

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3966 of 2023

Arising Out of PS. Case No.-100 Year-2021 Thana- KACCHWA District- Rohtas

Priyanshu Thakur S/O Ramji Thakur R/O Village- Danwar, P.S- Kachwa
(Danwar), Distt.- Rohtas, Bihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sarfraz Ahmad, Adv. Mr. Jitendra Kumar, Adv. Mr. Shardanand, Adv. Ms. Shivam Perna, Adv.
For the Respondent/s:		Mr. Bal Mukund Prasad Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 21-11-2024

1. Heard the parties.

2. The present appeal preferred by

appellant/convict, namely, Priyanshu Thakur against judgment of conviction dated 10.07.2023 and order of sentence dated 18.07.2023 passed by learned 7th ADJ cum Exclusive Special Judge (POCSO), Sasaram in connection with POCSO Case No. 41 of 2022 (arising out of Kachhwan P.S. Case No. 100 of 2021), whereby and where under appellant/convict has been convicted for the offence punishable under Section 366(A), 366 of IPC and Sections 4



and 6 of POCSO Act and has directed the appellant to undergo R.I. for 10 years and fine of Rs. 1,00,000/- and in default of payment of fine he is directed to further undergo RI for one year for the offence under Section 4 of the POCSO Act, period of custody of accused person during trial in this case shall be set of in sentence passed by this court.

3. Case of prosecution in brief is that Priyanshu Thakur (appellant) was the home tutor of the daughter /victim (aged about 17 years). It is alleged that during dushara time a conflict occurred between appellant and the brother of informant due to which the parents of appellant told the informant that one day they will make his daughter, as their daughter-in-law. Thereafter on 23.12.2021, appellant along with others kidnapped the victim with intention to marry her.

4. On the basis of aforesaid written information, Kachhwan P.S. Case No. 100 of 2021 was lodged under Section 366(A), 366 of IPC and Sections 4 and 6 of POCSO Act, against the appellant.

5. To substantiate its case, the prosecution has examined altogether four witnesses. They are:-



Prosecution Witnesses No(s).	Names
P.W. 1	Shailesh Kumar Singh (informant)
P.W. 2	Victim
P.W. 3	Rakesh Kumar Singh
P.W. 4	Akhilesh Kumar Singh
P.W. 5	Akhilesh Kumar Singh (ASI)
P.W. 6	Dr. Sandhya (M.O.)

6. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-P1	The written application signed and identified by the informant.
Exhibit-P2	The statement of victim signed and identified by the victim
Exhibit-P1/1	Endorsement put by the SHO of Kachhwan P.S
Exhibit-P3	Charge-sheet written signed and identified by the I.O.
Exhibit-P4	Medical report of the victim
Exhibit-P5	Mark sheet cum certificate of Secondary School Of Examination, 2020 of the victim

7. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section



313 of the Cr.P.C., where he denied all incriminative evidences as surfaced against him during trial and claimed his complete innocence and false implication.

8. Neither any defence witness nor any document was exhibited in support of defence by appellants/convicts.

9. Upon the basis of evidences as surfaced during the trial and also by taking note of the argument as advanced by the learned counsel appearing on behalf of the parties, the learned trial court convicted appellant/convict and passed order of sentence, as stated hereinabove.

10. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellant/convict preferred the present appeal.

11. Hence the present appeal.

Argument on behalf of the appellant/convict:

12. It is submitted by learned counsel arguing on behalf of the appellant/convict, that out of love affairs victim accompanied appellant out of her own sweet will and went to Delhi, where they remained together for about forty days. It is submitted that no physical relation during said period was



established between them and there is no allegation even as of sexual assault. In support of this fact learned counsel relied upon the statement of victim as recorded under Section 164 of the Cr.P.C. It is submitted that after aforesaid statement victim released in favour of parents, whereafter under their pressure she completely took U-turn and raised allegation of rape/penetrative sexual assault against appellant as to commit rape upon her for continuously forty days at Delhi. It is submitted that in the view of such major contradictions, the conviction as recorded by learned trial court appears bad in eyes of law.

13. It is submitted that immediately after recovery, victim was subjected for medical examination where her age was assessed radiologically between 18-19 years. It is submitted that occurrence is of 23.12.2021 and the document in issue which was issued somewhere in year 2020 was only produced on 27.06.2023 before the learned trial court, where date of birth of the victim was shown as 18.06.2005. It is submitted that victim nowhere discloses in her examination-in-chief that her date of birth is 18.06.2005.



In aforesaid background the certificate i.e., Exhibit-P/5 in support of date of birth also appears doubtful. Learned counsel also submitted that the victim after recovery was examined medically by PW-6 where no injury in or around private part was noticed upon and in absence of any such injury it can be said safely that she was not sexually assaulted which further appears in corroboration with statement of victim as recorded under Section 164 of the Cr.P.C. and thus she can not be categorized as “sterling witness” to secure conviction, as recorded on her sole testimony.

