

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.689 of 2023

Arising Out of PS. Case No.-76 Year-2021 Thana- DHANARUA District- Patna

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Kamlesh Kumar S/o Jawahar Sao R/o Village- Mauza- Barni Bazar, P.S.
Dhanarua, Dist. Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. X NA

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Indeshwari Prasad Mandal, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-11-2024

Heard Mr. Ajay Kumar Thakur, the learned

Advocate for the sole appellant and Mr. Abhimanyu

Sharma, the learned Additional Public Prosecutor for the

State.

2. The appellant has been convicted for the offences under Sections 376 and 379 of the Indian Penal Code and under Section 4(2) of the POCSO Act, 2012, *vide* judgment of conviction dated 23.05.2023 passed by learned Additional District Judge-VII-cum-Special Judge,



POCSO, Patna, in Case No. CIS No. Special (POCSO) Case No. 42 of 2021, arising out of Dhanarua P.S. Case No. 76 of 2021. By order dated 31.05.2023, the appellant has been sentenced to undergo imprisonment for three years, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo imprisonment for two months under Section 379 of the IPC and in view of Section 42 of the POCSO Act to undergo R.I. for twenty years, to pay a fine of Rs. 30,000/- and in default of payment of fine, to further suffer imprisonment for two months for the offence punishable under Section 4(2) of POCSO Act.

3. The victim, who claims herself to be of fourteen years was allegedly forcibly taken away to a lonely house in Jehanabad and raped by the appellant.

4. The written report was lodged by the victim herself (PW-2), who says that she was made to come out of an auto-rickshaw and was taken to a house in Jehanabad on a motorcycle where she was raped. She could anyhow come out of the house and while proceeding



for her home, she borrowed the mobile phone of a stranger and called her sister and narrated about the incident to her. Later, her family members came and took her to the police station, where she lodged the report.

5. Based upon the afore-noted written report, a case *vide* Dhanarua P.S. Case No. 76 of 2021 dated 22.03.2021 was registered for investigation against the appellant under Section 376 and 379 of the IPC and under Section 7 and 8 of the POCSO Act, 2012.

6. The police after investigation submitted chargesheet under Section 376 of the IPC and under Section 4 and 6 of the POCSO Act, 2012, whereupon the appellant was tried.

7. The Trial Court after having examined six witnesses on behalf of the prosecution convicted and sentenced the appellant as aforesaid.

8. Though in the written report, PW-2 has claimed that the appellant forcibly brought her down from the auto-rickshaw in which she was going towards Masaurhi



and then was taken to somewhere in Jehanabad but in her statement under Section 164 of the Cr.P.C. recorded immediately after the occurrence, she had a different story to narrate. The material particulars in both the statements differ to a great extent.

9. That is not the sole cause for doubting the credit-worthiness of PW-2.

10. She was medically examined on 23.03.2021 by Dr. Kavita Singh (PW-6). Her age was assessed to be between seventeen to nineteen years and there was no sign of any recent sexual intercourse. There was no mark of abrasion. She has further stated before the trial Court that in cases of a rape, the vagina gets ruptured and there is always swelling, abrasion and discharge. She did not notice any swelling, abrasion or discharge in the private part of the victim.

11. According to her report, she asserted that no forcible sexual assaulted had been perpetrated upon the victim.



12. That apart, we have also examined the deposition of the investigator (PW-5), who had arrested the appellant on 23.01.2021 from a market place, but never got him medically examined as mandated under Section 53(A) of the Cr.P.C. She had asked for the clothes of the victim but that was never given to her. Despite her insistence, the family members of the victim did not show her the place from where the victim was brought to the police station. Even the victim did not respond to her demand of showing the house in which the occurrence had been committed.

13. On deeper probe, the investigator had found that near the P.O., there is a bank in which CCTV camera is installed. There was nothing captured in the footage of that camera. Even the telephone number which was used by the victim for informing her sister about the incident could not be traced.

14. Apart from this, we find it to be really unbelievable that the victim would be taken out of an auto



and would be forcibly made to sit on a motorcycle and then driven to a distance, without any objection. No independent person has claimed to have seen or known about such an incident in the neighbourhood.

15. These facts make the prosecution case highly doubtful.

16. Even the age of the victim, for the purposes of the jurisdiction of the Special Court, POCSO Act, could not be ascertained. All that the Trial Court could find that with respect to age of the victim, the document produced was a mark-sheet, which was unauthenticated. This causes serious doubts about the document in support of the minority of the victim to be a genuine document.

17. We have already noted the fact that even though the appellant was arrested immediately after the occurrence, no effort was made by the investigator to subject him to medical examination for further confirmation of the accusation against him.



18. In her deposition before the Trial Court, the victim has narrated a third story viz. of the appellant having given two thousand rupees to the caretaker of the house whereafter he committed rape on the victim.

19. The story of the appellant wielding a pistol and forcing her to submit to his carnal desires is also stated by the victim for the first time in her deposition. It also does not appear to be really acceptable factually that crossing through the road to Jehanabad, the victim shouted for help but nobody came to her rescue.

20. Thus, all these materials lead to the only conclusion that the prosecution has not been able to prove the case beyond all reasonable doubts.

21. For the aforementioned reasons, we find the conviction of the appellant to be absolutely unmerited and unwarranted.

22. We therefore set aside the conviction and allow the appeal.



23. The appellant is in jail since 23.03.2021. He is directed to be released forthwith, if not warranted or detained in any other case.

24. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

25. The records of this case be returned to the Trial Court forthwith.

26. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

krishna/shahnawaj

AFR/NAFR	NAFR
CAV DATE	NA
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