

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.72 of 2023

Arising Out of PS. Case No.-17 Year-2015 Thana- MAHILA P.S. District- Bhagalpur

Abla Yadav @ Ablay Yadav, Son Of Sikandar Yadav, At Mahasay Dyodhi
Jhoparpatti (Bangali Tola), P.S.- Nath Nagar, District - Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar

2. [REDACTED]

Dayori, (Jhoparpatti), P.S.- Nath Nagar, Dist.- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Aditya Nath Pandey, Advocate
For the State	:	Ms. Shashi Bala Verma, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 31-07-2025

Heard Mr. Aditya Nath Pandey, learned counsel appearing for the appellant and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State. We have issued notice to respondent no.2 but in spite of valid service of notice, respondent no.2 has chosen not to appear in this case.

2. The present appeal has been filed by the appellant, Abla Yadav @ Ablay Yadav, against the judgment of conviction dated 5th December, 2022 and order of sentence dated 7th December, 2022 passed in Special POCSO Case No. 127/2021 arising out of Mahila P.S. Case No. 17 of 2015 by the court of



learned Additional Sessions Judge- VIth -cum- Spl. Judge, POCSO Act, Bhagalpur, whereby and whereunder the appellant has been convicted for the offence punishable under Section 376 D of the Indian Penal Code (in short 'IPC') and under Section 6 of the Protection of Children from Sexual Offences Act, (in short 'POCSO Act') and in the light of the provisions of Section 42 of the POCSO Act, the appellant has been punished only for the offence under Section 6 of the POCSO Act for which he has been sentenced to undergo 20 (twenty) years of rigorous imprisonment with a fine of Rs. 1,00,000/- (Rupees One Lakh) and in default of payment of fine, he has been directed to undergo simple imprisonment for one year additionally.

Prosecution story:-

3. The substance of the prosecution story is as follows:-

The victim herself lodged the FIR and according to prosecution story narrated by her in her written FIR, on 12.03.2015 she went to Mohanpur Bahiyar from her village along with eight girls to cut the grass. All of them were cutting the grass then at about 2:00 P.M., two boys namely, Abha Yadav @ Abhay Yadav (appellant) and Gugo Yadav who are her neighbours, came and started talking irrelevant facts then the other girls who were seven in number, fled away from that place and thereafter, both the



accused took her to a nearby maize field and tied her mouth and thereafter, they opened her *salwar* and raped her one by one and after that they fled away. The informant further alleged that at the time of commission of the alleged occurrence, there was no one. Thereafter, she returned back to her home. She further revealed that when she returned back to her home, her father and mother were not there as they had gone out for earning and they came back at night. Then she informed them about the occurrence and as there was late night at that time, they could not go to the police station on that day and the next day in the morning she went to the police station with her mother and brother who filed her written application.

4. The informant, the victim, herself lodged the FIR as stated above by filing her written application (Exhibit-P1/PW-1) on that basis the formal FIR bearing Bhagalpur Sadar Mahila P.S. Case No. 17 of 2015 was registered under Section 376D of IPC and also, under Section 6 of the POCSO Act against the aforementioned accused persons, which set the criminal law in motion.

5. During the course of investigation, the victim's statement was recorded under Section 164 of Cr.P.C. by the Magistrate and the statements of other witnesses, were recorded under Section 161 of Cr.P.C. by the investigating officer and



thereafter, chargesheet was submitted after completing other part of the investigation against the appellant and co-accused, Gugo Yadav for the offence under Section 376 read with section 34 of IPC.

6. As the co-accused did not appear before the trial court, so, his case was separated after declaring him an absconder and the trial of the appellant ran separately.

7. The appellant stood charged for the offences under Section 376 (D) of IPC and Section 6 of the POCSO Act. The charges were read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.

8. During course of trial, the prosecution examined following five witnesses who are :-

Sl. No.	Name
PW-1	Victim
PW-2	Mother of the victim
PW-3	Brother of the victim
PW-4	Dr. Alpana Mitra, Doctor
PW-5	Gyan Bharti, Investigating Officer

9. The prosecution proved some documents in documentary evidence and got them marked as exhibits which are as under:-

Sl. No.	Details of exhibits and documents
Exhibit-P1/PW-1	Signature of the victim upon xerox copy of written application
Exhibit-P2/PW-1	Signature of the victim upon the xerox copy



	of victim's statement recorded under Section 164 Cr.P.C.
Exhibit-P3/PW-3	Signature of PW-3 upon written application submitted in police station
Exhibit-P4/PW-4	Medical Report of the victim
Exhibit-P5/PW-5	Formal FIR
Exhibit-P6/PW-5	An endorsement on the written FIR by the S.H.O. of Mahila P.S.

10. After the completion of prosecution's evidences, the statement of the appellant was recorded under Section 313 of Cr.P.C. in which he denied the main circumstances appearing against him from the prosecution's evidences and claimed himself to be innocent, however, he did not take any specific defence in his statement.