Argument on behalf of State:

14. Learned APP while opposing the appeal submitted that victim proved “child” within the meaning of Section 2(1)(d) of the POCSO Act as her school certificate was duly proved during the trial which is Exhibit - P/5 which is her mark-sheet issued from Central Board of Secondary Education (CBSE), where her date of birth shown as 18.06.2005 and, therefore, certainly she was below 18 years of age on the date of occurrence i.e., of 23.12.2021. It is submitted that in view of the fact as victim proved “child”, the



learned trial court correctly import the provisions of Section 29 and 30 of POCSO Act regarding presumptions and, therefore, on this score conviction as recorded by learned trial court cannot be said bad in eyes of law. However, he could not disputed the contradictions as appears out of the statement of victim as recorded under Section 164 of the Cr.P.C. which is Exhibit-P2.

15. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

16. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

17. The most important witness of present crime in question is, **PW-2**, who is victim herself. It appears from her examination-in-chief that on 22.12.2021 at about 11 P.M., the appellant approached her and asked to go for Delhi in connection with examination and also to get suitable employment and under repeated request she finally



accompanied appellant for Delhi where she was kept somewhere in Mangolpuri area in isolated room for forty days where rape was committed upon her. It was deposed by her that she recorded her statement under Section 164 of Cr.P.C. and after statement she went along with her parents. She denied the suggestion that she lodged present case against appellant under pressure of her parents due to family disputes.

18. PW-1 is Shailesh Kumar Singh, who is the informant of this case and the father of the victim. It appears from his deposition that the occurrence took place on 23.12.2021, somewhere at about 4:00 A.M. He deposed that the appellant was giving tuition to her victim daughter, aged about 17 years old since last one year. It appears from his deposition that appellant teased his daughter during tuition which was noticed by his brother, namely, Rakesh Singh consequent upon an altercation took place between his brother and appellant. It was deposed that the victim found missing on 23.12.2021 since 4:00 A.M. When his brother visited the house of appellant he was also found absent,



whereafter family members of appellant started quarreling with them and said that one day he will make his daughter as their daughter-in-law. He identified his signature on his *fardbeyan* which upon his identification exhibited as Exhibit-P1. It was deposed that his daughter was recovered by police after forty days and thereafter under direction of court she was handover to him. It was further deposed that victim informed him that appellant committed rape upon her for forty days and also committed mental cruelty upon her. He also made his statement during investigation before police.

18.1. Upon cross-examination he stated that his daughter eloped by appellant but he is not an eye witness of the occurrence. It was stated by him that his daughter was mentally fit when her statement was recorded before Judicial officer. He also stated that police visited place of occurrence which is the first floor of his house where the victim was sleeping at the night of the occurrence.

19. PW-3 is Rakesh Kumar Singh, who is the uncle of the victim. He also deposed by supporting the occurrence as of 23.12.2021, which took place at about 4:00



A.M. It was deposed by him that he also visited Delhi along with police. The victim was recovered from the third floor of one building in Mangolpuri area, Delhi and the moment victim came in front of him she started weeping. He further deposed that he was informed by victim that the appellant was in process to send her to Kolkata within next 2-4 days but same was checked due to timely arrival of police.

19.1. Upon cross-examination he could not disclose whether this FIR was lodged after five days of the occurrence. It was stated by him that appellant never expressed his desire to marry his niece/victim.

20. PW-4 is Akhilesh Kumar Singh, who is also uncle of the victim and supported the occurrence by deposing during the trial that same took place on 23.12.2021 at about 4:00 AM like PW-1 and PW-3. He also deposed that victim remains with appellant for forty days in Delhi, where rape was committed upon her. He stated that victim was treated in Sadar Hospital, Sasaram while she was in intoxicating state. He has no personal knowledge that how victim was taken by appellant. He denied having knowledge regarding fact that



victim stated in her Statement made under Section 161 and 164 of the Cr.P.C. that she went to Delhi along with the appellant, namely, Priyanshu Thakur out of her own sweet will.

21. PW-5 is Akhilesh Kumar Singh, Who is A.S.I. posted at Kachhwan police station and on 28.12.2021 he lodged the Kachhwan P.S. case No. 100 of 2021 regarding present occurrence. He received investigation of this case on the same very day under endorsement of the then SHO namely, Kumar Gaurav. He identified his endorsement on formal FIR and also his handwriting which upon his identification exhibited as Exhibit – P1/1. He recorded the statement of informant at police station itself and thereafter visited the place of occurrence and recorded the statement of other witnesses. It appears from his deposition that on the basis of mobile tower locations of mobile no. 8051678250 which belongs to appellant, he came to know that his location was in Delhi and thereafter he proceeded for Delhi where with the help of local police he arrested the appellant on 01.02.2022. He collected matriculation certificate of the



victim on 02.02.2022 in support of her age. He got recorded the statement of victim under Section 164 of the Cr.P.C. on 03.02.2022.

