

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1195 of 2019

Arising Out of PS. Case No.-302 Year-2017 Thana- MASHRAK District- Saran

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Vikash Sah, aged about 22 years, male, Son of Bhikhari Sah, Resident of
Village-Chainpur Chamaria, P.S.-Mashrakh, District-Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Naschiketa Jha, Adv.

For the State : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-09-2024

Heard Mr. Nachiketa Jha, the learned
Advocate for the appellant and Mr. Abhimanyu Sharma,
the learned APP for the State.

2. The sole appellant/Vikash Sah stands
convicted for the offences under Section 376(1) of the
Indian Penal Code (*in short the I.P.C.*) and Section 4 of



the Protection of Children from Sexual Offences Act, 2012 (*in short the POCSO Act, 2012*) vide judgment dated 23.08.2019 passed by the learned Additional District & Sessions Judge-I-Cum-Special Judge, POCSO Act, Saran at Chapra in POCSO Case No. 5 of 2018/C.I.S. No. 39 of 2017, arising out of Mashrakh P.S. Case No. 302 of 2017. By order dated 28.08.2019, he has been sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 50,000/- for the offence under Section 4 of the POCSO Act, 2012. In default of payment of fine, he has further been directed to undergo imprisonment for three months.

3. The victim, a seventeen years old girl, is said to have been raped by the appellant, who is her next door neighbour.

4. The occurrence had taken place on 03.08.2017. However, the report regarding the same was lodged on 24.10.2017.

5. The victim herself had initiated the case.



6. The written report lodged by her reflects that in the night of 03.08.2017, while she was sleeping on a cot in her courtyard, the appellant scaled over the wall of the house and on the point of dagger, committed rape on her. She was also threatened of being killed in case she raised alarm or reported the matter any where. She has also informed the police officer that in the night of the occurrence, only two members, namely, her grand-parents were available in the house. Her father had been working in a private company at Mumbai. Because of threats doled out to her, she informed her father about the occurrence only after a lapse of about one and half months. When her father learnt about it, he came back from Mumbai and confronted the appellant at his house. The appellant did not respond to the accusation.

7. On the basis of the afore-noted written report, a case *vide* Mashrakh P.S. Case No. 302 of 2017, dated 24.10.2017, was registered for



investigation under Section 376 of the IPC and Section 4 of the POCSO Act, 2012.

8. The police, after investigation, submitted charge-sheet against the appellant, whereupon he was put on trial. The Trial Court, after having examined four witnesses on behalf of the prosecution including the victim, convicted and sentenced the appellant as aforesaid.

9. The main plank of argument of Mr. Nachiketa Jha, the learned Advocate defending the appellant is that the enormous delay in lodging the F.I.R. makes the accusation very doubtful. The very fact that the appellant is admittedly a neighbour of the victim, further lends credence to the proposition that the association between the appellant and the victim was out of consent and that an affair was continuing for a long time, which continued even later than the date when the occurrence is said to have been committed.

10. Along with the afore-noted proposition,



Mr. Jha has also tried to impress upon this Court that the POCSO Court, before assuming the jurisdiction to try the appellant, ought to have been satisfied about the victim being a minor at the time of the occurrence. He has argued that a report by the Headmaster of the school, which has never been proved, was relied upon to hold that the victim was seventeen years of age at the time of the occurrence.

11. Adding up to these arguments, Mr. Jha has further submitted that non-examination of the grand-parents of the victim, who were present in the house; the police officer not finding any evidence of an outsider scaling over the house and; the late reporting of the F.I.R., all cumulatively indicate only towards the relationship between the appellant and the victim having gone wrong someway along the continuum and, therefore, the victim elected to file this case, perhaps, to put some kind of pressure upon the appellant, for him to buckle down and accept some proposal on behalf of the



family of the victim.

12. Opposing the afore-noted arguments, Mr. Abhimanyu Sharma, the learned APP has drawn the attention of this Court to certain facts which are, to say the least, very stark. True it is that the report was lodged after two and half months of the suggested date of occurrence, but there was a reasonable explanation for the delayed lodging of the case. The victim had become pregnant and did not want to continue with such pregnancy. For terminating the pregnancy, it has been submitted, she had to approach the High Court and only after obtaining requisite permission, she was subjected to D&C (dilation and curettage).

13. Mr. Sharma has further pointed out that the blood samples of the appellant and the victim were collected and sent for forensic examination, which was found to have matched with the blood of the foetus. He, therefore, contends that what could be a more definite proof of the victim having been raped by the appellant.



