

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1025 of 2023**

Arising Out of PS. Case No.-105 Year-2021 Thana- GOPALPUR District- Gopalganj

Munna Pandey Son Of Late Paras Pandey Resident Of Village - Purkhas, PS-
Gopalpur, Dist- Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ansul, Advocate Mr. Pankaj Kumar Dubey, Advocate Ms. Sagrika, Advocate Mr. Aditya Pandey, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP
For the Informant	:	Mr. Rana Pratap Singh, Advocate Mr. Dharamveer, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 02-04-2024

1. We have heard Sri Ansul, the learned Advocate for the sole appellant and Mr. Rana Pratap Singh No.2, the learned advocate for the informant. The State has been represented by Sri Parmeshwar Mehta, the learned Additional Public Prosecutor.
2. The appellant has been convicted under Section 376(2) of the Indian Penal Code and Section 4(1) and 6 of the POCSO Act, 2012 vide judgment



dated 19-08-2023 passed by the learned Additional Sessions Judge-VI-cum Special Judge (POCSO), Gopalganj in POCSO Case No. 60 of 2021. By order dated 25-08-2023, the appellant has been sentenced to undergo R.I. for 20 years, a fine of Rs. 50,000/- and in default of payment of fine, to further suffer R.I. for one year for the offence under Section 376(2) of the IPC; R.I. for 20 years, to pay a fine of Rs. 50,000/- and in the default of payment of fine, to further undergo R.I. for one year for the offence under Section 4(1) of the POCSO Act and RI for 20 years, fine of Rs.50,000/- and in default of payment of fine, to further undergo R.I. for one year for the offence under Section 6 of the POCSO Act,2012. The sentences have been ordered to run concurrently. The Trial Court has also directed that the amount of fine realized shall be paid to the victim in terms of Sections 4(3) and 6(2) of the POCSO Act, 2012 read with section 357 (1) of the Criminal Procedure Code. Additionally, a direction



has been given by the Trial Court for payment of Rs. Two Lakhs to the victim as compensation.

3. The appellant is alleged to have raped the victim who is a 14 years old girl.

4. The mother of the victim is the informant of this case, who has been examined as PW-1. In her written statement, she has alleged that her husband had been staying abroad. During his absence, the appellant had made relations with the family and at his instance, PW-1 along with a children came to Kuchaikote and thereafter to Jamunaha to reside in rented premises. About 2-3 months before lodging of the F.I.R., the husband of PW-1 had arrived from abroad and all of them were residing together at Jamunaha. On 04-06-2021, at about 4 O'clock in the day, her daughter (victim) was taken out by the appellant on the pretext of taking her to the his village home. When the victim did not return till the next day, PW-1 along with her husband went to village Purkhas, the native place of



the appellant, where she found her daughter who appeared to be very distraught and afraid. She did not state anything. On the next day, on the insistence of PW-1, the victim told her that in the night of 04-06-2021, the appellant had forcibly subjected her to rape and had asked her not to state about such occurrence to anyone. PW1 thereafter gave her written report on 07-06-2021 .

5. On the basis of the afore-noted written report by PW-1, a case vide Gopalpur PS Case No. 105 of 2021 dated 07-06-2021 was registered for investigation under Sections 376(3) of the IPC and Sections 4 and 6 of the POCSO Act, 2012 .
6. The police, after investigation, submitted chargesheet, whereupon the appellant was put on trial.
7. The learned Trial Court after having examined five witnesses on behalf of the prosecution and four on behalf of the defense, convicted and sentenced the appellant as aforesaid.



8. From the perusal of the deposition of the witnesses, especially of the mother of the victim (PW-1), and the victim (PW-4), it appears that they have presented a grab-bag of complaints against the appellant. A bare look at the deposition of the two witnesses disclose that they have made discrepant statements at the trial which actually has put the prosecution case completely off-kilter.

9. PW-1 at the trial, though supported the accusation of the appellant having taken away the victim to her home and having committed rape on her, but along with that she has also come up with a litany of other charges, especially of the appellant having extracted money from her and of subjecting her also to rape on several occasions.