21.1. Upon cross-examination, it was stated that occurrence took place on 23.12.2021, whereas FIR for same was lodged on 28.12.2021. He deposed that victim stated while recording her statement under Section 161 of the Cr.P.C. that she never established physical relationship with appellant, but approved the fact that she was in love affair with appellant since last two years. When he brought victim before court for recording her statement under Section 164 of the Cr.P.C. he didn't noticed that she was under due pressure or fear. It was stated by him that during investigation he collected medical report of victim where her age was shown between 18-19 years. It was stated by him that victim and appellant were found in same room which they opened immediately after knock. He received three different mobile locations but ultimately found where both were living by changing their name.

22. PW-6 is Dr. Sandhya, (M.O.) who



conducted medical examination upon the victim on 18.03.2023 at Sadar Hospital, Sasaram finding of which are under :-

“i) Spermatozoa - not found alive or dead

ii) RBC - Not found

iii) WBC - Not found

iv) Epithelial Cells - 4 to 12 HPF

v) Bacteria - Present (few)

vi) UPT- Negative.”

Conclusion:-

23. No doubt the statement as recorded under Section 161 and 164 of the Cr.P.C. are not the substantial piece of evidence but certainly it can be used for the purpose of corroboration or contradiction and its corroborative value particularly that of victim recorded under Section 164 of the Cr.P.C. cannot be ignored.

24. The statement of victim of crime in question get recorded under Section 164 of Cr.P.C. by a Judicial Magistrate and it was recorded only when victim found in fit state of mind and there is no undue pressure or fear. With aforesaid certification only the statement was provisioned to be recorded. It appears from the statement of victim that she was in love affairs with appellant and out of her own sweet will



she went with the appellant to Delhi where she lived together for forty days. It also appears out of said statement that no physical relation was established between them during stay at Delhi. Almost same fact was stated by victim during investigation under Section 161 of the Cr.P.C., which was approved by PW-5, who is none but the I.O. of this case. He also approved love affairs which was between appellant and victim since last two years before the occurrence.

25. With aforesaid factual position of this case, when the victim started to live with her parents after recording her statement under Section 164 of the Cr.P.C. and as such when she lived together for couple of months her deposition was recorded by learned trial court as PW-2, where she stated that on daily basis she was raped by appellant. Taking totality of her evidence *qua* crime in questions as PW-2 and comparing her statement as recorded under Section 164 of the Cr.P.C. also the testimony of PW-5 i.e., Investigating Officer, it can be held safely that she is not the “sterling witness” of crime in question and therefore the conviction cannot be said sustainable in eyes of law on her



sole testimony.

26. In aforesaid context, it would be apposite to reproduce para 22 of the legal ratio as approved by Hon'ble Supreme Court as available through ***Rai Sandeep vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***, which reads as follows:-

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the



offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

27. From the perusal of the record it further appears that a document which is exhibited as Exhibit-P5 in present case, which is matriculation certificate of victim as issued by C.B.S.E. where the date of birth of victim shown as 18.06.2005 though I.O. stated that during investigation he collected medical slip where the victim was found somewhere between the age group of 18-19 years but mere said oral statement is not suffice to held that she was major on the date of occurrence. It appears that document Exhibit-P5 is a document which is a valid document under Section 94(2) of Juvenile Justice (Care and Protection of Children) Act, 2015 as approved by Hon'ble Supreme Court in view of ***Jarnail Singh vs. State of Haryana*** as reported in ***2013 (7) SCC***



263 and as such the learned trial court correctly held victim as a “child” within the meaning of Section 2(1)(d) of the POCSO Act. Hence argument of learned counsel appearing for the appellant appears not convincing in this context.

28. Merely on the fact that victim proved “child” within the meaning of Section 2(1)(d) of the POCSO Act, does not lead to conclusion *ipso facto* that the presumption can be imported to the fact of this case as available under Section 29 and 30 of the POCSO Act. It is settled principle of criminal jurisprudence that presumptions as available under the law can be import only when the foundational aspect of the case proved. In present case testimony of victim, who is the sole witness of the crime in question appears doubtful being as she does not inspire confidence to accept as “sterling witness”. Hence, it can be said safely that prosecutions failed to establish the foundational aspect of this case and so the presumption as available under POCSO Act as available under Section 29 and 30 cannot appears applicable in present case.

29. From the testimony of PW-6, who is a doctor and examined victim, it appears that nothing found upon the



medical examination of victim on the basis of which it can be said that rape/penetrative sexual assault was committed upon her. The medical finding appears corroborating to the statement of victim as recorded under Section 164 of the Cr.P.C. as discussed above, which negate sexual assault.

30. In view of aforesaid, it can be said safely that prosecution failed to established its case beyond reasonable doubt, the benefit of which must be extended to appellant.

31. Accordingly, appeal stands allowed.

32. The impugned judgment of conviction dated 10.07.2023 and order of sentence dated 18.07.2023 rendered by learned 7th ADJ cum Exclusive Special Judge (POCSO), Sasaram in connection with POCSO Case No. 41 of 2022 (arising out of Kachhwan P.S. Case No. 100 of 2021) is hereby set aside/quashed.

33. Appellant namely, Priyanshu Thakur is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case. Fine, if any paid, by appellant, be returned to appellant immediately.

34. Office is directed to send back the trial



court records and proceedings along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.11.2024
Transmission Date	26.11.2024

