

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1092 of 2023**

Arising Out of PS. Case No.-132 Year-2022 Thana- SANOKHAR District- Bhagalpur

MD. SAHBAZ SON OF MD. EKRAM RESIDENT OF VILLAGE -
MADHOPUR, P.S. - AMDANDA (SANOKHAR), DISTRICT -
BHAGALPUR

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rajive Ranjan Singh, Adv

For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-07-2024

1. We have heard Mr. Rajive Ranjan Singh who has been assisted by Mr. Amit Ranjan, the learned advocates for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.



2. The sole appellant stands convicted under Section 376 of the IPC and Section 4 of the POCSO Act vide judgment dated 15.09.2023 passed by the learned Exclusive Special Court (POCSO Act)-cum-VIIth Additional Sessions Judge, Bhagalpur in POCSO Case No. 123 of 2022. By order dated 23.03.2023, he has been sentenced to undergo RI for 20 years, to pay a fine of Rs. 20,000/- for the offence under Section 4 (2) of the POCSO Act and in default of payment of fine, the appellant has been directed to suffer further simple imprisonment for six months. The amount of fine has been directed to be paid to the victim or to her parents. No separate sentence has been awarded under Section 376 of the IPC in the light of the provision of Section 42 of the POCSO Act, 2012. The Trial Court has also directed for payment of compensation of Rs. 3,00,000/- to the victim by the State from the victim compensation fund or other scheme of fund established for rehabilitating her.



3. The victim, a fourteen years old girl, is said to have been raped by the appellant on 07.07.2022. Incidentally, the appellant is stated to be the tutor of the victim.

4. In the present case, along with the appellant, his parents were also charge- sheeted and put up on trial but the Trial Court acquitted them of all charges because of there being no evidence against them. The FIR was lodged by Md. Margub Alam (PW-3), who is the father of the victim. He has alleged that on 07.07.2022, he had gone to Sanhaua Madarsa for teaching pupils at about 7 'o'clock in the morning. His wife (PW-2) who is an Anganwari Sevika had also gone to her centre. After coming from the Anganwari Centre, his wife has gone to the fields for plucking lentils. At about 3 'o'clock in the day, his daughter/victim whose date of birth is 28.02.2008 and who is a student of standard-VIII also proceeded to the field to meet her mother. However, the appellant, a 24 years old person,



whose house fell in the way, forcibly took her inside his house and gagged and raped her. His daughter was also threatened of dire consequences in case she narrated about the incident to her parents or filed any case. His daughter came to the field and told her mother about the occurrence. The wife of the informant communicated all this to him. On receiving such information from his wife, PW-3 went to the house of the appellant where he met the parents of the appellant who did not take any steps against their son; rather they admitted that the appellant had committed such offence only for creating a situation so that the victim is married to the appellant. A panchayati was convened but the appellant did not participate in the aforementioned panchayati.

5. Hence, the written report was lodged on 09.07.2022.

6. On the basis of the aforementioned written report by PW-3/father of the victim, a case vide Sanokhar



(Amdanda P.S. Case No. 132 of 2022 dated 09.07.2022) was registered for investigation under Section 376, 504, 506 and 34 of the IPC read with Section 4 of the POCSO Act.

7. The police after investigation submitted chargesheet against the appellant and his parents whereupon all the three were put on trial.
8. The learned Trial Court after having examined seven witnesses on behalf of the prosecution; three on behalf of the defence and one as a Court witness, convicted the appellant as aforesaid.
9. However, the parents of the appellant were acquitted of all the charges.
10. We have examined the records of this case rather carefully. The victim has been examined as PW-1, who has supported the prosecution version in totality. According to her, the appellant had been threatening the family for having filed the case. At the time of the occurrence, the victim claimed to be twelve years of age. While she was going to meet



her mother in the fields, the appellant caught her and forcibly took her inside his house. He then raped her. When she was untied, she went home and told everything to her parents. The case was lodged thereafter by her father. She has admitted in her cross-examination that she used to visit the appellant for taking tuition. She had been taking tuition from the appellant for the last six months. She always visited his house at about 5 pm for the purposes of taking lessons. All this fact was known to her parents. She has also admitted that her date of birth is 28th of February, 2008 but in her Adhaar card which she had given to the police, her date of birth is stated to be 01.01.2008. She has denied that because the marriage of the victim could not be solemnized with the appellant, this false case was lodged by her father.

