

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1118 of 2024

Arising Out of PS. Case No.-388 Year-2020 Thana- ARA NAWADA District- Bhojpur

Esravati Devi, Wife of Ram Kumar Sharma, Resident of Village- Chhoti line,
Anaith P.S. -Ara Nawada, District- Bhojpur

... .. Appellant

Versus

1. The State of Bihar
2. Lal Babu Sharma, Son of Ram Bachan Sharma, Resident of Village- Chhoti line, Anaith P.S. -Ara Nawada, District- Bhojpur
3. Hare Ram Sharma, Son of Lal Babu Sharma, Resident of Village- Chhoti line, Anaith P.S. -Ara Nawada, District- Bhojpur
4. Rishi Kesh Sharma, Son of Birbahadur Sharma, Resident of Village- Chhoti line, Anaith P.S. -Ara Nawada, District- Bhojpur
5. Ravindra Singh, Son of Late Parash Singh, Resident of Village- Chhoti line, Anaith P.S. -Ara Nawada, District- Bhojpur
6. Chhotu Sah @ Prakashdeep Kumar, Son of Hargovind Sah, Resident of Village- Chhoti line, Anaith P.S. -Ara Nawada, District- Bhojpur
7. Mannu Sah @ Abhimanu Kumar, Son of Chhote Lal Sah @ Chhoten Sah, Resident of Village- Chhoti line, Anaith P.S. -Ara Nawada, District- Bhojpur

... .. Respondents

Appearance :

For the Appellant : Mr. Rajani Ranjan Pd. Singh, Advocate
For the State : Mr. Sujit Kumar Singh, Addl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 22-11-2024

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State as also perused the
learned trial court's records.

2. The present appeal against acquittal has been
preferred by the informant-appellant for setting aside the judgment



of acquittal dated 05.08.2024 (hereinafter referred to as the 'impugned judgment') passed by learned Additional District and Sessions Judge-VI-cum-Special Judge, POCSO, Bhojpur at Ara (hereinafter referred to as the 'learned trial court') in POCSO Case No. 36 of 2020 arising out of Ara Nawada P.S. Case No. 388 of 2020 registered for the offences punishable under Sections 448, 341, 354, 376, 511, 506 of the Indian Penal Code (in short 'IPC') and Section 8/17 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned judgment, the learned trial court has been pleased to acquit Respondent Nos. 5 to 7 of the charges under Sections 323/34, 341/34, 504/34, 354, 354B IPC and Section 8 of the POCSO Act. Respondent Nos. 2 to 4 have been acquitted of the charges under Sections 323/34, 341/34, 504/34 IPC and Section 8/17 of the POCSO Act.

Prosecution Case

3. The informant alleged in the written application that on 08.05.2020 while she was sleeping in her house, at about 05:00 PM in the evening, her minor daughter aged about 14 years was brooming outside the house, in the meanwhile, (1) Mannu Sah, (2) Chhotu Sah, (3) Ravindra Singh, (4) Lal Babu Sharma, (5) Hare Ram Sharma, (6) Rishikesh Sharma, all armed with weapons suddenly came there. When the informant's daughter proceeded



towards her home then Chhotu Sah and Ravindra Singh pulled her 'odhni' and started misbehaving with her. Mannu Sah gagged her mouth with the 'odhni', lifted her in his lap and started taking her away with intention to commit rape on her. But somehow the victim fell down and started screaming then the informant came outside and started protesting then the above-named accused persons resorted to 3-4 rounds of firing from the pistol and went away. After some time, again 10-15 unknown persons including Chhotu Sah came in drunken condition at the door of the informant and entered into her house. They became adamant to commit rape upon the victim in front of the informant and tore her clothes. When the informant requested them to leave her, Ravindra Singh threatened her to leave the house and at 09:00 PM, they had unloaded bamboos at her house and were still sitting at the door. The informant further alleges that Ravindra Singh is a man of criminal nature and she had lodged cases against him i.e. Complaint Case No. 1417(C) /19 and 1558(C)/19 which are pending in the court of learned Nisha Kumari.

