of the victim. He has stated that in the night when he returned from his agricultural field then his wife had narrated him the entire story. He was suggested that at the time of occurrence, he was in Bangalore but he denied the suggestion. This witness was suggested that no rape has been committed with his daughter and he was deposing only at the instance of his wife. This Court finds that PW-2 has clearly stated that he had not seen the occurrence but he was told about the occurrence by his wife. This Court does not find any exaggeration in his evidence and he seems to be an honest witness.

18. The victim of this case has been examined as PW-3. In her examination-in-chief, she has supported the prosecution case and has narrated the entire story as disclosed in the written application of her mother. She has stated that her mother had taken her to Medani Chowki and from there she was taken to Sadar Hospital, Munger where she was treated. She has stated that her

statement was recorded by a Magistrate who had asked her some questions and she had answered the same. The Magistrate had read over the statement recorded by her and she had put her signature thereon. She has proved her signature as Exhibit '2'. Her 164 CrPC statement has been marked Exhibit '7'. She has also withstood the cross-examination. She was suggested that she was deposing on the basis of the information given by her mother. She was suggested that the appellant who is her uncle had not committed rape on her and that in collusion with Mukhiya she was deposing in the court. This witness has denied the suggestions.

19. PW-4 and PW-5 are the two Doctors who have deposed. PW-4 has proved medical report which has been marked as Exhibit '3'. PW-5 has proved the medical report prepared by her. She identified the signature thereon as Exhibit '3/1'. She has deposed that in her examination, she had found time of injuries within twenty four hours, there was first aid stitch and dressing over the private part of the victim which was seen after removal of dressing, hymen was tethered, parinium was teared and stitched. She has noted vaginal bleeding slight, redressing done and medicine advised. She had also noted that under garment was taken for DNA examination by police SI and one piece of stand slide and swab of her vagina. In her opinion, PW-5 said that it is a case of rape but then she has stated that it is incomplete till the receipt of DNA test. This Court finds that PW-

6 who is one of the I.O.'s of this case has proved the seizure list (Exhibit '5') but unfortunately, the FSL report could not be obtained by the I.O. Learned counsel for the appellant has sought to take advantage of the non-availability of the D.N.A. report.

20. On perusal of the aforementioned evidences, this Court finds that the prosecution witnesses such as PW-1, PW-2 and PW-3 are consistent in their statement and the defence is unable to take any contradictions in course of their deposition. They are wholly reliable witnesses in this case who are also victim of the offence. In these circumstances, the submission of learned counsel for the appellant that there is a delay of nineteen hours in lodging of the FIR is liable to be rejected. The circumstances under which the FIR was lodged on the next day are appearing from the evidence on the record. The authenticity of the FIR cannot be doubted on the face of the deposition of prosecution witnesses who have been found wholly reliable witnesses.

21. This Court is also of the view that PW-4 and PW-5 who are the Doctors of the Sadar Hospital, Munger had proved the medical report of the victim girl. From their deposition, it is evident that the victim girl was presented for medical examination by Police. PW-5 had found that first aid stitch and dressing were done over her private part. This finding is consistent with the case of the prosecution that after the occurrence, PW-1 had taken her daughter

(PW-3) for treatment at Medani Chowki. PW-5 had also found after removal of dressing that hymen was tethered, parinium was teared and stitched. The first impression of the Doctor (PW-5) was that it is a case of rape. In these circumstances, non-examination of Dr. Sanjay of Medani Chowki would not create any dent in the prosecution case. The fact that in paragraph '10' of the deposition, PW-5 has, while stating about the impression stated that it is a case of rape, the opinion "it is incomplete till the receipt of DNA test report," cannot be interpreted to mean that in absence of DNA test report, the prosecution case would be liable to fail. The medical report and the evidence of PW-4 and PW-5 are sufficient to understand that victim girl was subjected to rape. The circumstances under which she was raped has been fully explained by the prosecution witnesses (PW-1 and PW-3). While, it is true that in this case, the appellant was arrested on the very next day of the occurrence and he could have been sent for medical examination, this Court finds that it was a lapse on the part of the Officer-in-Charge of the Police Station. The police officers (PW-6 and PW-8) have been examined in this case. PW-8 has proved Exhibit '5' which is the seizure list of the under garment and frock of the victim girl. He has stated in his examination-in-chief that he had sent those seized clothes to FSL, Bailey Road, Patna. However, in his cross-examination, he has stated that he had not found blood stain mark on the seized panty and frock. This Court

finds that PW-8 has stated that he had not got medical examination of the appellant done and when he was asked as to whether he had read the police manual? He has stated that he had read the same a little bit. He has, however, stated that the victim was treated in a private clinic at Medani Chowki but he had not examined the Doctor. He had also not demanded the treatment documents. He had not examined Mukhiya Simple Kumari and he had also not examined the cousin sister of the appellant. This Court finds that PW-8, who was the Officer-in-Charge of the police Station, has not acted promptly and negligence on his part in course of investigation is apparent. He had also not collected the FSL report but then a question arises as to whether for the fault of I.O. (PW-8), the prosecution case would be liable to fail?

22. This Court is of the considered opinion that in this case there are overwhelming materials present on the record in form of the evidence of PW-1, PW-3, PW-4 and PW-5. The statement of the victim girl recorded under Section 164 CrPC (Exhibit '7') and her deposition in course of trial as PW-3 remains consistent. No prior enmity between the parties has been proved in this case and the defence case that this case has been falsely lodged because father of the appellant was supporter of the opponent of the present Mukhiya is not acceptable to this Court.

23. This Court finds that the appellant in this case was aged about 17 years 7 months 13 days on the date of occurrence. In his preliminary examination under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, it was found that the appellant was physically and mentally capable of committing crime and he also knew the consequences of the commission of crime. The learned trial court has, therefore, tried him as an adult and upon finding that the guilt under Section 376 IPC and Section 3/ 4 of the POCSO Act has been proved against him beyond all reasonable doubts, convicted him.

24. Having re-appreciated the entire evidences, this Court finds no reason to interfere with the impugned judgment and order of the learned trial court.

25. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
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