

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.129 of 2022

Arising Out of PS. Case No.-148 Year-2018 Thana- SIMRI District- Buxar

AKHILESH TURAHA, Son of Munna Turaha, Resident of Village - Bheriya,
P.S.- Simri, Distt.- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manoj Kumar, Advocate Mr. Sada Nand Roy, Advocate Mr. Shashi Shekhar Singh, Advocate
For the Informant/s	:	Mr. Pradhan Murali Manohar Pd., Advocate Mr. Abhash, Advocate Mr. Raju Kumar, Advocate
For the State	:	Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 23-02-2024

1. Heard learned counsel for the Appellant, learned counsel for the Informant as well as learned APP for the State.

2. The present appeal has been preferred against the Judgment of Conviction dated 29.09.2021 and Order of Sentence dated 30.09.2021 passed by learned Additional District and Sessions Judge- VIth - cum- Special Judge, POCSO Act, Buxar in POCSO Case No. 35 of 2018 CIS No. 32/2018 arising out of Simri P.S. Case No. 148 of 2018.

3. The appellant stood charged for the offences punishable under Sections 376, 341, 323, 354B, 354C, 308, and 509 of the Indian Penal Code (hereinafter referred to as “IPC”) and



Section 4 of Protection of Children from Sexual Offences Act (hereinafter referred to as “POCSO Act”).

4. The learned trial Court held the appellant guilty of the offences punishable under Sections **376, 323, 341, 509 and 354B of IPC and Section 4 of POCSO Act** and sentenced the appellant to undergo rigorous imprisonment for ten years with a fine of Rs. 20,000/- and in default of the payment of fine to further undergo simple imprisonment for six months for the offence of 376 of IPC, further sentenced him to undergo one year of simple imprisonment for the offence of 323 of IPC, further sentenced him to undergo three years of simple imprisonment with a fine of Rs. 5,000/- and in default of payment of fine to undergo additional simple imprisonment for one month for the offence under Section 354B of IPC and also sentenced him to undergo rigorous imprisonment for ten years with a fine of Rs. 25,000/- and in default of payment of fine to undergo additional six months of simple imprisonment for the offence punishable under Section 4 of the POCSO Act. All the said sentences have been directed to run concurrently by the Trial Court. The learned trial Court did not award separate sentence for the offences punishable under Sections 341 and 509 of IPC considering the said offences having been committed to complete the main offences.



5. The substance of prosecution's case appearing from the written report (Exhibit-2) is as follows:-

On 26.06.2018 at about 3:30 P.M the victim, aged about 15 years, was going to take tuition in her neighboring Kharahatar village, when she reached near the house of her co-villager namely, Chand Muni Devi then, suddenly her co-villager Akhilesh Turaha (Appellant) came and caught her from behind and forcefully took her inside a room of the house of one Lalan Kanu and thereafter, closed the door of the room and when the victim resisted, she was assaulted by the appellant, the victim also attempted to cry but the appellant pressed her mouth by putting his hand and after that pushed her down on the floor and removed her clothes and started raping her and then she anyhow cried but the appellant started slitting her throat by using a **Garasa** even then the victim continued to try to save herself from the appellant but the appellant caught hold her tightly and also started clicking her photographs and in the meantime on hearing her cry the daughter-in-law of Lalan Kanu came from inside of her house and made the appellant open the door of the room and thereafter, the appellant managed to escape and after that on hearing victim's cry her mother, uncle namely, Ashok Chaurasiya and several co-villagers



reached at the place of occurrence and brought the victim to her house.

6. With the above allegations the victim filed a written application Ext.-2 on 27.06.2018 at Simri Police Station, on that basis the formal FIR bearing Simri P.S. Case No. 148 of 2018 (Ext.-3) was registered under **Sections 341, 323, 354B, 354C, 308, 376, 511 and 509 of IPC and Section 8 of the POCSO Act** which set the criminal law in motion.

