

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.219 of 2025

Arising Out of PS. Case No.-168 Year-2023 Thana- HARSIDHI District- East Champaran

Victim X Daughter of Uma Shankar Sah Resident of Village -Sariswa Parshurampur, PS -Harsidhi District -East Champaran Under Guardianship of Uma Shankar Sah Age about 49 years, male son of saral sah, village- sariswa Parshurampur, Ps- Harsidhi, Dist- East Champaran, at P/A- Tola Asharfi Sah, Turkauliya, ps- Turkauliya, Dist- East Champaran

... .. Appellant

Versus

1. The State of Bihar
2. Kabil Ansari Son of Mastan Miyan R/o Village- Sariswa, ps- Harsidhi, Dist- East Champaran
3. Sagar Ansari Son of Noor Mohammad R/o Village- Sariswa, ps- Harsidhi, Dist- East Champaran

... .. Respondents

Appearance :

For the Appellant/s : Mr. Karandeep Kumar, Advocate
For the State : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 10-09-2025

The present criminal appeal has been preferred under Section 413 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'B.N.S.S.') against judgment of acquittal dated 14.11.2024 passed by the learned 6th Additional Sessions Judge-cum-Exclusive Spl. Judge, POCSO Act, East Champaran, Motihari in POCSO Trial No. 45 of 2023, arising out of Harsidhi P.S. Case No. 168 of 2023, whereby Respondent Nos. 2 and 3 have been acquitted by the learned Trial Court from the charge of Sections 341/34, 342/34, 376-DA of Indian Penal Code, Section 4, 6 of the POCSO Act and Section 67 (C) of the I.T. Act.

2. The prosecution case, in brief, is that on 26.02.2023



at 04:00 a.m., the victim girl had gone outside her home to attend nature's call. Her co-villagers, namely, Kabil Ansari, Sagar Ansari and one unknown person came there. They pressed her mouth and took her to a bamboo tree field which was situated in the eastern side of her house. The victim girl has further stated in her written application that the accused persons had tied her hands and mouth. Sagar and the one unknown person had forcibly laid her down on the surface and thereafter the accused Kabil Ansari disrobed her and committed rape upon her. She was crying but accused Kabil Ansari continued to rape her for about four minutes and, as a result, she sustained injury and was bleeding. It has further been stated that thereafter the accused Sagar Ansari and one unknown person molested her by touching her breast and other parts of her body. She was admitted to Turkauliya Hospital on 27.02.2023 where she was treated till 03.03.2023. She has further stated that, on 09.03.2023, all the three accused persons again came to her house and threatened to take her away. The accused Sagar Ansari earlier filmed her video while she was being raped and, on 09.03.2023, he showed her that video and threatened her to enter into *nikah* or face consequences.

3. On the basis of written application of the victim



girl, Harsidhi P.S. Case No. 168 of 2023 was instituted under Sections 341/34, 342/34, 376-DA of Indian Penal Code, Section 4/6 of the POCSO Act and Section 67 (C) of the I.T. Act and investigation was taken up by the police. The police after investigation submitted charge-sheet against Respondent Nos. 2 and 3 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined altogether seven prosecution witnesses i.e. PW1- Deepak Sah, PW2- Sunil Prasad, PW3- Birendra Sah, PW4- Rina Devi, PW5- X (victim girl), PW6- Kumari Vibha Bharti (Investigating Officer) and PW7- Dr. Priti Gupta. The prosecution has also produced certain documents which were marked as 'Exhibits' i.e., Ext. 1- written application of the informant/victim, Ext. 1/1- signature of informant/victim on her written application, Ext. 2- signature of the victim on her statement under Section 164 of the Cr.P.C., Ext. 3- signature of the victim on her age determination report, Ext. 3/1- age determination report of the victim, Ext. 3/2- signature of the witness, namely, Dr. Priti Gupta on age determination report, Ext. 4- signature of the



victim on her medical examination report, Ext. 4/1- medical examination report of the victim, Ext. 4/2- signature of the witness, namely, Dr. Priti Gupta on medical examination report, Ext. 5- signature of Ravi Ranjan Kumar on formal FIR and Ext. 6- R.F.S.L. report of the cloths of the victim girl. Three witnesses have been examined on behalf of the defence i.e. DW1- Guddu Kumar Singh, DW2- Rustam Ansari and DW3- Abdul Manan. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

5. The learned Trial Court on the basis of the materials available on record, and the evidence produced before the Court, acquitted the accused persons observing that the prosecution has not been able to prove any of the charges levelled against the accused persons beyond doubt and the prosecution case appears to be doubtful because, as per the basic principle of the criminal jurisprudence, the benefit of doubt has to be given to the accused persons.