10. In her cross- examination, she has admitted before the Trial Court, that for the last 11 years, her husband had been staying abroad. She has three daughters and one son, the youngest one being 6 years old. The date of birth of the victim is 17-11-



2007. Though she has claimed that the victim was admitted in a Government school in Class-X, but could not provide any details of her education experience in any other class of any other school before she was admitted in standard -X. There was no production of any document regarding the date of birth of the victim. As regards the appellant, she has disclosed that for the last one year, the appellant had been residing with her and her children. For the last two months, she had been staying in Kuchaikote when also the appellant was with her. She had also stayed at Jamunaha for about two months. During this period, the appellant is said to have raped her too and had taken Rs. 2,20,000/- and gold chain from her. The money and the jewellery were never returned to her. Even when her husband had returned, the appellant had sexual relations with her for about 8-9 times. She had never complained against this before anybody, including her husband for the fear of the appellant. All her contact numbers



in her mobile telephone were deleted. She was never allowed to talk to her husband on telephone in the absence of the appellant. With respect to the occurrence of rape on her minor daughter, she has stated that the appellant took her away to his native village on 03-06-2021. Appellant had assured that he shall bring back the victim within ten minutes and based on that assurance, she had allowed her daughter to go with the appellant. On the next day, she along with her husband went to the house of the appellant at about 11 PM and stayed in the house of the appellant. The appellant fought with the family for the whole night and closeted them in a room. On the next day, thereafter, the victim was brought to the Police Station by PW-1 . On further questioning, she has disclosed that she came to back home with her daughter only five days later, as during this period the victim remained with the police. The appellant lived with his parents, brother and sister-in-law in his house at village Purkhas.



11. There is yet another interesting disclosure by PW-1 before the Trial Court, namely, that one of her sisters, namely, Ruby had actually introduced the appellant to her. She has denied the suggestion that she had filed a false case and that she had an unholy relationship with the appellant.

12. The victim (PW-4) disclosed that she was raped by the appellant in the night of 04-06-2021. While the appellant was at the act, she was gagged and was also threatened. Only when her parents came to the house of the appellant, she disclosed before them about the occurrence. Thereafter, she was taken to Gopalpur Police Station and the case was lodged. She has admitted of having made her statement before the Magistrate under Section 164 Cr.P.C. Her version of the story is that her father was residing abroad for about 14-15 years. After the occurrence, she was locked inside one of the rooms of the appellant. From the house of the appellant, she had gone to the Police Station



straightaway along with her parents. She did not remember as to when she had changed her clothes and when her clothes were given to the police for further forensic examination.

13. The victim was subjected to medical examination on 08-06-2021 by Dr. Sarika (PW-2) who assessed the age of the victim to be 15 to 16 years. No injury or foreign hair was found by her over the private part or inside vagina. Though hymen was not intact, but no tear or laceration was discerned by PW-2. The vaginal swab for microscopic examination was reported to be negative. She concluded in her report that there was no evidence of sexual assault and the assessment of age was on the basis of radiological findings .

14. What sends us doubting about the correctness of the prosecution version is that though the clothes of the victim were sent for forensic examination and the report indicated that it contained blood and semen, but when those clothes were handed over to



the police remains completely unknown. Even if it were known, the appellant was never medically examined as mandated under Section 53A of the Code of Criminal Procedure. There was no cross matching and, therefore, the forensic evidence, namely, the serological report has lost all its significance.

15. During the course of investigation, the statement of the father of the victim viz., Ashutosh Dubey, Upendra Kumar Pandey and Jitendra Pandey were recorded but none of them have been examined at the trial. The father of the victim not coming to the witness stand makes the prosecution case again doubtful; not only for his not examining himself as a witness, but also for the other charges which have been levelled by PW-1 (mother of the victim) against the appellant.

16. All this demonstrates that PW-1 concealed the physical relationship which the appellant had with her, to her husband. The story of she being



threatened and because of fear she did not disclose anything, does not appear to be probable for the reasons that all this happened over a passage of several months.