The informant further stated that she had sent this application on 09.05.2020 through registered post to the Superintendent of Police, Bhojpur, Ara and to the Station House Officer of Nawada Police Station but no action was taken. Then, the informant



contacted the Superintendent of Police through mobile phone and is continuously in contact with him since 14.05.2020. On 15.05.2020, she was asked to contact Nawada Police Station, when she contacted, one Avadhesh claiming himself to be the Station House Officer or I.O. talked to her from mobile no. 7488162416 at 08:53 PM and told her that her application is not in the police station so he cannot do anything and she was asked not to talk to SP and settle the dispute after consulting appropriate person which would be for her betterment. The above-named persons were pelting stones in the night on her house and were adamant to commit rape after entering into the house but no action was being taken.

4. On the basis of the written application of the informant (PW-1), Ara Nawada P.S. Case No. 388 of 2020 was registered against the six named accused persons and 10-15 unknown persons for the offences under Sections 448, 341, 354, 376, 511 and 506 of the Indian Penal Code (in short 'IPC') and Section 8/17 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). After investigation of the case, police submitted chargesheet bearing no. 474/20 dated 10.08.2020 against six named accused persons. After filing of the chargesheet, the learned trial court took cognizance of the offences under



Sections 354, 354B, 341, 323, 504/34 IPC and Section 8/17 of the POCSO Act vide order dated 01.12.2020. The charges were read over and explained to the accused persons in Hindi which they denied and claimed to be tried. Accordingly, charges were framed against (1) Mannu Sah @ Abhimanyu (2) Chhotu Sah @ Prakash Deep Kumar and (3) Ravindra Singh for the offence under Sections 354, 354-B, 323/34, 341/34, 504/34 IPC and Section 8 of the POCSO Act and (4) Lal Babu Sharma, (5) Hareram Sharma and (6) Rishikesh Sharma for the offence under Sections 323/34, 341/34, 504/34 IPC and Section 8 read with Section 17 of the POCSO Act *vide* order dated 15.09.2021.

5. On behalf of the prosecution, as many as five witnesses were examined and four documents were marked Exhibits whereas on behalf of the defence, three witnesses were examined. The list of witnesses and the description of the exhibits are being provided hereunder:-

List of Prosecution Witnesses

PW-1	Victim’s mother
PW-2	Hareram Kumhar
PW-3	Victim
PW-4	Dr. Madhubala Sinha
PW-5	Punam Kumari, I.O.



List of Documents Exhibited on behalf of Prosecution

Exhibit ‘P-1’	Handwriting and Signature of victim over her Section 164 Cr.PC Statement dated 18.05.2020
Exhibit ‘P-2’	Medical report of the victim
Exhibit ‘P-3’	Endorsement and Signature of S.H.O. on typed application
Exhibit ‘P-4’	Chargesheet

List of Defence Witnesses

DW-1	Shivprakash Sharma @ Dhela Sharma
DW-2	Laddu Kumar
DW-3	Rakesh Singh

Findings of the Learned Trial Court

6. The learned trial court after analyzing the evidences on the record found that the case of the prosecution is that due to old dispute, the accused persons have committed the alleged offence with the victim and have assaulted her. The case of the defence is that the prosecution has not been able to prove the age of the victim and the present FIR has been lodged after about eight days of the occurrence. Moreover, the old dispute between the parties is with respect to a piece of land which does not belong to the informant, rather it belongs to Usha Martin Company.

7. Regarding the age of the victim, the learned trial court found that PW-1 has stated that the age of the victim is about 14



years and the victim (PW-3) has not disclosed her age whereas the Doctor (PW-4) has assessed her age as 19 years. Thus, the learned trial court observed that the prosecution has failed to prove the age of the victim and the charge under POCSO Act could not be proved beyond all reasonable doubts.

8. Learned trial court found that there is an old dispute between the parties and PW-1 had lodged two complaint cases against Ravindra Singh and others which is pending in the court of learned Nisha Kumari since last 2-3 years. Learned trial court also found that PW-2 Hareram Kumhar has been declared hostile.

9. The learned trial court concluded that as far as the charge under Sections 323/34, 341/34, 504/34 IPC is concerned, the informant has not alleged any case of assault or abuse against the accused persons in the written application. The victim in her statement under Section 164 Cr.PC has only stated about abuses hurled on her and her mother. PW-1 has alleged in her deposition that the accused persons were pelting stones and firing. Thus, the prosecution has failed to establish its case against accused persons for the offence under Sections 323/34, 341/34, 504/34 IPC.