6. Learned counsel for the appellant submits that the learned Trial Court has failed to appreciate the evidence of the prosecutrix (PW-5) who herself is an eye-witness to the



occurrence and has fully supported the factum of rape committed with her by the accused persons including the two Respondents and she also identified these persons. He further submits that the learned Trial Court had also failed to consider the medical evidence as minor irregularities in the investigation are not fatal to the prosecution case.

7. The learned counsel for the state has submitted that there is no perversity in the judgment of the learned trial court, and the prosecution has failed to prove the guilt of the accused before the learned Trial Court. He further submits that the medical evidence had assessed the age of the victim as 17.5-18.5 years and, apparently, as per the report of the medical examination in respect to the age, the victim appears to be major. He further argued that prosecution witnesses (PWs. 1 & 4) are the hearsay witnesses. Therefore, the order of the learned Trial Court requires no interference in the present case.

8. We have heard learned counsel for the appellant and the State and have also gone through the records of the case.

9. The sole question that requires consideration by this Court is whether the impugned judgment requires any interference by this Court.

10. Upon scrutiny of the evidence available on record,



this Court finds that, the incident is alleged to have occurred on 26.02.2023, whereas the First Information Report came to be instituted only on 10.03.2023. Such a delay of more than twelve days has remained wholly unexplained by the prosecution. The law is well settled that delay in lodging the FIR, if not properly explained, creates doubt about the authenticity of the prosecution version. ***In Thulia Kali v. State of Tamil Nadu, (1972) 3 SCC 393***, the Hon'ble Supreme Court observed that unexplained delay in setting the criminal law into motion is fatal to the prosecution case as it affords scope for embellishment and afterthought, as observed as under:-

“12.....First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated



account or concocted.”

11. Further, there is a serious contradiction regarding the naming of the accused persons. In the FIR, the victim mentioned only two names, namely Kabil Ansari and Sagar Ansari. However, during her statement recorded under Section 164 Cr.P.C., she added the name of Sonu Alam as a third accused. Such an improvement at a later stage casts doubt upon the veracity of her testimony.

12. Further, The Hon’ble Supreme Court in ***Suraj Mal v. State (Delhi Administration)***, AIR 1979 SC 1408, has further held that where witnesses make inconsistent statements in their evidence, whether at one stage or at different stages, their testimony becomes unreliable and unworthy of credence, and in the absence of special circumstances no conviction can safely be based on such evidence, as Para-2 of judgment observes as under:

“2.....It is well-settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses....”

In the present case, the inconsistent statements of the



victim create doubt and render her testimony unsafe for reliance without independent corroboration.

13. The medical and forensic evidence also does not support the prosecution case. Though the prosecution claimed that the victim was examined at Turkauliya Hospital on 27.02.2023, no report of the Doctor from that Hospital has been brought on record. The medical examination conducted by PW-7 has not shown that the victim was subjected to sexual or physical assault. On the contrary, the R.F.S.L. Report does not reveal the presence of semen or any foreign body on the clothes of the victim. The Hon'ble Supreme Court in **Radhu v. State of Madhya Pradesh, (2007) 12 SCC 57**, has held that although medical evidence is not always indispensable in a case of sexual assault, where the medical evidence rules out the possibility of such an assault, conviction cannot be based solely on ocular testimony, as observed as under:

“11. Dr. Vandana (PW-8) stated that on examination of Sumanbai, she found that her menstrual cycle had not started and pubic hair had not developed, and that her hymen was ruptured but the rupture was old. She stated that there were no injuries on her private parts and she could not give any opinion as to whether any rape had been committed. These were also recorded in the examination Report (Ex. P8). She, however, referred to an abrasion on the left elbow and a small



abrasion on the arm and a contusion on the right leg, of Sumanbai. She further stated that she prepared two vaginal swabs for examination and handed it over along with the petticoat of Sumanbai to the police constable, for being sent for examination. But no evidence is placed about the results of the examination of the vaginal swabs and petticoat. Thus, the medical evidence does not corroborate the case of sexual intercourse or rape.

