

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.969 of 2024

Arising Out of PS. Case No.-465 Year-2019 Thana- MOHANIYA District- Kaimur (Bhabua)

Nirmala Devi W/O- Lalji Pal Resident of Village- Panapur Ps- Mohania Distt-
Kaimur

... .. Appellant/s

Versus

1. The State of Bihar
2. Dharmendra Yadav @ Lalu Yadav son of Rajnarayan Yadav Resident of
Village- Sidhepur PS-Industrial Area Buxar, Distt- Buxar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vishwanand Upadhyay, Advocate Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)

Date : 24-10-2024

Heard Mr. Vishwanand Upadhyay assisted by Mr. Santosh Kumar, learned Advocates for the appellant / informant and Mr. Bipin Kumar, learned A.P.P for the Respondent-State.

2. This appeal has been filed on behalf of the appellant / informant under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) against the judgment and order of acquittal dated 31.05.2024 rendered by the learned Special Judge, Exclusive POCSO Court-cum-Additional Sessions Judge-VI, Kaimur at Bhabhua, in POCSO



Case No. 3 of 2020, arising out of Mohania P.S. Case No. 465 of 2019, whereby the concerned Trial Court has acquitted the private respondent / accused from the charges levelled against him, for the offences punishable under Sections 366, 376(1) of the Indian Penal Code (hereinafter referred to as the IPC) and under Section 4 of the POCSO Act.

3. The prosecution case, in short, is based on the *fardbeyan* of the informant dated 23.10.2019 stating therein that her daughter, aged about 16 years, went missing from her house and during course of search, she came to know that accused Dharmendra Yadav @ Lalu Yadav kept her minor daughter in his house situated at village Sidhipur, P.S. Industrial Area Buxar, District- Buxar. It is alleged that when the informant went to the house of accused Dharmendra Yadav @ Lalu Yadav for taking her daughter back, the accused started abusing and assaulting them. Hence, she got suspicion that the accused Dharmendra Yadav @ Lalu Yadav kidnapped her minor daughter for the purpose of marriage.

4. After registration of the FIR, the Investigating Agency commenced the investigation. Statements of the witnesses were recorded by the Investigating Officer including statement of the victim under Section 164 Cr.P.C. and thereafter



the Investigating Agency filed the charge-sheet against the private respondent / accused for the offences punishable under Sections 363, 366A, 376 of the IPC and under Section 4 of the POCSO Act before Exclusive POCSO Court-cum-Additional Sessions Judge-VI, Kaimur at Bhabhua (hereinafter referred to as the Special POCSO Court).

5. The concerned Special POCSO Court has taken cognizance under Sections 363, 366A, 376 of the IPC and under Section 4 of the POCSO Act and the police papers were provided to the accused/private respondent in compliance of Section 33(9) of the POCSO Act. The charges were framed under Sections 366, 376(1) of the IPC read with Section 4 of the POCSO Act.

6. Before Special Court, the prosecution has examined in total eight witnesses and produced six exhibits. Defence has also examined one witness and produced two exhibits.

7. After conclusion of the trial, the Special Court acquitted the accused/private respondent vide its judgment dated 31.05.2024.

8. Being aggrieved and dissatisfied by the said



order of acquittal, the informant has preferred the present appeal.

9. The learned Counsel appearing for the informant/appellant has mainly contended that the victim girl was minor at the time of alleged occurrence as her date of birth is 01.01.2003 whereas date of kidnapping was 23.10.2019. It has further been contended that the victim girl in her examination-in-chief stated that she was kidnapped by accused/private respondent. She also deposed that she was sexually assaulted against her will. Learned counsel further submits that the victim girl was recovered from the house of the private respondent. This aspect has been completely ignored by the Trial Court. Learned Counsel further submits that from the FIR itself, it becomes clear that kidnapping was taken place on 23.10.2019 whereas medical examination took place on 01.11.2019 and by that time the sign of sexual assault was vanished. He further submits that all PWs. have stated that victim girl was recovered from the house of accused/private respondent. Therefore, case of kidnapping has been confirmed. He submits that in the examination of doctor



sexual intercourse has been proved. Learned Counsel for the appellant submits that in this background her date of birth is clear i.e., 01.01.2003, she has been recovered from the house of accused/private respondent and victim herself deposed that she was kidnapped, it is a clear cut case of kidnapping as well as penetrative sexual assault have been made out. But the Trial Court has acquitted the accused/respondent No.2 ignoring all the materials on record. Learned Advocate, therefore, urged that the present appeal requires consideration and, therefore, this appeal be admitted and thereafter the impugned judgment passed by the Special Court be quashed and set aside.

