

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.150 of 2023

Arising Out of PS. Case No.-112 Year-2021 Thana- KASBA District- Purnia

Md. Ekbal, S/o Sk Suleman @ Gulam Rasul, Resident of village- Kusha, P.S.-
Kashba, District- Purnia

... .. Appellant

Versus

1. The State of Bihar
2. XXX, C/o [REDACTED] S/o [REDACTED] Resident of Village- Lakhna,
P.S.- Kasba, Dist.- Purnia

... .. Respondents

Appearance :

For the Appellant/s : Mr. Saroj Kumar Choudhary, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 29-04-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. This Court had issued notice to the informant, he
has entered appearance through an Advocate but at the time
of hearing, no one has appeared on behalf of the Informant
to oppose this appeal.

3. This appeal has been preferred for setting aside the
judgment of conviction dated 17.11.2022 (hereinafter
referred to as the 'impugned judgment') and the order of



sentence dated 25.11.2022 (hereinafter referred to as the 'impugned order') passed by the learned ADJ-VI-cum-Special Judge (POCSO Act), Purnia (hereinafter referred to as the 'learned trial court') in Special (POCSO) Case No. 75 of 2021 arising out of Kasba P.S. Case No. 112 of 2021.

4. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and by the impugned order, the appellant has been ordered to undergo rigorous imprisonment for life with a fine of Rs. 50,000/- and in default of payment of fine, he shall further undergo additional rigorous imprisonment for five months. He has been further ordered to undergo rigorous imprisonment for a term of 10 years with a fine of Rs. 20,000/- under Section 313/34 of the Indian Penal Code (in short 'IPC') and in default of payment of fine, he shall further undergo rigorous imprisonment for a terms of two months. He has been further ordered to undergo rigorous imprisonment for a term of 3 years with a fine of Rs. 20,000/- under Section 201/34 of the IPC and in default of payment of fine, he shall further undergo rigorous



imprisonment for a terms of two months.

Prosecution Case

5. The prosecution story is based on the written information of the informant who is father of the victim. He has alleged that his 11 years old daughter had been residing with her maternal grandfather Md. Ekbal for last four years. She used to study in '*Madarsa*' and Md. Ekbal was looking after her. In the month of September 2020, Ekbal committed rape with the victim and threatened her to kill, if she would disclose the matter to anyone else. He repeatedly raped her, due to which the victim became pregnant. On 17.05.2021, when she was carrying seven month's pregnancy, Ekbal, Ali Hasan, Afjal, Afasar, Masro, Dirangej, Noori, Munni and Sahabuddin took her to Majhagama. They kept the victim for two days in the house of Sahabuddin and on 19.05.2021, all the aforesaid persons in collusion with each other took her to a doctor and got her child aborted. After abortion, she lived in the house of Sahabuddin for two days in Majhagama then Ekbal took her to his own house. Due to abortion and profused bleeding,



the victim became ill. The informant was informed about the illness of victim then he brought his daughter to his house at Balsar. He took the victim to the Sadar Hospital, Purnea, where she was treated and victim narrated the entire story to the informant. A '*panchayati*' was held, but the matter was not resolved and the informant filed a written application in Kasba Police Station. Due to 'Panchayati' delay took place in lodging of the F.I.R.

6. Upon investigation, the Investigating Officer submitted charge sheet against Ekbal under Sections 376, 313, 201/34 of IPC and 4 of POCSO Act keeping investigation pending against other accused persons, namely, Ali Hasan, Afjal, Afsar, Masro, Dirangej, Noori, Munni and Sahabuddin. Then cognizance was taken against Ekbal for offences punishable U/S 376, 313, 201/34 of IPC and U/S 4 of POCSO Act on 24.08.2021.

7. On 15.09.2021 charges under Section 313, 376AB, 201/34 of IPC and U/S 4 and Section 6 of POCSO Act were read over and explained to accused person, namely, Ekbal in Hindi, to which he pleaded not guilty and claimed to be tried. Thereafter charges were framed.