7. Mr. Manoj Kumar, learned counsel for the appellant has argued that the FIR is said to have been lodged on 27.06.2018, the next day from the date of commission of the alleged occurrence, but some material witnesses, who accompanied the victim to the police station, said that the FIR was lodged on 26.06.2018 and the victim herself made contradictory statement regarding the date of institution of the FIR and the most important witness Rani Devi, daughter-in-law of Lalan Kanu was not produced and examined by the prosecution before the trial Court despite her name being mentioned as a witness in the chargesheet and the alleged occurrence is stated to have taken place inside the house of Lalan Kanu and in this regard, wife of Lalan Kanu was produced and examined by the appellant in his defence who did not support the allegations levelled by the victim. Further



submission is that the victim was medically examined about one month after the commission of the alleged occurrence and PW-6, who was a member of the Medical Board which examined the victim, did not find any positive evidence of sexual assault as well as physical assault at the neck of victim by means of sharp edged weapon like *Garassa* and the victim's parents, who are said to be important witnesses as they got the information of the occurrence from the victim just after the commission of the occurrence, were not produced and examined by the prosecution in the trial of the appellant and other prosecution witnesses, except the so-called victim, are not stated to be eye-witnesses. It has been further argued by appellant's counsel that the investigating officer, examined as PW-7, did not find any incriminating evidence at the place of occurrence while inspecting the said place, hence the learned trial Court did not appreciate properly all these relevant and important circumstances appearing against the prosecution and wrongly convicted the appellant for the alleged offences.

8. On the contrary, Mr. Pradhan Murali Manohar Pd., learned counsel appearing on behalf of the informant has vehemently opposed the appeal and submitted that before the trial Court the victim's minority was proved by adducing her original marks sheet of matriculation examination that was marked as Ext.-



7 and the medical board's opinion regarding victim's age is also in favour of said age and the police intentionally did not properly investigate the allegations levelled by the victim and even she was not produced before the Judicial Magistrate for recording her statement under Section 164 of Cr.P.C., and finally the victim herself approached to the trial Court for getting her statement recorded by Judicial Magistrate and only then, the police filed an application before the trial Court for the medical examination of the victim and recording her statement under Section 164 of Cr.P.C., and before the trial Court, the initial injury report of the victim(Ext.-4) was proved by the staff of the concerned hospital as the doctor, who examined the victim, died at that time and the Ext.-4 clearly shows that four Abrasions around the whole neck of the victim were found that is sufficient to prove the allegation of causing injury to the victim's neck by the appellant by using *Garasa*. It has been further submitted by learned counsel for the informant that though the second medical examination report issued by the medical board does not go in favour of the prosecution but admittedly, the victim was examined one month after the occurrence so, there was no possibility to find any sign of physical and sexual assault on the person of the victim by the doctors who examined the victim and the victim's testimony is



completely reliable and sufficient to justify the conviction of the appellant.

9. Heard both the sides and perused the judgment impugned and evidences available on the case record and also gone through the statement of the appellant.

In the instant matter, the place of occurrence is stated to be the house of one Lalan Kanu. As per allegation, the appellant caught hold of the victim from behind when she was going to take tuition, thereafter forcefully took her inside a room of the house of said Lalan Kanu and closed the door of the room and took turns to rape the victim and when she resisted his act he caused injury at her neck by using *Garasa*. As per prosecution story, the most important witness of the prosecution is the victim herself and she fully supported the allegations levelled by her in her written FIR, in the examination-in-chief before the trial Court. She deposed that the alleged occurrence took place on 26.06.2018 at about 3:30 P.M. when she was going to take tuition and when she reached near the house of Lalan Kanu the appellant caught hold of her and forcefully took her inside the house of Lalan Kanu and closed the door of the room, raped her and also assaulted her by means of *Garasa* that resulted in injuries to her neck. The victim deposed that her statement was recorded before the Judicial



Magistrate under Section 164 of Cr.P.C. Before the trial Court, the victim proved her signature upon her statement recorded under Section 164 of Cr.P.C., which was marked as Ext.-1. It is a well settled principle of law that ***“a statement recorded before a Magistrate under Section 164 of Cr.P.C., can be used to corroborate the evidence of statement maker”***. Before the Judicial Magistrate, the victim reiterated the same allegations levelled by her in her written FIR. The learned counsel for the appellant has not drawn the attention of this Court to any material or evidence to show any enmity or tense relation between the victim’s family and the appellant’s family prior to occurrence so, in view of this fact, there was no reason for the victim to make the false allegation of rape and assault against the appellant. The victim showed her age as fifteen years in her written FIR when she lodged the case. In support of the victim's minority the prosecution produced victim’s original marks sheet of matriculation examination which was marked as Ext.-7, which proved that the victim was minor at the time of commission of the alleged occurrence and furthermore, the medical board which examined the victim, opined the victim’s age between 15 and 16 years. In rebuttal to these evidences no evidence was given by the appellant.