10. Learned Additional Public Prosecutor, on the other hand, submits that Trial Court has not committed any error, while passing the impugned Judgment and, in fact, till date the State has not preferred any acquittal appeal against the impugned judgment passed by the Special Court. However, learned Additional Public Prosecutor submits that this Hon'ble Court may pass appropriate order considering the facts and circumstances of the present case.

11. We have considered the submissions



canvassed by the learned Advocates appearing for the parties. We have also perused the materials placed on record including the copies of depositions which have been supplied separately by the learned Advocate for the informant/appellant. From the copy of the depositions supplied by the learned Advocate for the informant/appellant, it transpires that prosecution has examined eight witnesses and defence has examined one witness. The statement of the victim recorded under Section 164 Cr.P.C. which is Exhibit-P/3 and medical report Exhibit-P/5 as well as the marks sheet of the victim Exhibit-P/2, which are relevant for consideration and on the basis of those important materials charges were framed under Sections 366, 376(1) of the IPC and under Section 4 of the POCSO Act.

12. At this stage, we would like to refer the evidence of the victim, who has stated in her examination-in-chief that she was admitted in Bhabhua Tegore Academy, which is a Government school, in the year 2008. After class-X she left the school. She was promoted in Class-VII in the year 2015. She had completed her tenth from High



School, Ramgarh. They did not marry in the Civil Court, Buxar, before the Notary. She further deposed that she had not given Aadhar Card to the Notary and I did not state my date of birth as 01.01.2001. In my Aadhar Card my date of birth is 01.01.2003. She has denied that she had given the Adhar Card in which her date of birth was 01.01.2001. In paragraph-8 of her deposition, she denied about the date of birth which was entered in in her Aadhar Card placed before the Notary Public as 01.01.2001. PW 4 who is alleged to be the uncle of the victim has clearly deposed in paragraph-3 of his deposition that at the time of occurrence the age of victim was 20 years.

13. It also transpires to this Court from the deposition of doctor, who is PW 6, in which she has deposed that she (PW 6) was a member of the Medical Board in which it has come that initially the victim refused to undergo for medical examination but only after persuasion by parents and others, she gave consent, in writing, for medical examination. The said doctor PW 6 has deposed in paragraphs-3, 4, 5 and 6 which read as follows:

“3. We a board of three doctors



comprising Dr. Badruddin Ansari, Dr. Mrs. Amber and Dr. Mrs. Manisha Kumari examined Preeti Kumari.

4. The alleged victim brought to the hospital by Bal Vrind Prasad, S.I, PS-Mohania and Ritu Kumari, female constable no. 776. Initially the alleged victim refused to undergo medical examination but after persuasion by parents and others, she consent in writing for medical examination.

The alleged victim is normal and cooperative. Her LMP Is 25.10.2019. She had her menarche in 2012.

The alleged victim was in relationship with Dharmendra Yadav of Sidhupur (Buxar) for about one year. On 21.10.2019, she went to Buxar alone and arrived at Dharmendra's house at 04:00PM on 21.10.2019 and stayed there. She married to Dharmendra at a Mandir at Buxar on 23.10.2019 in presence of Dharmendra's Jeeja and uncle. On 30.10.2019, the police brought her to Mohania. Internal Examination done by me Dr. Amber with Parwati Kumari, ANM as assistant. Axillary hair is black but sparse. Pubic hair black mild grown



but no medial extension to thighs. Breasts having projection of papillae due to recession of areola. Hymen not present. The vagina swab taken by me and sent immediately to Dr. K.M. Singh, the pathologist, SDH, Mohania for microscopic examination and the report. The report points out 0 to 1 epithelial cells, a few pus cells and erythrocytes nil/Hpf, spermatozoa live or dead not found.

