

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.318 of 2023

Arising Out of PS. Case No.-27 Year-2018 Thana- BENIPATTI District- Madhubani

Chhedi Das, son of Late Saguni Das, Resident of Village- Majhila Tol Pali
PS- Benipatti, Dist- Madhubani.

... .. Appellant

Versus

1. The State of Bihar
2. 'X' c/o I [REDACTED] R/o vill - Majhila Tol Pali, P.S. - Benipatti, Distt. -
Madhubani

... .. Respondents

Appearance :

For the Appellant	:	Mr. Rajesh Kumar, Advocate
For the Informant	:	Mr. Gagandeo Yadav, Advocate
		Mr. Udeshya Kumar Yadav, Advocate
For the State	:	Mr. Ajay Mishra, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 15-09-2025

We have heard learned counsel for the appellant and
learned Additional Public Prosecutor for the State as also learned
counsel for the informant.

2. The present appeal has been preferred through the
Patna High Court, Legal Services Committee. This appeal is arising
out of the judgment of conviction dated 20.08.2019 (hereinafter
referred to as the 'impugned judgment') and the order of sentence
dated 27.08.2019 (hereinafter referred to as the 'impugned order')
passed by learned 1st Additional Sessions Judge-cum-Special Judge
(POCSO Act), Madhubani (hereinafter referred to as the 'learned



trial court') in POCSO G.R. Case No. 16 of 2018 arising out of Benipatti P.S. Case No. 27 of 2018.

3. By the impugned judgment, the learned trial court has been pleased to convict the appellant for the offences punishable under Section 376 of the Indian Penal Code (in short 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act').

4. By the impugned order, the appellant has been ordered to undergo imprisonment for life and to pay a fine of Rs.1,00,000/- for the offence under Section 376 IPC and in case of default of payment of fine, he has to further undergo one year imprisonment. For the offence under Sections 4 and 6 of the POCSO Act, he has to further undergo twenty years rigorous imprisonment for each of the Sections and to pay a fine of Rs.10,000/- each and in case of default of payment of fine, he has to further undergo six months imprisonment for each of the sections under the POCSO Act.

Prosecution story

5. The informant/ father of the victim (PW-3) alleged in his written application (Exhibit '1') that on the alleged date of occurrence at about 03:00 PM in the evening, his daughter/ victim (PW-2) aged about eight years had gone in the garden ('gachi') situated at about 200 meters from his house and was collecting the leaves. In the meantime, Chhedi Das (this appellant) caught hold of



the victim and committed rape upon her. The victim came crying and said taking name of this appellant that he has committed wrong act with her and fell unconscious. The informant and others brought her to Benipatti for primary health.

6. On the basis of this written application, Benipatti P.S. Case No. 27 of 2018 dated 03.03.2018 was registered under Section 376 and Sections 4 and 6 of the POCSO Act against this appellant. After investigation, Police submitted a chargesheet bearing No. 103 of 2018 dated 31.03.2018 under Sections 376, 307 IPC and Section 4 and 6 of the POCSO Act against this appellant. Learned trial court, vide order dated 25.04.2018 took cognizance of the offences under Sections 376, 307 IPC and Section 3 and 4 of the POCSO Act against this appellant.

7. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried. Accordingly, vide order dated 24.07.2018, charges were framed under Sections 376 and 307 IPC and Section 4 and 6 of the POCSO Act.

8. In course of trial, the prosecution examined as many as eight witnesses and exhibited two documents. The names of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution witnesses



PW-1	Mother of the Victim
PW-2	Victim
PW-3	Informant/ Father of the Victim
PW-4	Cousin Brother of the Father of the Victim
PW-5	Dilip Das
PW-6	Dr. Rama Jha
PW-7	Dr. S.C. Roy
PW-8	Ravindra Kumar Singh

List of Exhibits on behalf of Prosecution

Exhibit ‘1’	Written application
Exhibit ‘2’	Medical report of the victim

9. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. He took a plea that he is innocent. The defence has not adduced any oral or documentary evidence.

Findings of the Learned Trial Court

10. Learned trial court after analysing all the evidences available on the record found that the victim (PW-2) has stated that this appellant had come, asked her father’s name and took her in his lap and brought her to the 'Dhaniya' field where he opened her undergarment, gagged her by her mouth, pressed her neck and then committed wrong act with her. Learned trial court found that the evidence of PW-2 has been duly supported by the other prosecution witnesses, PW-1, PW-3, PW-4 and PW-5.



11. Learned trial court found that the Doctors, PW-6 and PW-7 has in their deposition stated the age of the victim between 7-8 years and found injuries on the private part of the victim suggesting sexual assault.

12. Learned trial court after properly appreciating all the facts and circumstances of the case found that the prosecution has been able to prove its case beyond all reasonable doubt against the appellant. Accordingly, learned trial court convicted the appellant for the offences punishable under Section 376 IPC and Section 4 and 6 of the POCSO Act.