10. Learned counsel for the appellant has placed reliance upon the evidence given by the PW-6, who proved the medical examination report(Ext.-4) of the victim. Though, as per Ext.-4 and evidence of PW-6, the Medical Board did not find any injury on the person of the victim at the time of examination but the victim was examined on 28.07.2018, one month and two days after the commission of the alleged occurrence so, in view of this considerable delay between the commission of the offences and the medical examination of the victim, there was less possibility to find any sign of rape and physical assault by the medical board. On the other hand, the informant's counsel has argued that the investigating officer did not take any pain to get the victim's statement recorded by a magistrate and also did not get the victim examined by the doctor and thereafter, the victim herself approached to the trial Court and only after that, the police came into action and got the victim's statement recorded by Judicial Magistrate and also got the victim's medical examination done by the doctor concerned. The said circumstance pointed out by learned counsel for the informant shows that the investigating officer was completely careless in getting the victim examined by the Medical Board after lodging the FIR but on account of this negligence on the part of the investigating officer, the appellant is



not entitled to get a benefit as the victim was initially treated at Primary Health Centre, Simri on 27.06.2018 at about 2:30 A.M. Though, the doctor, who examined the victim, could not have been produced as he had died but the hospital's register having relevant entries of the said medical treatment was called upon by the trial Court from the Primary Health Centre, Simri, which was produced by PW-8, who deposed that according to the entries made in the emergency register on 27.06.2018 the victim aged about 15 years was treated at Primary health Centre, Simri, it was noted in the register that abrasion around the neck of the victim was found. On the basis of this evidence, the relevant entry concerned to the victim's treatment made in the emergency register of concerned PHC was marked as Ext.-4 which is sufficient to show and prove that the victim was treated on the same night of the alleged day of occurrence at Primary Health Centre, Simri and abrasions around her neck were found that is supportive to the allegation of assault committed at her neck by the appellant by *Garasa* like means. Accordingly, I do not find any force in the above contention of the appellant's counsel.

11. It has been argued by learned counsel for the appellant that daughter-in-law of Lalan Kanu was not produced and examined by the prosecution whereas she was a material and



important witness of the prosecution as she was the first person to see the victim being closed in a room of the house of her father-in-law. Though, in the present matter the daughter-in-law of said Lalan Kanu was not produced and examined by the prosecution but in defence side the wife of Lalan Kanu was produced and examined as DW-1. She deposed that no occurrence of rape as alleged, took place on 26.06.2018 in her house. She further deposed that on the day of occurrence when she returned at her home in the afternoon then she saw the victim sitting in her house and thereafter, she asked her to go to her home and then several nearby persons including the family members of the victim gathered. The witness deposed in the cross-examination that she gave her evidence as per the direction of her advocate. In view of these facts stated by DW-1, her evidence, regarding the main occurrence, cannot be deemed to be reliable as she deposed her evidence as per direction of defence counsel but one thing is quite clear that during the relevant time of the alleged occurrence, the victim was found in her house and the said circumstance goes in favour of the prosecution's allegation.

12. Though in the instant matter, the victim and other prosecution witnesses who accompanied the victim to police station, made some contradictory statements regarding the



particular date when the FIR was lodged by the victim as the victim deposed in the cross-examination that her application was written in the night of 26.06.2018 while as per PW-4, the FIR was written on 27.06.2018 before him. The said contradiction is not material as the victim deposed that when she wrote the application in the night, her mental condition was not good and her mental condition became stable in the morning then she wrote her application correctly and thereafter, gave the same at the police station. Here, it is relevant to mention that in the night of 26.06.2018, the victim was treated at Primary Health Centre, Simri which supports the fact that the victim was not in a position and did not get sufficient time to write the FIR on the same night of the day of occurrence.

PW-2, deposed that the victim wrote only one application to lodge the FIR and PW-4 Chhote Lal Chaurasia deposed in the cross-examination that the application was written on 27.06.2018 before him. Both the witnesses accompanied the victim to the police station and also made their signature upon the written FIR (Ext.-2) and identified their signatures upon it which were marked as Exts.-2/A and 2/B.

13. Accordingly, I do not find any force in the above contention of the appellant's counsel. So far as, non finding of any



incriminating material or evidence at the place of occurrence by the investigating officer at the time of inspection is concerned, as contended by appellant's counsel though, the Investigating Officer did not find any incriminating material at the place of occurrence but as discussed above the Investigating Officer completely remained careless to investigate the allegations of the victim in proper manner which is also clear from the statement of PW-4 who deposed in the cross-examination that from the place of occurrence a *Garasi* was recovered but no document was prepared in support of this recovery and the *Garasi* was recovered by the police. The statement clearly shows that the police were interested in defending the accused and did not collect the material evidence intentionally.