11. The informant/father of the victim/PW-3 has also supported the case at the trial in totality. He has further informed the Trial Court that on hearing



about the occurrence, he reached his house within 15 to 20 minutes. He had not seen any injuries on the person of the victim. The house of the appellant and of the victim is situated nearby. The family of PW-3 was known to the appellant from before. The appellant was the tutor of the victim.

12. Similar statements have been made by the mother of the victim, namely, Nazra Begum (PW-2).

13. Md. Sazzad and Nisar Alam, who have been examined as PWs-4 & 5 respectively are co-villagers of the informant who have testified before the Trial Court that the victim as also the appellant are their villagers and that they had come to know about the occurrence from the father of the victim. Both of them were aware of the fact that the appellant was giving tuition classes to the victim.

14. The Investigator/Ravi Kumar (PW-6) has offered nothing substantial to the Trial Court but for the fact that he had investigated the case and had visited the house of the appellant as also of the



informant. He had recorded the statements of the witnesses. He had also recorded the statement of one Sheikh Sakrulla, who has been examined as defence witness No.1. With respect to the age of the victim, the information to the investigator was only through the medical report where the victim was referred to as a 14 years old girl. After the investigation, he had submitted chargesheet against the appellant and his parents. He has admitted before the Trial Court that he never examined and investigated about the age of the victim as was directed by the superior police officer/supervising officer. He did not look at the academic records of the victim to come to any independent conclusion about the age of the victim. He has also admitted that during the course of supervision, it was found that the victim was less than 17 years of age and that no injury was found on her person from which it could have been deduced that the victim was subjected to sexual assault.



15. Dr. Poonam Mishra (PW-7) had examined the victim on 11.07.2022. She did not find any sign of violence, either on external or internal parts of her body. There was no foreign hair present either in vagina or vulva or on the undergarment. There was complete absence of any foreign discharge either in the vagina or vulva or on the undergarment. The pathological report prepared at JLNMCH, Bhagalpur depicted absence of any spermatozoa in the vaginal swab. On the basis of x-ray report sent from JLNMCH, Bhagalpur, the victim was found to be less than 17 years of age. However, she has reiterated in her cross-examination that based upon the clinical findings, she did not find any sign or symptom of rape.

16. It would only be appropriate to refer to the statements of the DWs and the Court witnesses so as to know the exact state of affairs. All the three defence witnesses had given their statements to the police also before coming to the Trial Court.



17. According to DW-1, the age of the victim was between 18-19 years. He has given clean chit to the appellant and has stated that the appellant is a person of good moral character. He has denied that because he happens to be the uncle of the appellant, he has appeared as a defence witness in support of the appellant.
18. Bhupal Paswan (DW-2) has stated that because the marriage negotiation between the appellant and the victim failed, therefore, a false case was instituted by the father of the victim. He, as a co-villager, had told the father of the victim that it is not proper to lodge a false case. On the basis of his observation, he assessed the age of the victim to be between 18-19 years. Apart from this, DW-2 had no other special information about the case.
19. Mubarak (DW-3) was also examined by the police during the course of investigation. He too was of the view that because the marriage negotiation had failed, therefore, as an act of reprisal, this case



was lodged. He had also attempted to convince PW-3 about the futility of lodging of a false case but to no avail. He stands in the relation of grandfather to the appellant. The age of the victim was assessed by him on general observation. He has denied that because he happens to be the grandfather of the appellant, therefore, he has come to the witness box to help his grandson.