10. The learned trial court after considering all the facts and circumstances of the case came to a conclusion that the prosecution has failed to prove it's case beyond all reasonable



doubts against the accused persons. Accordingly, the accused persons were acquitted of the charges under Sections 323/34, 341/34, 504/34 IPC and Section 8/17 of the POCSO Act giving them benefit of doubt.

Submissions on behalf of the Appellant

11. Learned counsel for the appellant has assailed the impugned judgment on the ground *inter alia* that the learned trial court failed to appreciate that the victim has given her age as 14 years and had supported the prosecution case. It is submitted that the mother of the victim girl has been examined as PW-1 who has stated in her examination-in-chief that Mannu Shah had pulled the *duppatta/odhani* of the victim and it was Ravinder Singh who had made her to sit on his lap and had torn her clothes. She disclosed the age of the victim girl as 14 years. It is submitted that in such circumstance, the learned trial court has committed error in recording a finding that the prosecution had failed to establish its case beyond all reasonable doubts under the POCSO Act.

12. Learned counsel submits that the victim (PW-3) has stated in her examination-in-chief that she had appeared in class X examination. She had though not disclosed her date of birth but had declared that she was 15 years old. She had also stated that while she was cleaning at the door of her house, all of a sudden six



accused persons had come armed with weapons and had committed the offence as alleged.

13. Learned counsel submits that learned trial court has failed to appreciate that the prosecution witnesses including the informant has duly explained the delay in lodging of the first information report. According to him, learned trial court seems to have been swayed away from the fact that there was prior land dispute between the parties. It is submitted that the prosecution in this case has fully established its case beyond all reasonable doubts, therefore, this Court may set aside the impugned judgment and pass a judgment of conviction and order of sentence against the respondent nos. 2 to 7.

Submissions on behalf of the State

14. The appeal has been opposed by the learned Additional Public Prosecutor for the State. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State has submitted that on a bare perusal of the impugned judgment, it would appear that on the point of determination of age of the victim, the learned trial court has considered the entire materials available on the record. The learned trial court found that while the victim disclosed her age 14 years in her statement under Section 164 CrPC, her mother also made similar statement in paragraph '2' of



her deposition, the victim did not disclose her date of birth in course of her evidence. The Doctor (PW-4) assessed her age as 19 years. The I.O. (PW-5) has stated in course of his evidence that on the basis of medical report the age of the victim was above 18 years, therefore, he had not submitted the chargesheet under the POCSO Act. It is submitted that even though the victim girl claimed that she had appeared in class X Examination but she had not made available her date of birth as per her first school admission register and none of the documentary evidence as envisaged under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 could be produced. In such circumstance, the learned trial court had rightly reached to a conclusion that the prosecution has failed to establish its case under the POCSO Act.

15. Learned Additional Public Prosecutor for the State submits that on a bare perusal of the evidence of the mother of the victim (PW-1), it would appear that in paragraph '25' of her deposition, she has stated that Ravinder Singh wanted to oust from her house and in this connection, two cases were going on with him for last 2-3 years. Both the cases were lodged by her in court because the case was not taken in the police station. In her statement before police, she had stated that a dispute is going on



with regard to the land on which she was keeping her cows and the accused persons wanted to make her to leave the land on the strength of threatening. It is submitted that the alleged occurrence took place on 08.05.2020 but the present FIR was lodged after eight days. The informant and the victim although have tried to explain the delay but on a careful reading of their depositions, it would appear that they are making false statement with regard to their going to police station to lodge the case. The I.O. (PW-5) has stated that the place of occurrence in this case is the Anaith Mohalla under Ara Police Station which has come up on the land of Usha Martin Company which has been unauthorisedly possessed by people and it is in connection with the said unauthorised possession of the land, the informant and others are fighting among themselves.

16. Learned Additional Public Prosecutor for the State submits that the medical report of the victim (Exhibit 'P-2') does not disclose any injury on any part of the body and the doctor has clearly opined that the victim would be 19 years of old. The submissions is that the learned trial court has rightly appreciated the entire evidences on the record and concluded that the prosecution had failed to establish its case beyond all reasonable doubts.



