

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.374 of 2019

Arising Out of PS. Case No.-746 Year-2014 Thana- SHASTRINAGAR District- Patna

Jay Mangal Gope @ Biral Late Musi Gope Resident Of Mohalla - Nand Gaon
(Aadmi Gaon), P.S. And P.O. - Shastri Nagar, Distt.- Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arvind Kumar Tewary, Advocate
For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 28-01-2025 Heard the learned counsel for the appellant and the
learned APP for the State.

2. This appeal has been preferred by the appellant who have been convicted and sentenced *vide* judgment and order dated 10.12.2018 and 12.12.2018 respectively passed by the learned Additional District & Sessions Judge-1-cum-Special Judge, POCSO Act, Patna in Special Case No. 30 of 2016 by which the appellant was convicted under Section 376 of the Indian Penal Code and under Section 4 of the POCSO Act and further sentenced him to undergo R.I. for 10 years and to pay a fine of Rs. 10,000/- and in default of payment of fine, he is further sentenced for 1 year S.I. respectively.

3. As per the prosecution case, the informant who is the brother of the victim has alleged that he is a tenant in the



house of Jayamangal Gope @ Biral, where he lives with his wife, child, mother and mentally challenged sister. He runs a footwear shop. On 14-12-2014, between 4.00-5.00 pm, his wife had gone to the market with the children and he and his mother were at the shop. At that time, his sister, the victim, aged 21 years, was alone in the house. When his wife came home at 5.00 pm, she saw his sister crying. His sister told his wife by gestures that the landlord raped her. His wife informed him about this over the phone. On receiving the information, he came home and saw his sister crying. On asking a lot, his sister told him that the landlord, Jayamangal Gope @ Biral, had raped her between 4-5 pm on 14-12-2014.

4. On the basis of the written information by the informant's brother, Shastri Nagar P.S. Case No-746 of 2014 dated 14.12.2014 was instituted against the accused namely Jay Mangal Gope u/s 376 of Indian Penal Code. After investigation, the I.O. submitted charge-sheet against the sole accused u/s 376 of Indian Penal Code and section 4 of POCSO Act, 2012 and cognizance was taken against the appellant u/s 376 of Indian Penal Code and section 4 of POCSO Act *vide* order dated 05.03.2016 and the case was committed to the Court of Sessions on 22.02.2016. The charges were framed against the appellant



u/s 376 of Indian Penal Code and u/s 4 of the POCSO Act on 31.03.2016 to which appellant pleaded not guilty.

5. It has been submitted by the learned counsel for the appellant that the appellant is innocent and has not committed any crime. Prosecution has examined seven witnesses as P.Ws and out of which three were close relatives of the victim.

6. The following witnesses have been examined as P.Ws:-

- (I). P.W-1 was Shobha Devi (Bhabhi of the victim);*
- (ii). P.W-2 was Krishna Devi (Mother of Victim);*
- (iii). P.W-3 was Dhananjay Kumar (brother of victim/informant);*
- (iv). P.W-4 was Binod Kumar Gupta(Renter of the same premises/hostile);*
- (v). P.W-5 was Dr. Pushpa Prakash (Doctor);*
- (vi). P.W-6 was S.I. Kapil Deo Prasad (I.O of the case);*
- (vii). P.W-7 was Alka (Victim herself).*

7. The learned counsel for the appellant has further submitted that out of seven witnesses, 4 witnesses are highly interested witnesses and except the victim herself, all the other three family members examined as the prosecution witnesses, have given hear-say evidence. He further submits that the



informant in his written information, which is the basis of the FIR had mentioned the age of his sister/victim as 21 years and PW-5, who is the doctor of the case has ascertained the age of the victim to be around 18 years and also the medical report(exhibit) suggests the age of the victim to be 18 years, but the learned lower court has exceeded his powers and held the age of the victim to be around 10 years. Such discrepancy in ascertaining the age and completely ignoring the contents of FIR and the medical report is bad in law. There is an established and admitted relationship between the informant, his family members including the victim and the accused which is of landlord-tenant relationship, and the prosecution has failed to produce up-to-date rental receipt which is to be paid by the informant, the angle of harassing his landlord by planting this false and fabricated case with ulterior motives, but the learned lower court has completely failed to appreciate this fact.

8. Learned counsel for the appellant next submitted that the prosecution has failed to establish the commission of rape because the medical report suggests that there was no sign of vaginal intercourse found on the victim and with that no spermatozoa was found in the medical examination and there is no cogent and legal evidence to implicate the appellant u/s 376



of I.P.C and u/s 4 of POCSO Act, the ingredients which need to be satisfied for establishing commission of crime u/s 376 of I.P.C and section 4 of POCSO Act, 2012.

9. Learned APP for the State has supported the impugned judgment and order and has submitted that the conviction of the sole appellant is based on evidence and the same should not be interfered with.