11. The appellant did not give any evidence in his defence.

Findings of the trial court:-

12. While convicting the appellant for the charged offences, the trial court mainly relied upon the evidence of the victim, the statement recorded by her before the learned Judicial Magistrate during the course of investigation under Section 164 Cr.P.C., and deemed the evidence of PW-2 and PW-3 to be corroborative of relevant facts such as the victim's going to the place of occurrence to cut grass along with other girls, and the victim's clothes being in torn condition when she returned. The



trial court deemed the alleged place of occurrence having been established by the prosecution, as the Investigating Officer revealed the same place of occurrence in his evidence as stated by the informant herself.

Submissions by the appellant's counsel:-

13. Mr. Aditya Nath Pandey, learned counsel appearing for the appellant, submits that the evidence of the victim is wholly unreliable and untrustworthy, as there are serious contradictions in her testimony and the allegations levelled by her in the written FIR. Seven to eight girls who were said to be present with the victim at the alleged place when the appellant arrived there with the co-accused were not examined by the Investigating Officer, and even their identity was not revealed by the victim and her family members, except of two girls who were also not examined by the I.O. The victim made several serious contradictions with regard to the clothes she wore at the time of the alleged occurrence and the presence of her family members at her house when she returned after the incident. The prosecution could not produce and examine any independent person to substantiate the allegations, despite the presence of several such persons if the prosecution story is believed — firstly, the victim's companion girls; secondly, the owner of the field where the victim went to do labour work;



and thirdly, the persons whose fields are situated on the boundaries of the place of occurrence. It is further submitted that the medical evidence given by PW-4 completely negates the victim's allegations.

Submissions by learned APP appearing for the State:-

14. On the other hand, Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing for the State, submits that in a sexual offence, particularly one involving a minor victim, the evidence of the victim can be deemed to be sufficient to prove the sexual offence. In the present matter, the evidence of the informant, i.e., the victim, is sufficient to prove the charged offences. Neither the victim nor her family members had any enmity with the appellant or his family, and in this regard, no material was brought forth by the appellant. Therefore, there was no reason for the victim to make a false allegation against the appellant by staking her reputation. It is a settled principle of law that in the offence of rape, there is no need for corroboration from medical evidence, and the victim's evidence alone is sufficient to prove the offence of sexual assault. In the present case, the victim can be deemed to be a sterling witness. Hence, there is no merit in this appeal, and it should be dismissed.



15. We have heard both the sides, perused the evidences available on the record of trial court, have gone through the statement of the appellant and also given our thoughtful consideration to the aforesaid submissions advanced by both the sides.

Consideration and Analysis:-

16. As per the prosecution story, the victim went to Mohanpur Bahiyar along with eight girls from her locality to cut grass, and at around 2:00 P.M., the appellant and co-accused, Gugo Yadav arrived and started talking about irrelevant matters. Then, the victim's companion girls fled, leaving her behind and thereafter, the accused took the victim in a nearby maize field, tied her mouth and took turns to rape her one by one.

17. In view of the aforesaid story, in addition to the victim, the victim's companion girls, who were eight in number, were important witnesses; however, their identities were not disclosed by the victim in the FIR. During the course of investigation, the victim recorded her statement under Section 164 of the Cr.P.C., in which she said nothing about the presence of her companion girls and, in this regard, remained completely silent. Before the trial court, she revealed the names of two girls in paragraph '10' of her



cross-examination but did not disclose the names of the other girls. PW-5, the Investigating Officer, in paragraph '13' of his cross-examination, stated that the addresses of the girls whose presence was mentioned by the victim in the FIR could not be verified, as they belonged to nearby villages. If this statement is to be believed, then it appears that either the victim intentionally concealed the identity and addresses of her companion girls, or none of them was present with her at the alleged place of occurrence. In the normal course, a minor girl would not be expected to go with unknown girls to a field situated three to four kilometers away from her home to cut grass, and this circumstance creates a doubt in the prosecution story. Further, the victim mentioned in her FIR that she went to cut grass, but before the trial court, she stated that she went to a field owned by another person situated in the 'Diara' area locality to do labour work. This statement contradicts her earlier assertion in the FIR regarding the purpose of her visit to the alleged place. If she had gone to do labour work in someone's field, then the presence of the field's owner or another person supervising the labour would be expected. However, neither in the FIR nor before the trial court did the victim mention the presence of the owner of the field, nor did she



disclose his identity. This vagueness casts a doubt on the prosecution's allegations.

