

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.700 of 2022

Arising Out of PS. Case No.-36 Year-2018 Thana- MAHILA P.S. District- Nawada

Niranjan Singh @ Niranjan @ Karu Singh, Son of Birendra Singh, R/O
Village- Sekhodeswra, P.O.- Sekhodeswra, P.S.- Kawakol, District- Nawada
(BIHAR)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Birendra Kumar, Advocate Mr. Kumud Kishore, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 24-09-2024

We have heard Mr. Birendra Kumar, the learned Advocate for the appellant and Mr. Abhimanyu Sharma, the learned APP for the State.

2. The appellant has been convicted under Section 376AB of the Indian Penal Code and Section 5(m)/06 of the POCSO Act, 2012 *vide* judgment dated 11.05.2022 passed in POCSO Trial No. 74 of 2018. By order dated 18.05.2022, taking into account the provisions contained in Section 42 of the POCSO Act,



2012, the appellant has been sentenced to undergo RI for 20 years, to pay an amount of Rs. 25,000/- and in default of payment of fine to further suffer RI for one year for the offence under Section 376AB of the IPC. The victim has been awarded a compensation of Rs. 6 lakhs also.

3. The victim (PW-3) was eight years old at the time of the occurrence. The FIR was lodged by the mother of the victim (PW-2), who had submitted a written report addressed to the Officer-in-Charge of Mahila Police Station, Nawada on 22.11.2018. She has alleged that on 21.11.2018 at about 7:00 PM, the victim started bleeding from her private parts. On enquiry from her, the victim disclosed that about ten days ago, the appellant had taken her to his room, given her a mobile telephone to play with and then committed rape with her. He also warned her that she should not inform about that to anybody. Because of fear, she did not state about the occurrence. On the day when she had



suffered the encounter with the appellant also, she had bled from her private part. However, that time she had wiped her wound. On 21.11.2018, when the mother of the victim spotted blood in her undergarments, deep enquiry was made and the victim is said to have disclosed all this. After consultation with the family members, PW-2 then lodged the written report.

4. On the basis of the aforementioned written report, Nawada Mahila P.S. Case No. 36 of 2018 dated 22.11.2018 was registered for investigation against the appellant under Sections 376(2)(i) and 506 of the IPC and Sections 3(2)(va) of the SC/ST (Prevention of Atrocities) Act, 1989 as also Section 4 of the POCSO Act, 2012.

5. The police after investigation submitted charge-sheet against the appellant, whereupon he was tried.

6. The Trial Court, after having examined eight witnesses on behalf of the prosecution, convicted and



sentenced the appellant as aforesaid.

7. The learned Advocate for the appellant has argued that he is the nephew of one Santosh Singh who had been residing in his uncle's house. The victim always visited the house of Santosh Singh to play. The sexual encounter had happened for the first time on 10.11.2018. However, the victim continued to visit the house of Santosh Singh thereafter. After about ten days, when the victim again started bleeding, she is said to have told her mother (PW-2) about the occurrence.

8. This, it has been argued, clearly depicts that the injury suffered by the victim was not as a result of sexual act ten days ago which was complained against the appellant. Though the victim, while deposing before the Court, in her examination-in-chief has narrated in such terms which gives an impression that the appellant continued to trouble her but the prosecution has chosen to limit the act complained of as one encounter which had taken place on 10.11.2018.



9. In this background, the evidence of the Doctor also has been referred to. The victim was examined by Dr. Neelam Kumari(PW-1) on 23.11.2018. The victim was found to be between 8 to 9 years. No external injuries were found on her body. However, the vagina, libia majora and minora were found to be inflamed. There was redness on the private parts. The hymen also appeared to be inflamed. The tear in the hymen admitted of a little finger. No spermatozoa was found. In the opinion of the doctor, it was a case of sexual intercourse.

10. However, during her cross-examination, the doctor has further reiterated that she did not find any external injury on any part of the body of the victim. She agreed to the proposition that if a person falls down on the ground, some external injuries may be caused. Inflammation of libia minora and majora could, in the opinion of PW-1, be caused by insect bite also. The tear of hymen could have been possible for very many



reasons. This could happen even while a person is playing or is undertaking some physical exercise.

11. Based on the aforementioned report, it has been argued, that the evidence was analysed with a lens which did not project a true picture.

12. While going through the evidence, we found that the mother of the victim (PW-2), though supported the prosecution case, but was very clear in her deposition that she had not seen the occurrence herself. On the day of the occurrence and on later days also, the victim never complained of any sexual act by the appellant. The first disclosure was made by the victim before her on 21.11.2018. PW-2 never got an opportunity or occasion to ask the victim about what had happened to her over a period of ten days. Everyday, the victim came back home after playing from the house of Santosh Singh where the appellant had resided. PW-2 had no idea that this kind of occurrence had taken place ten days ago.