10. The questions to be examined in this case are that whether the victim is a minor and whether the appellant has committed rape with the minor victim. The trial court has held the victim to be minor but in the FIR, the brother of the victim has said that the victim is 21 years old. In medical examination, the age of the victim has been found to be around 17–18 years but in the Court, the age of the victim has been assessed as 10 years. The victim is not educated and there is no document in support of her date of birth. P.W-3/informant in the FIR has said that the victim was 21 years old on the date of occurrence. P.W-2/mother of the victim has said that victim was aged about 17 years on the date of occurrence. In my opinion, the victim cannot be held to be a minor considering the fact that PW-3/informant in the FIR has said that the victim is 21 years old and in the medical examination the Doctor has found the victim



to be aged around 17–18 years of age. So far as the conviction of the appellant under Section 376 of the Indian Penal Code is concerned, the same has to be examined in view of the evidence laid by the prosecutrix and other witnesses.

11. P.W-1 is the Bhabhi of the victim, who was informed by the victim in sign language that the appellant had committed rape with her.

12. P.W-2 is the mother of the victim and she has also supported the fact of commission of rape by the appellant and in her evidence, she says that she was informed by her daughter-in-law/P.W-1 that the appellant had committed rape with her daughter.

13. P.W-3 is the informant and is the brother of the victim. He has filed the FIR about rape having been committed by the appellant upon the victim who is mentally challenged and cannot speak properly.

14. P.W-4 is one Binod Kumar Gupta who has turned hostile.

15. P.W-5 is one Dr. Pushpa Prakash who has examined the victim on 30.12.2024 while being posted as Medical Officer at New Gardiner Road Hospital at Patna. She has deposed that Microbiology Department has not found any



spermatozoa and the report of Radiology Department says that the victim is aged about 17–18 years of age and in her cross-examination, she said that she did not find any injury on any party of the body of the victim and she cannot say whether the rape was committed with the victim or not.

16. P.W-6 is the IO of the case. Nothing significant has been said by him. He has deposed that he had noted during investigation that the victim could not speak properly and could communicate only through sign language. He had not recovered anything from the place of occurrence.

17. P.W-7 is the victim herself. When questions were put in sign language, she has supported the allegation of rape having been committed by the appellant. She has been found to be dim-witted. At the time of her deposition, she was accompanied by her mother to explain the questions asked in sign language to the victim. She has deposed that appellant caught her breast and committed rape with her, and she identified the appellant who was in custody. She has said that her statement was taken by the Magistrate where she has given her thumb impression.

18. From the evidence of the witnesses and including the evidence of the victim, it has come that it is the appellant



who had committed rape with the victim who is mentally challenged and dumb. The defense has come out with a weak defence that he has falsely been implicated in a case of rape because of rent dispute as the family of the victim was his tenant. The date of occurrence is 14.12.2014 and the date of medical examination is 30.12.2014.

19. The Hon'ble Supreme Court in the case of ***State of Punjab v. Ramdev Singh, (2004) 1 SCC 421*** has held as follows:-

12. Learned counsel for the respondent-accused pointed out that rape as claimed by the victim was discounted by the evidence of PW 2, who did not find visible injury when she medically examined the victim. In our opinion the same is of no consequence. The doctor examined the victim after about three weeks. That being so, the effect of the act on the physical form was practically obliterated. That is not denied by the doctor. Merely because the friend of the victim was not examined that also cannot be a suspicious circumstance to throw suspicion on the victim's evidence.

20. In the present case also, the victim was examined after two weeks of the occurrence. The doctor did not find any external or visible injury of rape upon the victim. Since the victim was examined after two weeks, the injury has practically



obliterated.

21. The Hon'ble Supreme Court in the case of *State of Punjab v. Ramdev Singh* (*supra*) has further held that there is no rule of law to discard the statement of the victim if it is not corroborated by any other evidence as she stands on a higher pedestal than an injured witness.

22. In the present case, the victim is mentally challenged and a dumb girl who has supported the allegation of rape having been committed by the appellant in sign language and nothing could be elicited from her to doubt her evidence. In my opinion, once the prosecutrix has supported the allegation of rape having been committed by the appellant, the conviction of the appellant cannot be interfered with.

23. In view of the discussions above, the conviction of the appellant under Section 4 of the POCSO Act cannot be sustained, and the same is hereby set aside. So far as the conviction of the appellant under Section 376 of the Indian Penal Code is concerned, the same is sustained and this Court does not interfere with the sentence awarded to the appellant i.e., 10 years of rigorous imprisonment.

24. Accordingly, this appeal is partly allowed.

25. The bail bonds of the appellant are directed to be



cancelled. The appellant shall be taken into custody to serve the remaining part of the sentence awarded to him.

26. Let the LCR be sent to the concerned Trial Court forthwith.

27. Interlocutory application/s, if any, shall also stand disposed of accordingly.

(Sandeep Kumar, J)

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