8. In course of trial, the prosecution examined eight witnesses and exhibited several documents to prove the prosecution case. The list of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

P.W.-1	Nasima Khatoon
P.W.-2	Md. Anen
P.W.-3	Abdul Hakim
P.W.-4	Md. Mohit Alam
P.W.-5	Father of victim (Informant)
P.W.-6	Mukesh Kumar Mandal (I.O.)
P.W.-7	Victim
P.W.-8	Dr. Aparna Dey (MO)

List of Exhibits

Exhibit ‘1’	Signature of informant on written application
Exhibit ‘1/1’	Signature of informant on compromise petition
Exhibit ‘1/2’	Signature of victim on compromise petition
Exhibit ‘1/3’	Signature of victim on statement u/s 161 of Cr.P.C.
Exhibit ‘1/4’	Signature of victim on statement U/S164 of Cr.P.C.
Exhibit ‘2’	Charge sheet No. 119/2021
Exhibit ‘3’	Endorsement on written application
Exhibit ‘4’	Formal F.I.R.



Exhibit '5'	Medical report of victim
Exhibit '6'	Statement of victim U/S 164 of Cr.P.C.

9. The accused has examined himself as D.W.1 in his defence and proved the certified copy of the sale deed dated 18.08.2021 executed by him in favour of the victim which has been marked as Exhibit-A.

Findings of the Learned Trial Court

10. Learned trial court having analyzed the evidence available on the record concluded that the prosecution has succeeded in proving the facts that the accused, namely, Md. Ekbal (the appellant) being the maternal grandfather of the victim committed rape with her in his house and got her abortion done with the help of his family members.

11. The trial court has found that the victim is a minor girl aged below 12 years, no dispute has been raised on the point of age of the victim during trial and in the sale deed which has been executed by the appellant on 18.08.2021 in favour of the victim girl, he has also mentioned her age as about 11 years.

12. The trial court found that the appellant had made



the victim girl pregnant, due to the rape and this offence would come within the definition of aggravated penetrative sexual assault defined under Section 5 of the POCSO Act which is punishable under Section 6 of the POCSO Act. The trial court also held the appellant guilty of the offence under Section 376(A) (B) of IPC.

13. This Court further finds that the trial court has taken a view that the evidence of the victim (P.W.7) itself is sufficient to prove the case of the prosecution. The plea of the defence that the doctor (P.W.8) has not written the history of the offence in her report (Ext.5), would not be any reason to discard her testimony.

14. In this case, the accused-appellant himself came in dock as defence witness no.1. He has proved the sale deed on 18.08.2021 executed by him in favour of the victim which has been marked Exhibit- 'A'.

15. The trial court has relied upon the judgment of the Hon'ble Supreme Court in the case of **Bholaram Vs. State of M.P** reported in **1997 SCC online 118** to observe that the conviction for offence of rape can be based on the sole testimony of the prosecutrix, if it is reliable, unimpeachable



and does not suffer from any infirmity. As held in the judgment of this Court in the case of **Sheo Kumar @ Shiv Kumar Vs. State of Bihar and Ors.** reported in **2021 (6) BLJ page 57**, it has been observed that since corroboration is not the imperative component to prove the charge, only because some of the prosecution witnesses have not supported the prosecution case would not make any difference. The victim (P.W.7) has been found trustworthy, credible and sterling in nature.

Submissions on behalf of the appellant

16. Mr. Saroj Kumar Choudhary, learned counsel for the appellant has assailed the impugned judgment on the grounds *inter alia* that it is a case of false implication of the appellant. According to him, the evidences available on the record would show that the informant had strong motive to falsely implicate the appellant.

17. It is his submission that there is an unexplained delay in reporting the matter to police. The occurrence allegedly took place on 19.05.2021 but no information was given to the police station or the Mahila Police Station, Purnia.



18. Apart from this discrepancy in the prosecution case, the main witnesses of the case including the informant have turned hostile and they have not supported the prosecution case. The prosecution has not adduced any evidence against the appellant. It is his further submission that the learned trial court could not appreciate that the statement recorded under Section 164 of the Cr.P.C. is neither a substantive nor a corroborative piece of evidence.

Submissions on behalf of the State

19. On the other hand, Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State submits that the learned trial court has meticulously examined the evidences available on the record. The evidence of the victim girl (P.W.7) leaves no room for doubt about the prosecution story. Her testimony is fully corroborated by the medical evidence (Ext.5) proved by the doctor (P.W.8).

20. Learned Additional Public Prosecutor further submits that in this case, the informant (P.W.5) has been declared hostile after the prosecution noticed that he was not supporting the prosecution case as he had entered into a compromise with the appellant during the trial and had filed



a compromise petition on which he put his signature (Ext.1/1) and made her victim (daughter) to put her signature (Ext.1/2).