13. Even on 21.11.2018, the victim did not speak of herself but on being questioned by her, especially when PW-2 had seen blood spots in her undergarments that she disclosed about the occurrence. PW-2, thereafter, communicated this fact only to her mother-in-law and nobody else. She had got the victim examined by a private doctor by the name of Dr. Chandrika, who has not been examined at the Trial. Dressing was done in her clinic. On the asking of the Officer-in-Charge of Kauakol Police Station, which she had visited, she came to Nawada Mahila Police Station where her statement was recorded.

14. One of her brother-in-laws, viz., Devar Vishkarma had accompanied her to the police station.

15. On a perusal of the written report, it appears that it was countersigned by Sadhna Kumari and Jalandhar Kumar, both of whom have not been examined. It appears that Jalandhar is the brother-in-law of PW-2.



16. Even the Officer-in-Charge of Nawada Mahila Police Station, viz., Ms. Sushma was never examined.

17. It further appears from the records that investigation was immediately handed over to Baban Kumari Sinha (PW-6), the Investigator. She has also stated before the Trial Court that the victim used to play regularly and also participated in sports in her school. She has denied the suggestion that while climbing or coming down from a mango tree, she was hurt by a protruding branch of the tree and that the case was lodged because of village politics.

18. We have examined the evidence of the victim as well. In her examination-in-chief, she has spoken about the appellant having raped her on 21.11.2018 also, which is not the case of the prosecution. She used to visit the house of the appellant where appellant resided with his mother and two other brothers. She used to play with one Muskan. On the day



of occurrence i.e. on 10.11.2018, every member of the family of the appellant was present in the house, but she did not tell anyone of them about the conduct of the appellant. She did not raise any hue and cry while she was being taken to a room in the house nor did she raise any protest or complain after she was subjected to sexual act. She has also deposed that whatever her mother and uncle told her to say, she stated before the learned Magistrate while her statement under Section 164 of the Cr.P.C. was being recorded. The Investigator had not asked for her blood-stained undergarment. She has also disclosed before the Trial Court that there is no social relationship between her mother and the appellant's family.

19. Her evidence, therefore, only indicates that she was subjected to sexual intercourse on 10.11.2018 in the night about which she did not make any complaint at any place. The bleeding had started after ten days which could have been for other reasons as well.



20. The other witnesses, viz., Rajeev Kumar and Saurav Kumar Vishwakarma (PWs. 4 and 5 respectively) have not expressed any personal idea about the occurrence.

21. The other two witnesses, viz., Narendra Kumar Verma and Uday Kumar (PWs. 7 and 8) have been declared hostile.

22. The Investigator (PW-6) took up the investigation from Sushma Kumari. She has not disclosed as to when and how did she arrest the appellant. Incidentally, there is nothing on record which would indicate that after the arrest, the appellant was subjected to medical examination as contemplated under Section 53A of the Cr.P.C. All that she had to offer to the Trial Court was that she submitted charge-sheet against the appellant.

23. From her deposition, it becomes very clear that she had not investigated the case at all and just went along the accusation levelled by PW-2 and the



victim (PW-3).

24. From the overall conspectus of the deposition of the witnesses, it appears that only PW-2 and the victim (PW-3) have supported the accusation.

25. However, this is not supported by the report of the medical examination of the victim.

26. What has caused doubt in our minds about the correctness of the version of PW-3 is the victim not speaking about the act of the appellant for ten days and her continued visits to his house even after 10.11.2018 as also the vague opinion of the doctor with respect to the possibility of sexual intercourse.

27. No doubt, Dr. Neelam Kumari (PW-1) has given the opinion that it is a case of sexual intercourse but for all practical purposes has not made coherent statement in her cross-examination. No injury was found on any part of the body except for inflammation of private parts. In her opinion, it could be because of fall or coming in contact with hard substance like twig of a



tree while playing or by insect bite. The hymen tear has not been reported to be of any recent origin. The victim took part in sports and also played in the neighbourhood.

28. In this background, we find the accusation against the appellant to be doubtful.

29. Considering the entire case in a holistic manner, we are of the view that benefit of doubt is required to be given to the appellant.

30. For the aforementioned reasons, we set aside the judgment of conviction and order of sentence and acquit the appellant of the charges.

31. The appeal stands allowed.

32. The appellant is in jail since 22.11.2018. He is directed to be released from jail forthwith, if not required or detained in any other case.

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

34. The records of this case be returned to the



Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Manoj

AFR/NAFR	NAFR
CAV DATE	NA
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