Submissions on behalf of the Appellant

13. Learned counsel for the appellant submits that the learned trial court has, while appreciating the evidence adduced on behalf of the prosecution relied upon the testimony of the victim (PW-2) but without appreciating that PW-2 is a child witness and her competence to speak the truth as was required to be examined relied upon her evidence. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **P. Ramesh versus State Representing by Inspector of Police** reported in (2019) 20 SCC 593 to submit that if the competence of the child witness has not been examined, it would not be safe to sustain the conviction of the appellant on the basis of her testimony.



14. Learned counsel further submits that in this case, the other prosecution witnesses are the mother (PW-1), father (PW-3) and the cousin brother of her father (PW-4). They are all closely related and interested witnesses. So far as the evidence of the co-villager (PW-5) is concerned, he has stated that he did not remember the date and day of the occurrence and he has also stated that the accused is a married person having children and he is engaged in agricultural work. PW-5, however, did not remember the boundary of the place where he had gone after hearing *hulla*.

15. Learned counsel submits that the evidence of the Doctors, PW-6 and PW-7 are not clinching evidence and those are mere opinion of the Doctors. The prosecution witnesses, PW-6 and PW-7 have stated in their cross-examination that the kind of injuries found on the private part of the victim (PW-2) may be caused due to fall. The Doctor had not found any mark of external violence.

16. It is lastly submitted that while awarding the sentence, the learned trial court has committed grave error in imposing sentence of life imprisonment for the offence punishable under Section 376 IPC with a fine of Rs.1 lakh/- and further sentence of 20-20 years rigorous imprisonment for the offences under Sections 4 and Section 6 of the POCSO Act with a fine of Rs.10-10,000/- for each of the offence. In this regard, it is submitted that Section 376 of the IPC, at the relevant time when the offence



was committed, provided for a sentence which shall not be less than seven years, but which may extend for imprisonment for life and fine. Section 376 was substituted by Act 22 of 2018 with effect from 21.04.2018 and the substituted provision provided for a punishment with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life and fine.

17. It is further submitted that so far as Section 4 and Section 6 of the POCSO Act are concerned, at the time of commission of offence in the present case, Section 4 provided for punishment with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and the provision also provided for fine. Sub-Section (2) of Section 4 was inserted by Act 25 of 2019 w.e.f. 16.08.2019. According to this provision, where penetrative sexual assault below 16 years of age takes place, the accused shall be punished with imprisonment for a term which shall not be less than twenty years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and that person shall also be liable for fine.

18. It is further submitted that the learned trial court has erred in applying Sub-Section (2) of Section 4 of the POCSO Act in



the present case. As per the previous provision under Sub-Section (1) of Section 4, the minimum punishment was not less than seven years but which could have extended to imprisonment for life. It is submitted that so far as Section 6 is concerned, it was also substituted by Act 25 of 2019 w.e.f. 16.08.2019. Prior to its substitution, Section 6 provided for a punishment of rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and the accused shall also be liable to fine. Only after the substitution of Section 6, the minimum period of imprisonment for not less than 20 years has been introduced. It is, thus, submitted that in any case, the order of sentence passed by the learned trial court would be liable to be set aside by this Court.

Submissions on behalf of the State

19. The appeal has been contested by Mr. Ajay Mishra, learned Additional Public Prosecutor for the State. It is submitted that in this case, no doubt, the victim is a child witness but the learned trial court has recorded that she was competent to depose. The specific questions in this regard, if any, put by the learned trial court is not recorded in the deposition sheet but that would not discredit the victim (PW-2). It is submitted that the testimony of the victim is fully corroborated by the medical evidence (Exhibit '2') proved by the Doctor (PW-6).



20. It is also submitted that PW-5 is an independent witness. He is a co-villager and in his deposition, he has stated that there was good relationship between the informant and the appellant. On the date of occurrence after *hulla*, he had gone to the courtyard of the informant within 15-20 minutes and he has stated in his examination-in-chief that the victim girl was found unconscious whereafter she was taken to Benipatti for medical treatment. It is submitted that on the face of the evidence on the record, the finding of the learned trial court cannot be found fault with.

21. As regards the sentence imposed upon the appellant, learned Additional Public Prosecutor admits at the Bar that the learned trial court seems to have applied the substituted provision of Section 4 and Section 6 of the POCSO Act. In this case, the occurrence took place on 03.03.2018, therefore, the substituted provision either under Section 376 IPC or Section 4 and 6 of the POCSO Act cannot be applied to impose the sentence. It is, thus, submitted that so far as the order of sentence is concerned, the same may be set aside and this Court being an Appellate Court may award a suitable sentence to the appellant.