21. It is submitted that the victim girl remained consistent in her evidence. She had made her statement under Sections 161 and 164 of the Cr.P.C. In her both statements, she has stated that she was living with her maternal grandfather's family for last four years and during her stay there, she was subjected to rape by her maternal grandfather (the appellant). She had become pregnant and when this fact came to the notice of her maternal grandmother, maternal uncle and maternal aunt, they took her to a doctor at Purnia, who administered one injection to her, whereafter she aborted.

22. It is pointed out that the doctor (P.W.8) has examined the victim on 06.06.2021 at 11:30 A.M. in Sadar Hospital, Purnia. P.W.8 has recorded in the report (Ext.5) that slight blood discharge was present, vagina was loose and the margin of cervix was irregular. The ultrasonography was done on 29.05.2021 which shows bulky uterus thick. It showed retained product of conception at upper uterine



segment and incomplete abortion. The histopathological examination has shown that the victim had abortion recently and her age was about 14-15 years. It is submitted that the prosecution case has been proved beyond all reasonable doubt.

Consideration

23. Having heard learned counsel for the appellant, learned Additional Public Prosecutor for the State as also on perusal of the records, we find that the prosecution case is based on written information submitted by the father of the victim girl on 06.06.2021 in Kasba Police Station. In his written application, the informant (P.W.5) has stated that his daughter aged about 11 years was living with her maternal grandfather in village-Kushha, Panchayat-Kajhauri under Kasba police station for last four years and she was studying in a '*Madarsa*'. He has stated that this appellant was looking after his daughter (x). He alleged that about eight months back in September, 2020, the appellant forcibly committed rape upon the victim girl and threatened her. He committed rape on her repeatedly as a result whereof she became pregnant. He has then alleged that on



17.05.2021, the nine persons named in the written information/application brought the victim to the house of one Sahabuddin in Majhgama and on 19.05.2021, they took her to a doctor at Purnia for abortion, where the abortion was done. He has alleged that because of the abortion when the victim had profused bleeding and she became ill then he was informed whereafter he brought his daughter to his village-Balsar and took her for treatment to Sadar Hospital, Purnia.

24. In the kind of the allegations present in the written application, we are of the considered opinion that in the written application which is the basis of the FIR itself, the informant has explained the reason for delay in lodging of the First Information Report. Thus, in the facts of the present case, the delay in lodging of the FIR would not prove fatal to the prosecution.

25. This Court has noticed that the victim girl had made her statement under Sections 161 and 164 of the Cr.P.C. In both her statements, she has supported the prosecution case. She is the victim of the crime and has disclosed the entire occurrence which had taken place with



her. While recording her statement under Section 164 of the Cr.P.C. (Ext.6), the learned Magistrate put some preliminary question to the victim on finding that she is a child witness. The victim understood the questions and answered the same. She has narrated the entire story, as disclosed in the written application of her father.

26. In course of trial, P.W.1, who is the mother of the informant, has been declared hostile. She has stated in her examination in-chief that the informant of this case is her son and the occurrence had taken place with her grand-daughter. P.W.1 has stated that from the beginning, her grand-daughter was living at her maternal father's place. This witness was cross-examined by the prosecution and her attention was drawn towards her previous statement made before the police, in which, she had supported the prosecution case but the witness denied the suggestion of the prosecution in course of cross-examination.

27. Md. Anen (P.W.2), who is the nephew of the informant. He has also been declared hostile and cross-examined by the prosecution. However, this witness has also stated that the victim was living with her maternal grandfather and he had heard that the victim's maternal



grandfather had committed wrong act with her.

28. Abdul Hakim, (P.W.3) is a co-villager in relation with the informant. He has stated that he had no information about the occurrence, therefore, he has been declared hostile. However, this witness has also stated that the victim girl was living with her maternal grandfather Ekbal (appellant). In his cross-examination by the prosecution, this witness has stated that he had come with the informant in the court and he had told him about the occurrence. He has stated that there is a compromise between the father-in-law and the son-in-law. This witness was suggested by the prosecution that he was deposing in this case wrongly only because the informant has entered into a compromise with his father-in-law.