Consideration

17. The present case is based on a written application submitted by the appellant on 16.05.2020 in respect of an occurrence which allegedly took place on 08.05.2020. The case was registered vide Ara Nawada P.S. Case No. 388 of 2020 dated 16.05.2020 under Sections 448, 341, 354, 376, 511, 506 IPC and Section 8 of the POCSO Act against Mannu Sah and other five persons together with 10-15 unknown persons. Thus, the FIR has been lodged after eight days of the occurrence.

18. PW-1, who is the mother of the victim, has alleged in her written application that on the date of occurrence at about 05:00 PM while she was sleeping in her house, her daughter aged about 14 years who is victim of this case was cleaning the area outside the house, in the meantime, Mannu Sah, Chhote Sah, Ravindra Singh, Lal Babu Sharma, Hareram Sharma and Rishi Kesh Sharma arrived all of a sudden armed with weapons and they were entering into the house. She stated that Chhote Sah and Ravindra Sah pulled the 'odhni' of the daughter of the informant and indulged in some indecent acts. Mannu Sah allegedly gagged the victim by her mouth through the 'odhni' and pulled her in his lap and was taking away her with an intention to commit rape on her but while being taken away, the victim girl fell down from the



hand of the accused and shouted whereafter the informant came outside her house and raised a protest, thereafter the accused persons allegedly fired 3-4 rounds from their pistol and went away. She has further stated that after half an hour, once again 10-15 unknown persons who are from Bazari Mohalla came at the door of the informant. Chhotu Sah was adamant on taking away the prestige of the daughter of the informant and he tore her clothes. The informant alleged that Ravindra Singh is a person of criminal antecedent and in past also, the informant had lodged case against him which is pending in the Ara Court.

19. She has stated that she had sent a written application on 09.05.2020 which was sent to the Superintendent of Police, Bhojpur, Ara and to the Station House Officer of Nawada by registered post but no action was taken thereon whereafter she talked to the Superintendent of Police on his mobile number who advised him to contact Nawada Police Station, thereafter, the informant contacted one person, namely, Awadhesh who claimed himself the Station House Officer, he informed her that her application had not reached the police station, therefore, he cannot take any action. She was asked to enter into a compromise. The informant alleged that the persons named in the FIR are indulged in throwing bricks and stones during the night hours and they are



adamant on forcefully entering into the house and committing rape.

20. In course of her evidence, the informant has stated that when the victim was cleaning then Mannu Sah had pulled the 'odhni' and it was Ravindra Singh who had made her to sit in his lap and torn the clothes. Thus, the statement of the informant (PW-1) in her examination-in-chief materially differs with her statement in the written application (Exhibit 'P/3'). She has changed the name of the accused who had either tried to take her away or to make her to sit on his lap. She has further stated in her examination-in-chief that when she came outside the house, accused Ravindra Singh told her that this is the opportune moment because there is a lockdown and during this period, he can play with the prestige of the informant and her daughter. She has stated in paragraph '7' of her deposition that she had gone to the police station to lodge the case but the case was not registered and it was registered only after she had submitted an application with the Superintendent of Police. This Court finds that in her written application, the informant had stated that she had sent an application on the next date i.e. 09.05.2020 by registered post to the Superintendent of Police, Bhojpur and Station House Officer, Nawada but in her examination-in-chief, she has stated that she



had gone to the police station to lodge a case. She has not brought on record copy of the application which she had sent to the Officer of the Superintendent of Police and the Station House Office, Nawada. No proof of dispatch of the application to the respective offices has been placed on the record.

21. This Court further finds that in her written application giving rise to the present case, she disclosed the age of the victim girl as 14 years, the victim, as claimed was an appearing student of the matriculation examination but her date of birth was not disclosed in course of investigation. The medical examination of the victim disclosed that she was above 19 years of age and because of this material, the I.O. (PW-5) found that it was not a case under the POCSO Act, hence, no chargesheet was filed against the accused persons under the provisions of the POCSO Act.

