

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5548 of 2023

Arising Out of PS. Case No.-116 Year-2018 Thana- RAJGIR District- Nalanda

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Santu Kumari Wife of Arun Kumar R/O Village- Nanan, P.S.- Silao, Dist.- Nalanda, Presently Residing At Quarter No. 17, Type-Ii, Block No. 2, Ordinance Factory, Police Station- Rajgir, Dist.- Nalanda

... .. Appellant/s

Versus

1. The State Of Bihar
2. Sushil Kumar Singh Son of Late Uma Shakar Singh R/O Amyawar, P.S.- Nasriganj, Dist.- Rohtas, Presently Residing At Quarter No. 17, Type-Ii, Block No. 2, Ordinance Factory, P.S.- Rajgir, Dist.- Nalanda

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Binit Kumar, Advocate
For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 08-02-2024 Heard learned counsel appearing on behalf of the parties.

2. Present appeal preferred challenging order of sentence dated 18.10.2023 passed by learned VIIIth Additional District and Sessions Judge-cum-Special Judge, POCSO Nalanda at Biharsharif in POCSO Case No. 1724 of 2018 (arising out of Rajgir P.S. Case No. 116 of 2018), for inadequate compensation of Rs. 25,000/- and also with a prayer to enhance the sentence of three years to five years in view of Section 8 of the POCSO Act by victim under proviso of Section 372 of the Code of Criminal Procedure (in short Cr.P.C.), which is as under:-



372. No appeal to lie unless otherwise provided.—No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code by any other law for the time being in force:

[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.]

3. Learned counsel for the victim submitted that the maximum sentence for the offence punishable under Section 7 of the Prevention of Children from Sexual Offences (hereinafter referred to as 'POCSO') Act is of five years in terms of Section 8, where Section 42 of the IPC provides the maximum sentence for alternate offence as available for sexual offence under Indian Penal Code and therefore by importing the provision of Section 42 of the IPC sentence should not be less than five years in the present case.

4. On this point of submission, it appears that learned counsel is interpreting the provisions of law in different manner, which is not the mandate of law under Section 42 of the POCSO Act.



5. For the sake of convenience, it would be appropriate to reproduce the provisions of Section 42 & 8 of the POCSO Act alongwith Section 354 A of the IPC.

42. Alternate punishment.—Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 2 [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], 376E or section 509 of the Indian Penal Code (45 of 1860), then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.

“8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

354A. Sexual harassment and punishment for sexual harassment.—

(1) A man committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for



sexual favours; or

*(iii) showing pornography
against the will of a woman; or*

*(iv) making sexually coloured
remarks, shall be guilty of the offence of
sexual harassment.*

*(2) Any man who commits the offence
specified in clause (i) or clause (ii) or
clause (iii) of sub-section (1) shall be
punished with rigorous imprisonment for a
term which may extend to three years, or
with fine, or with both.*

*(3) Any man who commits the offence
specified in clause (iv) of sub-section (1)
shall be punished with imprisonment of
either description for a term which may
extend to one year, or with fine, or with
both.”*

6. It appears from above that there is no minimum sentence available for the offence punishable under Section 354-A of IPC, which is extendable upto 3 years but for the offence punishable under Section 7 of the POCSO Act, minimum sentence is of three years and therefore, sentence as awarded for three years in the present case not appears questionable in view of Section 42 of the POCSO Act. Discretion rest with the learned Trial Court for extended punishment for which several



aggravating factors and mitigating circumstances are required to be considered, where from perusal of record no illegality appears on its face. Moreover, this appeal on point of enhancement of sentence not appears fit in the frame of proviso of Section 372 of Cr.P.C.

7. As far inadequate compensation to the victim is concerned, it would be appropriate to reproduce Rule 9 of the POCSO Act, 2020.

“9. Compensation.— (1) The Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any.

(2) The Special Court may, on its own or on an application filed by or on behalf of the victim, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence.

(3) Where the Special Court, under subsection (8) of section 33 of the Act read with



sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974) makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

(i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

(ii) the expenditure incurred or likely to be incurred on child's medical treatment for physical or mental health or on both;

(iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;

(v) the relationship of the child to the offender, if any;

(vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;

(vii) whether the child became pregnant as a result of the offence;

(viii) whether the child contracted a sexually transmitted disease (STD) as a result



of the offence;

(ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;

(x) any disability suffered by the child as a result of the offence;

(xi) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;

(xii) any other factor that the Special Court may consider to be relevant.

(4) The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other scheme or fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or child's parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government."



8. From the submissions of learned counsel the maximum loss gathered in the present case is mental agony for which after due consideration learned Trial Court awarded compensation of Rs. 25,000/-, which need not interfere out of reasons submitted by learned counsel of appellant.

9. Accordingly, present appeal stands dismissed, at admission stage itself.

10. Let a copy of this order be sent to learned trial court.

(Chandra Shekhar Jha, J.)

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