18. As per the prosecution story, the victim was raped at 2 P.M. and her companion girls had run away before the commission of rape and after the rape, the accused also fled away leaving behind the victim alone. In such a situation, the victim could not reasonably be expected to have remained at the alleged isolated location until the evening. However, she deposed before the trial court that she reached her home after 5–6 P.M. Although she claimed that she had become unconscious and returned home only after regaining consciousness, this fact was not mentioned in her written FIR. Furthermore, her statements regarding the fact of becoming unconscious are contradictory. In her statement recorded under Section 164 of the Cr.P.C., she stated that both the accused made her unconscious and thereafter raped her. In contrast, before the trial court, she deposed that the accused fled away when she cried out and raised an alarm, and thereafter, she became unconscious. Additionally, the victim did not allege in the FIR that the accused tore her clothes, or that her clothes were torn as a result of the alleged act committed by the accused. In this regard, during her cross-examination in paragraph '16', the victim stated that she did not hand over her clothes to the police as the accused



had torn them, and therefore, she had kept the clothes at her home. However, the Investigating Officer deposed in his cross-examination that he did not collect the victim's clothes for chemical examination because, according to the victim and her mother, the clothes worn at the time of the alleged occurrence had already been washed. This fact contradicts the victim's allegation that her clothes were torn by the accused during the commission of the alleged offence.

19. In the written report the victim alleged that the accused first tied her mouth and then raped her one by one. Before the trial court, the victim stated that the accused slapped her during the commission of the alleged sexual assault and she sustained an injury on her mouth as a result of being slapped when she was forcefully taken to the field by the accused. Though, as per the settled proposition of law, the mere absence of physical injuries on the body of the victim does not negate the commission of rape, however, when there is a specific allegation of physical assault during the commission of the offence of sexual assault, there must be some supporting evidence from the medical examination of the victim. The alleged occurrence is said to have taken place on 12.03.2015, and the victim was medically examined on 13.03.2015. However, PW-4, who conducted the medical



examination, did not find any signs of rape. According to PW-4, there was no injury on the private parts of the victim's body. This medical opinion contradicts the victim's allegation that she sustained an injury on her mouth as a result of being slapped by the accused. The absence of corroborative medical evidence weakens the prosecution's case and renders the prosecution story doubtful. As per the FIR, the victim went to the field to cut grass along with eight other girls. But she did not reveal this fact in her statement recorded under Section 164 of the Cr.P.C. before the Judicial Magistrate, nor did she say anything about the presence of other girls at the place of occurrence. The victim further stated in her FIR that when she returned home after the incident, her parents were not present as they had gone out for work. However, in her examination-in-chief before the trial court, she deposed that she regained consciousness at around 5–6 P.M., returned home, and informed her mother and brother about the occurrence. She also stated that, after returning home, she and her family members first went to Nath Nagar Police Station, but her case was not registered there, and she was referred to the Mahila Police Station, where her case was eventually registered. These facts were not mentioned in the FIR. On the contrary, according to her FIR statement, her parents returned home only at night, and it was then that she



informed them about the incident. She also stated in the FIR that they could not approach the police station the same night due to the late hour.

20. Now, we come to the evidence of other material witnesses.

Prosecution witness PW-2, the mother of the victim, stated in her cross-examination that when the S.H.O. asked her to produce the victim's clothes, she revealed that the clothes had already been washed. However, this witness did not mention anything about the victim's clothes being torn by the accused during the alleged occurrence, which contradicts the victim's evidence. The witness further stated during cross-examination that there were marks on the victim's body caused by dragging and scratching. Nevertheless, the medical examination report of the victim does not corroborate this claim. It is also important to note that the victim's mother did not disclose the name of the owner of the field where the victim had gone to perform labour work. On this point, both the victim and her mother remained silent. The investigating officer failed to record the statement of the owner of the alleged place of occurrence, as well as the statements of others whose fields were situated at the boundaries of the site and in this regard, he remained careless. Such negligence on the part of the



investigating officer, combined with the silence of the victim and her mother regarding the details of the owner of the field, weakens the prosecution's case.

Conclusion:-

21. After analyzing the prosecution's evidence, we are of the considered view that there are serious inconsistencies in the victim's statements made in her written FIR, before the Judicial Magistrate, and before the trial court. The allegations levelled by her do not inspire our confidence in believing her story. Further, the victim's allegations are not corroborated by the medical evidence. Additionally, the non-examination of the girls who were present with the victim during the initial part of the occurrence, when the appellant and co-accused arrived at the field, and started talking irrelevant facts the companion girls of the victim ran away, adversely affect the prosecution's case. Accordingly, we find that in the present matter, the prosecution has failed to establish the foundational facts relating to the commission of the alleged rape by the appellant. The evidences on record create serious doubts regarding the victim's allegations, and the appellant is entitled to the benefit of the doubt. Hence, the judgment of conviction dated 05.12.2022 and the order of sentence dated 07.12.2022 passed by the learned Additional Sessions Judge- VIth -cum- Special Judge,



POCSO Act, Bhagalpur, in POCSO Case No. 127 of 2021 arising out of Mahila P.S. Case No. 17 of 2015, are hereby set aside.

22. In the result, the appeal stands allowed.

23. The appellant is in judicial custody; so, he is directed to be released forthwith, if his custody is not required in connection with any other matter.

24. Let the Trial Court’s Records (TCR) and a copy of this judgment be sent immediately to the trial court and the concerned jail authority for information and needful compliance.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.08.2025
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