14. After having heard the arguments and having perused the entire records rather carefully, we have noticed that though there is a delay of two and half months in lodging the F.I.R., but the victim and her father, both, have confirmed that there was a reason, plausible enough, for us to believe that the victim was under fear of the appellant in even reporting this matter to her father. The victim has referred to such threats, which could not have been taken as a mere blusters by a neighbour, several times in her written report; 164 Cr.P.C. statement before the Magistrate; and in her deposition before the Trial Court.

15. While going through the evidence of Sant Kumar Bhagat (PW-1), the father of the victim, we found that he too had questioned his daughter for not informing him about the occurrence, but the victim and the mother, both, had told him that after the occurrence also, the appellant had continuously been threatening against filing of any case at any forum. Precisely for this



reason, the father of the victim learnt about the occurrence after some time. But no sooner had he learnt about it, he came back home; tried to reason out with the appellant and finding no way out, accompanied his daughter to the police station for lodging the case. He too has confirmed that only after obtaining necessary permission from the Court, the victim was subjected to D&C.

16. In this context, it would be profitable to refer to the deposition of Indira Rani (PW-3), who has investigated this case. Nothing substantial has been offered by her to the Trial Court except for the source which made her believe that the victim was a minor at the time of the occurrence. She had found the certificate offered by the victim as a good a proof of the fact that her date of birth was 10.12.2000, counting from which date, the victim would be only seventeen years of age. The afore-noted document was a certificate by the Headmaster of the up-graded school



situated at Nawada in the District of Saran.

17. We have also found that no objection was ever raised with respect to the jurisdiction of the POCSO Court in trying the appellant.

18. Thus, the argument of the appellant that the victim was a major takes a pratfall. If this be so, then the sequel argument of Mr. Jha also has to be rejected.

19. There can be no presumption that two young persons, if they are neighbours, are bound to get physically attracted to each other. Even if it were so, the appellant cannot take advantage of it for the reason that any case of any physical liaison with a girl of less than eighteen years is a strict offence. If the victim was a minor at the time of the occurrence, none of the arguments of the appellant that it was consensual would hold any water.

20. We have tested this proposition from another angle as well.



21. By the time the victim and her family had gathered courage to report the matter, the victim had already become pregnant and, perhaps, she had carried her pregnancy for quite a long time. It can be expected that this must have created a news in the village. The victim comes of a poor strait of family, which appears from the vocation of her father as also her brother. If it had been consensual, there would have been the first attempt of legalizing it.

22. There is nothing on record for us to believe that the victim, under the family pressure, denied of having any acquaintance with the appellant because it was not to be liking of her family. The father of the victim had been working outside the State. She had been residing in the house with her old grandparents, who, though have not been examined at the trial.

23. If at all the victim wanted to continue with the relationship, there was no reason why she



persisted with her accusation even after the report was made.

24. There could be another fact scenario.

25. The attempt at the victim and her family of convincing the appellant to legalize the relationship would have been failed. There could be a possibility that the lodging of this case could be a reprisal against such a unilateral decision of the appellant.

26. But all these subjunctive arguments are of no avail, when there is no doubt or at least nothing has been questioned about the minority of the victim.

27. That the appellant got into sexual contact with the victim has been proved beyond doubts. The victim and the appellant, both, agreed for DNA testing and their blood samples were collected. The samples were matched with the blood of the foetus and it was found to be matching.

28. We have examined the FSL Report brought on record in detail.



29. Thus, there is no question of the appellant hiding behind the lame plea that he was carrying on an affair with the victim which was consensual, but because of some reasons beyond his control, he was made an accused in this case.

30. We must record the argument of Mr. Jha, the learned Advocate for the appellant that no recent sign of sexual intercourse was found by the Doctor and that the pregnancy report does not match with the timing suggested of the first sexual encounter of the appellant with the victim.

31. Both the arguments have been noted only to be rejected.

32. The case was lodged after two and a half months of the occurrence. The assessment of the age of the foetus is only a ballpark assessment and not a definite assessment, especially when the intention of the victim is to have the pregnancy terminated.

33. Tested from all angles, we find that the



Trial Court has rightly convicted and sentenced the appellant.

34. The judgment, referred to above, does not require any interference.

35. The appeal is, accordingly, dismissed.

(Ashutosh Kumar, J)

(Sunil Dutta Mishra, J)

Praveen-II/Jyoti

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