12. We are thus left with the sole testimony of the prosecutrix and the medical evidence that Sumanbai had an abrasion on the left elbow, an abrasion on her arm and a contusion on her leg. But these marks of injuries, by themselves, are not sufficient to establish rape, wrongful confinement or hurt, if the evidence of the prosecutrix is found to be not trustworthy and there is no corroboration.”

In the present case, the medical and forensic evidence not only fails to corroborate the prosecution version but tends to contradict it.

14. The testimony of the Investigating Officer (PW-6) further weakens the prosecution case. She has admitted that she did not find any sign of injury on the body of the victim. She has also stated that on visiting the alleged place of occurrence, no evidence of violence was detected. These admissions on the part of the Investigating Officer strike at the very root of the prosecution case.



15. It also emerges from the evidence available on the record that PW-1 to PW-4 are only hearsay witnesses who have not claimed to have witnessed the incident themselves. Their testimonies, therefore, have little evidentiary value. At this juncture, it is evident to take note of the decision rendered by Jharkhand High Court in the case of ***Ram Khelawan Paswan vs State of Jharkhand and Ors.*** reported in ***(2008) SCC OnLine Jhar 584***, it was observed as under:

“9. It is a basic principle of evidence that if previous statement of a person is sought to be used, then that person should be produced and tendered for cross-examination. In absence of production of the witness and an opportunity to cross-examine him, his previous statement becomes inadmissible. It also appears that the testimony of the witnesses on whose evidence the inquiry officer had relied upon was hearsay in nature as they were not the direct witnesses. A finding of guilt on the basis of hearsay testimony cannot be legally sustained in the eyes of law.”

16. So far as the age of the victim is concerned, the medical board has assessed it to be between 17.5 to 18.5 years at the time of the alleged occurrence. In criminal law, when age is assessed on medical estimation, the benefit of margin of error is normally extended to the accused. Even if the lower end of the assessed range is taken into account, the victim would be more



than 17 years of age and close to attaining majority. In the absence of any documentary proof such as a school certificate or birth certificate, the Court cannot conclusively hold that the victim was below 18 years. The assessment of the medical board clearly indicates that she was apparently a major at the relevant time. Therefore, the statutory presumption under Section 376-DA IPC as well as Sections 4 and 6 of the POCSO Act, which fasten liability for sexual intercourse with a child below 18 years irrespective of consent, is not automatically attracted in the present case. Once the minority of the victim is not established beyond reasonable doubt, it was incumbent upon the prosecution to prove by clear and reliable evidence that there was forcible sexual assault.

17. On a cumulative assessment of all these circumstances, it is manifest that the prosecution case suffers from serious infirmities. The delay in lodging the FIR, the contradiction in naming the accused, the absence of medical and forensic corroboration, the lack of any injury or sign of violence, and the weakness of the oral testimony collectively create a situation where the prosecution case cannot be said to be proved beyond reasonable doubt. It is a settled principle of criminal jurisprudence that suspicion, however strong, cannot



take the place of legal proof. In ***Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808***, the Supreme Court has categorically held that where two views are possible, the one favourable to the accused must be adopted, as observed in Para 25 of the judgment:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that is is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by report to surmises, conjectures or fanciful considerations. As mentioned by us recently in the



case of State of Punjab v. Jagir Singh [(1974) 3 SCC 227 : 1973 SCC (Cri) 886] a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.”

18. The Trial Court, upon a similar appreciation of evidence, recorded a finding that the prosecution had failed to prove the charge beyond reasonable doubt. On scrutiny, this court finds that the view taken by the Trial Court is both plausible and well-reasoned and therefore does not warrant any interference.

19. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of a reasonable doubt. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of



doubt.

20. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned Court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of **Mrinal Das vs. State of Tripura (2011) 9 SCC 479**, paragraphs 13 & 14 of which read as under:

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappraise, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to



be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

"75. The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."



21. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the Trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

22. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

23. Accordingly, the present appeal is dismissed.

24. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Sachin/-

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