22. This Court further finds that the informant (PW-1) has though denied her relationship with the accused persons but the defence has cross-examined her and has suggested that Shiv Prakash Sharma is her brother and accused Hare Ram Sharma is '*mausera bahnoi*' of Shiv Prakash Sharma. PW-1 has stated that she lives in the Anaith Chhoti Line Jhoparpatti and she has no paper of the land. She has also stated that the Government has not



issued any '*parcha*' to her in respect of the said land. She has stated that she has a piece of land in Jagdeo Nagar, Ara which is in her possession but she is not living on her land. On this point, the I.O. (PW-5) has clearly stated that the place of occurrence in this case is Anaith Mohalla in which people have unauthorizedly possessed the land of Usha Martin Company. PW-5 has given the boundary of the place of occurrence in paragraph '4' of his deposition and has stated that the place of occurrence is the land in respect of which both the sides have a quarrel. The I.O. had recorded statement of the independent witnesses, namely, Ram Kumar Sharma, Lal Bahadur Sharma and Hare Ram Sharma but those independent witnesses have been withheld by the prosecution, therefore, this Court would draw an adverse inference from the said withholdment of the independent witnesses. It appears that the prosecution was afraid that in case, the independent witnesses are produced, the truth which would not support the prosecution case would be revealed. A perusal of the deposition of the I.O. would show that in course of her statement before police, the victim had stated that her family has a long drawn quarrel with the accused persons over the disputed land. The appellant Esravati Devi (PW-1) had disclosed that prior litigation is going on with the accused persons and she had given



the two case numbers, those are Complaint Case No. 1417 (C)/19 and 1551 (C)/19 which were pending in the court of learned Nisha Kumari. They had stated that accused persons wanted that they should leave the place for which she was being threatened.

23. Hareram Kumhar (PW-2) seems to be an independent witness who did not support the prosecution case and has been declared hostile. He has been cross-examined by the prosecution as well as the defence. In paragraph '10' of his deposition, he has stated that he had no quarrel with the informant of this case. He has stated in his examination-in-chief that he is not aware of any occurrence with the victim.

24. On a careful scrutiny of the entire evidences on the record, it appears that in this case, the informant has submitted her written application after eight days of the occurrence which took place over the disputed land. She falsely disclosed the age of the victim girl as 14 years with an intention to bring the case within the ambit of the provisions of the POCSO Act. No plausible explanation has been submitted by the informant for not lodging the case for eight days, the reason shown by her that she had gone to the police station but the case was not registered fails to convince this Court for the simple reason that in her own application submitted before police, she had stated that on the next



date i.e. on 09.05.2020 she had sent her application by registered post to the Superintendent of Police, Bhojpur, Ara and the Station House Officer, Nawada. She did not claim that she had gone to the police station to lodge the case but it was not registered.

25. This Court further finds that in this case, the defence also adduced oral evidence by bringing Shiv Prakash Sharma @ Dhela Sharma as Defence Witness No. 1. DW-1 has stated that the informant of this case is his sister and the victim is his 'bhagini' (sister's daughter). The informant is his own sister but she is a quarrelsome woman who is always indulging in quarrel with her relatives and neighbours. He has stated that the accused of this case, namely, Lal Babu Sharma is his 'mausera' father-in-law, Hare Ram Sharma and Rishi Kesh Sharma were his 'mausera' brother-in-law. He has stated that the case lodged by Esravati Devi is a false and concocted case.

26. The second witness on behalf of the defence is one Laddu Kumar, Son of Hari Narayan. He is a neighbour of the informant. He has stated that Esravati Devi had lodged the case for using the land for purpose of her cows and buffaloes. She had lodged about 4-5 cases till now. She does not have good relationship with her family members and she is a quarrelsome lady. He had made statement before the police and has no criminal



antecedent. He had no enmity with Esravati Devi. We find that yet another defence witness, namely, Rakesh Singh who is the neighbour of the informant has deposed on similar line.

27. In the totality of the circumstances which are appearing from the evidences on the record, we are of the considered opinion that the learned trial court has not committed any error in appreciation of the evidences. It is a case of acquittal in which the presumption of innocence of the accused is, in fact, affirmed by the learned trial court. The presumption has doubled and in such circumstance, unless the Appellate Court comes to a clear opinion and finding that the guilt of the accused is proved beyond all doubts and that would be the only conclusion which may be reached, no interference with the judgment of the learned trial court would be required.

28. We find no reason to interfere with the impugned judgment of the learned trial court. This appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2024
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