22. Learned counsel for the informant endorsed the submissions of learned Additional Public Prosecutor for the State.



Consideration

23. Having regard to the submissions noted hereinabove and the evidences which this Court has gone through, it is found that the prosecution case is based on the written information (Exhibit '1') submitted by the father of the victim who has deposed as PW-3. In his examination-in-chief, PW-3 has stated that the victim was aged 8 years at the time of occurrence. She is the youngest among the five children of the informant. She had gone for collecting the leaves and at that time, PW-3 was in his house. She had gone there alone. PW-3 has given the description of the place of occurrence. In North, there is field of Dhaneshwar Sahu, in South, it is the field of Ram Prasad, in East, it is his plot and in West, there is a plot of Ram Prabodh. The victim had come weeping by 04:00 PM. He has stated that the appellant is maternal grandfather in relationship and both of them stayed at a distance of 50 feet only. On the date of occurrence itself his statement was recorded at the police station. PW-3 has stated that his daughter had remained unconscious for about one and 1½ hours.

24. We have found from the evidence of the victim (PW-2) that she has identified the appellant who was present in court. PW-2 has stated that this appellant had come to her, asked her father's name and took her in his lap and brought her to the



Dhaniya field where he opened her undergarment, gagged the victim by her mouth, pressed her neck and then committed wrong act with her. We find that the evidence of PW-2 has remained intact as in her cross-examination, the defence has not pointed out any fact or circumstances which could have led to discredit this witness.

25. We have also found that the evidence of the mother (PW-1) and the other prosecution witnesses, PW-4 and PW-5 duly supports the facts and circumstances of the case which were there immediately after the occurrence. Among all, PW-5 is an independent witness of the village whose statement was recorded by police on one day after the occurrence. The defence never suggested any of the prosecution witnesses that there was any prior enmity between the parties or that there is any other reason to falsely implicate the appellant in this case.

26. We have found that Dr. Rama Jha (PW-6) has proved the medical report (Exhibit '2'). PW-6 had found "tear of hymen posteriorly and also posterior wall $\frac{1}{4}$ inch length, margin lacerated, colour red, no bleed at present, age of injury within 24 hours.". We find from the evidence of the Doctor (PW-6) and also from Dr.S.C. Roy (PW-7) that they had found tear of hymen and other circumstances suggesting sexual assault upon the victim. The defence, though, suggested that such injuries may be caused due to fall but this Court is of the considered opinion that such suggestion



alone would not take away the evidentiary value of the medical report (Exhibit '2').

27. This Court has further found from the evidence of Ravinder Kumar Singh (PW-8), who is the I.O. of the case that he had visited the place of occurrence and he has clearly deposed that Dhaniya field was trampled. He has given the same description of the boundary of the place of occurrence which has been provided by PW-3. Thus, even the circumstantial evidence is found in the deposition of the I.O. (PW-8).

28. We have also noticed from the statement of the appellant recorded under Section 313 Cr.P.C. that in his response, he has not stated about any prior enmity or other reason suggesting his false implication in this case.

29. In the kind of materials present on the record, we find that learned trial court has not committed any error in appreciation of the evidence and so far as the finding as regards the evidence of the prosecution witnesses are concerned, this Court finds no reason to interfere with the same. This being the position, the judgment of conviction is not required to be interfered with and this appeal as against the judgment of conviction would fail.

30. This takes us to the order of sentence, it is also under appeal in this case.



31. We have noticed the submission of learned counsel for the appellant and learned Additional Public Prosecutor for the State. So far as the legal position is concerned, the learned Additional Public Prosecutor for the State has, after going through the provisions of law submitted that at the time of occurrence i.e. 03.03.2018, the minimum sentence provided under Section 376 IPC was seven years whereas the minimum sentence under Section 4 and Section 6 of the POCSO Act were 10 years imprisonment which could have extended to life imprisonment. In this view of the matter, we find that the learned trial court has committed grave error in awarding the sentence. Thus, the order of sentence is hereby set aside.

32. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for the State on the question of sentence as well. It is stated that the appellant in this case was 29 years old at the time of occurrence, is married and have two children who are dependent upon him. He was working as a labourer in the field together with the informant. His economic condition is so poor that he could not prefer an appeal for about four years and ultimately, the appeal has been preferred only through Patna High Court, Legal Services Committee.

33. On the question of sentence, the Hon'ble Supreme Court has given certain guidelines in the case of **Gurmukh Singh**



versus State of Haryana reported in (2009) 15 SCC 635.

Paragraph '23' thereof reads as under:-

“23. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without premeditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;
- (m) The conduct and behaviour of the accused after the incident.

Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?



These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.”

34. We have discussed the matter at length with the learned Additional Public Prosecutor for the State and keeping in view the entire circumstances and the parameters, it is thought just and proper to award a sentence of twelve (12) years rigorous imprisonment to the appellant. Considering the fact that the appellant is a poor person, he cannot even contest an appeal, we direct that he would be liable to pay a fine of Rs.10,000/- (Rupees Ten Thousand Only).

35. The appeal is partly allowed.

36. Let the trial court’s records along with the copy of this judgment be sent down to the learned trial court.

37. The Patna High Court, Legal Services Committee shall take appropriate steps to provide legal assistance to the appellant in sending his records to the Hon'ble Supreme Court, Legal Services Committee.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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CAV DATE	
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