5. X-ray of the right and the left wrist, x-ray of the both elbow joints and hip joints and knee joints and x-ray pelvis shows fusionu of their corresponding epiphysis with diaphysis and fusion of iliae crest.

Opinion (i) On the basis of the report given by Dr. Manisha Kumari, the dental surgeon, SDH, Mohania, her age is about 18 years on the basis of dental x-ray plates.

(ii) On the basis of physical features development of secondary sexual characters, menstrual history, x-ray reports and dental age report, her age is 18 to 19 years.

(iii) There is no evidence of



physical injury or recent intercourse. The consent letter, the report of microscopic examination, x-ray plates(9), 04 dental x-ray plates handed over to the police.

M.I- (i) A mole on the dorsum of the right wrist.

(ii) A tiny scar mark on the root of the nose.

Cross examination on behalf of defence

6. I have not found any injury on the body of the victim. The age assessed as 18-19 years means above 18.

During the course of cross-examination, another member of the Medical Board, who is PW 7, has also deposed that age of the victim was between 18 to 19 years.

14. Learned Advocate for the appellant/informant has contended that Exhibit-2 is the most fatal document, i.e., marks sheet of the victim, on which the date of birth is indicated as 01.01.2003 but from the deposition of all the witnesses it is not clear how the alleged marks sheet had been marked as Exhibit-P/2. From the evidence laid by the prosecution, it appears that the prosecution as well as the present appellant has mainly placed reliance on the



deposition of the victim as well as her alleged date of birth in which age is mentioned as 01.01.2003 but it is not clear from the record as to how it became part of record and marked as Exhibit-P/2.

15. We upon going through Exhibit-3, which is statement of the victim recorded under Section 164 Cr.P.C. and, particularly, just after filing of the FIR on 30.10.2019, police has recovered the victim on 30.10.2019 itself and on the very next day she was produced before the doctor, where the victim herself deposed story before the doctor which the doctor has narrated in her deposition. Subsequently, in the statement recorded under Section 164 Cr.P.C. which has taken place on 05.11.2019 before Magistrate, she has clearly narrated her story that she herself visited to the house of the accused/private respondent. She was not compelled and no force had been used upon her. So far as ascertainment of age is concerned, there are two aspects, Exhibit-2 has not been marked by any of the witnesses, on the other hand, a team of doctors has ascertained the age of the alleged victim in between 18 to 19 years. Victim's own uncle has deposed in his statement,



i.e., PW 4 at paragraph-3 that at the time of the occurrence the age of the victim was about 20 years. In this background, there are no ingredients of Section 366 or Section 4 of the POCSO Act available in the present occurrence, more particularly, after doctors' opinion that no evidence of physical injury or recent intercourse found. Therefore, there is no ingredient of Section 376 of the IPC also. In the light of the materials available, it transpires that there may be two views possible on the basis of the close analysis of this case. In this regard, it transpires to us that two reasonable conclusions may be possible.

16. In this regard two reasonable conclusion may be possible in the present case. Therefore, doubts have been created in our mind, as such, there is clear existence of doubt about commission of crime at the hands of the appellant. It is well established in the judgment of Hon'ble Supreme Court of India in the case of **Ram Nath Madho Prasad Vs. State of U.P.** reported in **AIR 1953 SC 420** that wherever there is existence of benefit of doubt, then the said doubt shall go in favour of the accused. In the light of the above discussion, it also exists that on the basis of the



evidences on record and upon its analysis there is breakage of link of connectivity of the chain of evidences in all respects.

17. Hence, after considering the reasoning recorded by the Trial Court while passing the order of acquittal in favour of the private respondent/accused, we are of the view that Trial Court has not committed any error while passing impugned order. Thus, looking to the overall facts and circumstances of the present case, we are not inclined to interfere with the impugned order.

18. Accordingly, the present appeal is dismissed.

(Vipul M. Pancholi, J)

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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