14. Hon'ble Supreme Court in the case of **C. Muniappan and Others vs. State of Tamil Nadu** reported in **(2010) 9 SCC 567** observed that:-

“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If



primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

15. In view of the above principles laid down by the Hon’ble Apex Court the appellant is not entitled to get any benefit on account of the omission and negligence on the part of the investigating officer which resulted in defective investigation in present matter as the other evidence particularly the victim’s evidence is so reliable and trustworthy that the lapses on the part of the investigating officer do not affect the truthfulness of the



allegations levelled by the victim in her FIR. Accordingly, I do not find any force in the above contention of the appellant's counsel.

16. The appellant was charged for the offence of penetrative sexual assault punishable under Section 4 of the POCSO Act and in the present matter, in view of the above discussed evidences of the prosecution, the foundational facts of the said offence were successfully established by the prosecution so, the presumption contemplated by Section 29 of POCSO Act comes into operation and the learned trial Court rightly presumed that the appellant had committed an offence punishable under Section 4 of the POCSO Act. The appellant did not succeed to rebut the said presumption and prove that he had not committed the alleged offence of penetrative sexual assault. In this regard the observation made by Hon'ble Apex Court in the paragraph no. 108 of the judgment passed **in the case of Pappu vs. State of Uttar Pradesh** reported in **(2022) 10 SCC 321** is relevant and the same is being reproduced as under:-

“ 108. For what has been discussed hereinabove, it is also but clear that the foundational facts of the offences alleged against the appellant have been established. In the given set of circumstances, it could safely be said that the presumption contemplated by



Section 29 of POCSO Act came into operation and the burden came staying with the appellant; and it was for him to rebut the presumption and to prove that he had not committed the offence. The appellant has failed to discharge this burden. Viewed from this angle too, the decisions in Noor Aga and Justin do not come to the rescue of the appellant; rather on the principles stated therein and in terms of Section 29 POCSO, the presumption would only lead to the finding of guilt against the appellant.”

17. Hon’ble Apex Court in the case of State of Punjab vs. Gurmit Singh and Others reported in (1996) 2 Supreme Court Cases 384 held that *“conviction can be founded on victim’s testimony alone and corroboration is not necessary unless there are compelling reasons for seeking corroboration and the testimony of the victim of sexual assault is vital”*. In the case of **Phool Singh vs. State of Madhya Pradesh** reported in 2022 (2) SCC 74 it was ruled by the Hon’ble Supreme Court that *“there can be conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality”* (para 8 of the said judgment), it was further



ruled that ***“As a general rule, if credible, conviction of the accused can be based on sole testimony, without corroboration. Sole testimony of the prosecutrix should not be doubted by the Court merely on the basis of assumptions and surmises.”*** (para 9 of the said judgment).

In the light of above law laid down by Hon’ble Apex Court it is a well established principle that the conviction of the accused in rape cases can be made merely on the basis of sole testimony of victim/prosecutrix without corroboration if victim’s evidence is found to be trustworthy, unblemished and credible. In the instant matter, as noted above the appellant did not give any evidence to show any enmity or bad relation between victim’s family and his family to rise a possibility of false allegation by the victim against him and from the cross-examination of prosecution witnesses including the victim, no fact suggesting the false allegation on the part of the victim could have been elicited by the appellant. The victim remained firm to her stand before the trial Court as well as Judicial Magistrate while recording her evidence and statement and her evidence appears to be trustworthy and credible. So far as the evidence of other non-official witnesses of the prosecution is concerned though, they are not stated to be the eye-witness of the alleged occurrence but they supported the other



relevant facts such as victim’s condition just after the occurrence, her age and victim’s going to the police station to lodge the FIR etc and in the cross-examination, they did not reveal any fact to disprove the allegation of prosecution. Furthermore, the initial medical treatment of the victim which was given at Primary Health Centre, Simri on the same night of the alleged day of occurrence, goes against the appellant and supports the prosecution’s case and in this regard the relevant entries regarding the factum of treatment made in the emergency register of said Primary Health Center was proved by the concerned official who produced the register before the trial Court.

18. For the aforementioned reasons, this Court forms the opinion that the appellant was rightly convicted for the alleged offences by the trial Court and there is no illegality in the impugned judgment and order convicting and sentencing the appellant for the alleged offences and I do not find any force in the present appeal, so it stands dismissed.

(Shailendra Singh, J)

Maynaz/-

AFR/NAFR	AFR
CAV DATE	07.02.2024
Uploading Date	23.02.2024
Transmission Date	23.02.2024