17. The Investigator of this case, who has been examined as PW5 had searched the house of the appellant and had not found anything incriminating there. He claims to have seized the clothes of the victim (Ext. P-2/3). At his instance, the statement of the victim under section 161 Cr.P.C. was recorded by Afsa Parween (PW3), who at the relevant time was Officer-in-Charge of Mahila Police Station. No clothes of the victim was found at the place of occurrence. In fact, he has stated in his cross-examination that PW1 along with the victim had come to the police station and had handed over the clothes of the victim to him. He did not record the statement of father of the appellant whom he had met during the course of investigation. However, he had recorded the statement of the father of the



victim and others during the course of investigation.

18. From his deposition thus, it becomes very clear that he did not investigate the case properly. No background fact check was made by him.

19. Under such circumstances, it has been argued on behalf of the appellant that the story of PW1 and the victim does not appear to be true at all. If the appellant was arrested, he was required to be subjected to medical examination for further confirmation of the accusation against him. This mandate of the Code is though not mandatory but if not done without any reason, it definitely becomes prone to adverse inference.

20. For our curiosity, we have also perused the statement of the victim under Section 164 Cr.P.C. In such statement, the victim had stated that she was lured that she would be made to contest the election of Mukhiya. She did not state about any forcible sexual attack on her though she did admit that the appellant did to her what a husband would do to his



wife. From the tenor of the statement of the victim under Section 164 Cr.P.C. as also during the trial, it appears that a totally different case was projected against the appellant.

21. The fact that PW1 and the victim have narrated about other misdeeds of the appellant, about which there was no complaint anywhere in the past; non-examination of the father of the victim even though he had made his statement under Section 161 Cr.P.C; the different dates provided by PW1 and the victim about the appellant having taken away the victim to his home ; and no proof of the clothes of the victim having been given to the police for further forensic examination, make the prosecution case highly doubtful.

22. In his statement under Section 313 Cr.P.C, the appellant has clearly stated that because PW1 was not ready to return Rs. 4,00,000/- which she had taken as an accommodation loan from the appellant, he has been falsely framed in this case.



23. The manner in which the case has been reported and PW1 and PW4 have made their disclosures, both of them do not appear to be sterling witnesses. As it appears from the records, PW1 was in some kind of relationship with the appellant. Whether she concealed this fact out of fear is also very doubtful. It was not a solitary instance of PW1 also having been raped by the appellant. Several times, even when the husband of PW1 was in the country, the appellant is alleged to have raped her. All these facets of the story give a totally different picture.

24. If in this background, the evidence is seen, it would appear that even with respect to age of the victim, there was no conclusive finding of the Trial Court that she was less than 18 years of age at the time of the occurrence. That apart, what has caught our attention is that the victim was raped in the parental home of the appellant where his parents, brother and sister-in-law were also present. This also



does not appear to be true. Had there been any semblance of truth, the Investigator would surely have interrogated the family members of the appellant. The I.O. has merely stated before the Trial Court that because the family members of the appellant were not ready to get their statements recorded, he left it that. Their examination by the I.O. would have testified to the fact that the victim was closed inside a room and subjected to rape.

25. Whether she ever go to the house of the appellant also is shrouded in mystery. From the house of the appellant, the witnesses have stated, they proceeded to the police station. PW1 claims to have come back to her home along with the victim only after five days. For all this while, the victim was kept with the police.

26. Where dis she reside in the meanwhile ?
There is no evidence of any stay at safe home or a short stay home. This aspect has not been confirmed by the Investigating Officer.



27. This, therefore, makes the delay in lodging the First Information Report really fatal for the prosecution.
28. The evidence at the trial thus analysed clearly presents a picture which is not believable, especially with respect to rape on the victim.
29. We have also examined the deposition of D.W.s 1 to 4, all of whom have talked about the appellant having lent money to PW1.
30. Thus the prosecution has failed miserably to prove the case beyond all reasonable doubts.
31. Giving benefit of doubt to the appellant, we set aside the judgment and order of conviction and acquit the appellant of the charges levelled against him.
32. Since the appellant is in jail, he is directed to be released forthwith, if not required or wanted in any other case.
33. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for record and



compliance.

34. Let the record of this appeal be also returned to the concerned Trial Court.
35. The appeal stands allowed.
36. The interlocutory application/s, if any, also stands disposed of.

(Ashutosh Kumar, J)

(Khatim Reza, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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