20. One Gopal Kumar has been examined as a Court witness. He, at the relevant time, was in-charge Headmaster of Urdu Middle School, Bathani. He had appeared before the Court on the summons issued to him. He identified the admission register of 2015-16, in which the name of the victim was entered. She was admitted in that school in class-II on 16.07.2015. This was the first school where the victim was admitted. Her date of birth of in the register has been shown as 28.02.2008. He had issued a transfer certificate in favour of the victim on 10.04.2023. On being specially questioned, he has



stated that in the column of the register about the earlier school attended by the victim, nothing was mentioned. He had also noticed that there was a whitener mark on the date of the birth of the victim which was entered in the admission register. He has denied that he has prepared any false evidence to help the accused.

21. Mr. Singh, the learned advocate for the appellant has argued that there is material difference in the deposition of the victim and her parents. According to the father of the victim, after the victim was raped and untied by the appellant, she proceeded to the field to meet her mother. However, at the trial, the victim has said that she straightaway reached her home and told her parents about the occurrence. The informant/father of the victim had actually stated that the victim first narrated about the incident to her mother, who in turn informed him. It was only thereafter that he came to know about it and visited the house of the appellant to



accost him. He has further submitted that the appellant is no stranger to the victim or her family. He is also a neighbour of the victim. Under such circumstances, it does not appear to be probable that the victim would be raped by the appellant. He further submits that if the victim or her parents would have had any doubt on the moral character of the appellant, the victim would not have regularly visited his house for the purposes of taking lessons. For the last six months, she had been taking tuition classes from the appellant. There were many opportunities for the appellant to have committed such crime. However, the present case appears to have been filed only for the reason that the marriage proposal of the victim with the appellant was not accepted.

22. Though, the defence witnesses are all in some way related to the appellant but on going through their depositions, it clearly appears that they had no clear idea about the age of the victim nor were they



very sure about any marriage proposal of the victim with the appellant.

23. On going through the evidence on record, it appears that the defence of marriage proposal not having been accepted, being the ground for false implication is only imaginary. Even otherwise, it is difficult to presume that there would be marriage proposal of a pupil with his/her teacher. True it is that the victim had been visiting the appellant for several months but there could be no explanation for sudden cacoethes when the appellant chose to violate his own pupil sexually. The occurrence is said to have taken place on 07.07.2022. A panchayti was convened on 08.07.2022. When this did not bear any fruit, the case was lodged on 09.07.2022. The victim was examined by the doctor on 11.07.2022. This explains for no medical evidence of rape.

24. The Supreme Court in several cases has held that merely because there is no corresponding injury



on the person of the victim of rape, that cannot be the sole ground for discarding the truthful testimony of the victim. If the evidence of the victim is truthful, lack of any medical evidence of rape is no ground for disbelieving the prosecution version.

25. However, we have noticed that the appellant was arrested shortly after the report of the case. There is nothing on record to indicate that he was subjected to any medical examination. Section 53A of the Code of Criminal Procedure ordains that in such cases of rape, the accused must be examined by a medical practitioner. However, it has been held that merely because the I.O has failed to follow the mandate of Section 53A of the Code of Civil Procedure, the prosecution case cannot be allowed to be torpedoed on that ground alone.

26. We have not found anything in the deposition of the victim to render her untrustworthy. The two villagers were aware that such an occurrence had taken place. They were informed by the father of the



victim. The father and mother of the victim have also supported the prosecution case in totality. Minor deviations in narrating an incident which must have put the victim to a great consternation would not cause such a dent in the prosecution version so as to render it doubtful.

27. We have also found that there was practically no objection to the date of birth of the victim which was recorded in the admission register as 28.02.2008. Even otherwise, the age of the victim has been assessed to be less than 17 years of age. In this background, we do not find that the Trial court has erred on any aspect of the matter; even with respect to the sentencing of the appellant.

28. We have also noted that the amount of fine has been directed to be paid to the victim or her family members for the rehabilitation of the victim. We also endorse the payment of compensation to the victim as has been directed by the Trial Court.

29. Thus, finding this appeal to be meritless, we



dismiss it.

30. Interlocutory application/s, if any, also stands
disposed of.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.07.2024
Transmission Date	04.07.2024