29. Md. Mohit Alam (P.W.4) is another witness, who is a distant relative of the informant and he has also been declared hostile.

30. The informant (P.W.5) has stated in his examination-in-chief that his daughter is minor. He had a quarrel with his father-in-law in which his daughter had suffered some injury. He has stated that the co-villagers and



members of this society had taken him and his daughter to police station where he had submitted a written application. He identified his signature on the written application which has been marked as Ext.1.

31. The learned trial court noticed that P.W.5 (informant) was not able to give answer to the questions and in answer to every question, he was only repeating that the people in the society had done it and he was not aware of what they had done. He was not aware that who had got the application written. He has proved his own signature and the signature of his daughter on the compromise petition filed in the Court. This witness has been declared hostile. The prosecution cross-examined him inviting his attention towards his previous statements made before police in which he had stated that his daughter was living with her maternal grandfather, she was studying in a '*Madarsa*' and in September, 2020, the maternal grandfather of the victim girl had committed rape on her and had also threatened her. He had stated before the police that the maternal grandfather of the victim had repeatedly committed rape on the victim against her will. He has admitted in paragraph '7'



of his cross-examination that when the victim became serious, she was admitted in Sadar Hospital, Purnia. His daughter had given all information of the occurrence to him whereafter a '*panchayti*' had taken place but no solution could be reached, therefore, there was some delay in submitting application in the police station.

32. P.W. 5 has stated in paragraph '9' of his evidence that his wife is an accused in this case, his children are of little age and therefore, he had entered into a compromise. The defence suggested P.W.5 that he had lodged the case because his father-in-law was not giving a share in the land. This witness has admitted that he had lodged the case because of the land dispute.

33. This Court finds from the evidence of P.W.5 that he resiled from his statement before the I.O. In this regard, the evidence of the I.O. (P.W.6) would prove that in his previous statement recorded by the I.O. (P.W.6), the informant (P.W. 5) had supported the prosecution case and had stated that the maternal grandfather of the victim had repeatedly committed rape upon her as a result whereof she had become pregnant. Paragraph '6' of the deposition of the



I.O. P.W. 6 proves the previous statement of the informant (P.W.5).

34. Apart from this the learned trial court also put some questions to P.W.5. He has admitted that he had gone to police station with his daughter. He has admitted that for examination, his relation had gone with his daughter to the hospital. When the Court asked a question as to when the abortion had taken place and who was the doctor, this witness has stated that the abortion had taken place earlier. He has also stated in answer to the Court's question that he had heard from the members of the society that the pregnancy was of the maternal grandfather of the victim girl.

35. We have noticed that the learned trial court has examined the evidence of P.W. 5 and recorded that although, P.W. 5 has been declared hostile on the request of the prosecution but he has supported the fact of commission of rape with his daughter by the accused-appellant, her pregnancy and treatment as well, so the part of his testimony where he says that her abortion was already done and he had heard that the child in the womb of her



daughter of her '*nana*' becomes admissible and it is also relied upon.

36. We find that the learned trial court is correct in appreciation of the evidence of the informant (P.W. 5).

37. The victim of this case has been examined as P.W. 7. In her examination-in-chief, she has fully supported the prosecution case. She has stated that her maternal grandmother told her to sleep in the room of maternal grandfather, she started sleeping with her maternal grandfather, whereafter her maternal grandfather had committed rape on her. She has stated that she had become pregnant because of the said rape and when she disclosed it to her maternal uncle, maternal aunt as also maternal grandmother, they took her to a doctor at Purnia, who administered her injection whereafter she aborted. She has stated that her '*Fufi*' informed it to her father whereafter her father lodged the case in Kasba Police Station. She and her grandmother had also accompanied her father to the Kasba police station. Police got conducted her medical examination and her statement was also recorded in Mahila Police Station and then her statement was recorded in



Court. She has proved her signatures on her statements.

38. In course of her cross-examination, she has stated that she was studying in '*Madarsa*', *Unwarul* in Class-VII and for last three years, she was residing with her maternal grandfather. She has also stated that she was not able to tell the occurrence to her father because her maternal grandfather had threatened that if she would disclose it with anyone, she would be killed. Her mother used to send her to maternal grandfather's house. She has stated that earlier she was undergoing menstruation prior to the occurrence but presently she was not menstruating. She has stated that she cannot say the name of the doctor and cannot say the date, day and month when she was taken to the doctor. We find it a very minor discrepancy in the evidence of this witness. She was not told about the name of the doctor at Purnia, therefore, it is not expected that she would remember the name, the date, day and month in which she was taken to the doctor by the FIR named accused persons. She has denied the suggestion of the defence that she was tutored by her father to make statement and that her father had lodged the case for getting a piece of land.



39. We find from the evidence on the record that Dr. Aparna Dey (P.W.8) had examined the victim in the Sadar Hospital, Purnia. She has proved (Ext.5). Ext. 5 is to be reproduced hereunder for ready reference.

“Mark of identification - A Mole over sternum. A mole over nose. Gen Examination - She was of average built. Height was 4'11" and weight 39 KG. Secondary sexual Character- Breast developed and engorged filled with milk Secretions. Axillary hairs & Pubic hairs were present. P/A -Soft. Marks of injury-No any internal and external injury found on her body and around her private parts. P/E slight Blood mixed discharged present. P/V- On per vaginal examination - vagina loose and the Margin of cervix was irregular. She had on USG L/A- Report dated on 29.05.2021 which shows bulky uterus thick endometrium. Retained product of conception seen at upper uterine segment incomplete abortion. For rape - HVS taken and sent for histopathological examination and presence of spermatozoa. According to pathological report spermatozoa not found. Suggested X-Ray of pelvis & X-Ray Wrist Joint for age determination. X-Ray done at Sadar Hospital, Purnea. X-Ray Report received on 07.06.2021. According to radiologist the age of victim is between 14 to 15 years (Fourteen to Fifteen years). USG lower abdomen also suggested. According to USG report -Uterus was mild bulky.

Hence she opined on the basis of previous



USG report and recent USG report and on clinical findings that the victim had abortion recently and her age was about 14 to 15 years.”

40. It is evident that the doctor (P.W.8) had found that there were retained product of conception at the upper utrine segment, as the abortion was incomplete. The USG of the lower abdomen was also done and on the basis of the USG report and on technical findings P.W.8 had found that the victim had abortion recently. This report of PW8 fully corroborates the statement of the victim girl (P.W.7).

41. We find that the learned trial court has meticulously dealt with the evidence of P.W.7 in the impugned judgment. The trial court is correct in its finding that the victim (P.W.7) has consistently supported the fact in her statement recorded under Section 164 of the Cr.P.C. as well as in her testimony that her maternal grandfather committed rape with her, due to which she became pregnant and when she was carrying pregnancy of about 7 months, her abortion was done by the family members of the accused.

42. We agree with the findings of the learned trial



court that in this case, the victim (P.W.7), is a sterling witness.

43. In the case of **Rai Sandeep @ Deepu Versus State (NCT of Delhi)** reported in **(2012) 8 SCC 21**, the Hon'ble Supreme Court has observed as to who will be put in the category of sterling witness. Paragraph '22' of the judgment reproduced hereunder for ready reference:-

"22 In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons



involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

44. We have appreciated the evidences hereinabove and we agree with the findings of the learned trial court. Even on re-appreciation of the entire evidence, we find no



reason to take any other view.

45. We have also gone through the evidence of the accused (D.W.1). He has stated that his son-in-law had lodged a case against him using his '*natni*' and this case is false. He has stated that the informant was asking for five '*bighas*' of land which he was not giving and for this reason, the rape case has been imposed upon him. He has stated that in his absence, '*panchayti*' was held, he had not given the land on his free will and volition. He has executed a sale deed (*kewala of 1 and ½ bighas of land*) in the name of victim because the informant had told him that he would get him set at free from the jail. P.W.8 has stated that the informant had told him that he would get a favourable deposition from the victim but he played fraud with him and got the sale deed executed. We find from the evidence of D.W.1 that he admits that the victim was living in his house for one year. On the face of the entire prosecution evidence which we have discussed here-in-above, the defence of D.W.1 is wholly unreliable.

46. In the result, we find that the guilt of the accused-appellant has been proved beyond all reasonable doubt and



the learned trial court has not committed any error in convicting him for the offences under Section 6 of the POCSO Act, as also under Section 313/34 and 201/34 of the IPC.

47. The appeal against the impugned judgment and order has no merit.

48. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Jagdish/lata/-

AFR/NAFR	NAFR
CAV DATE	NA
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