

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.306 of 2023

Arising Out of PS. Case No.-52 Year-2022 Thana- SANHAULA District- Bhagalpur

Rangeela Kumar S/o Awadhesh Mahto R/o Village- Lakshmipur, P.S-
Sanhoula, Distt.- Bhagalpur

... .. Appellant/s

Versus

1. The State of Bihar
2. X W/o Pramod Mahto R/o Village- Lakshimpur, P.S-Sanhoul, Distt.-
Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raghav Prasad, Advocate Ms. Urmila Kumari, Advocate Mr. Gunsagar Mahto, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

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

Date : 09-09-2025

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

2. Despite valid service of notice upon respondent
no. 2, she has chosen not to enter her appearance in this appeal.

3. The present appeal arises out of the judgment of
conviction dated 15.02.2023 (hereinafter referred to as the
‘impugned judgment’) and the order of sentence dated
17.02.2023 (in short referred to as the ‘impugned order’) passed
by the learned Additional District and Sessions Judge, VII-cum-



Spl. Court, POCSO Act, Bhagalpur (hereinafter called the 'learned trial court') in connection with POCSO Case No. 79 of 2022, arising out of Sanhaua P.S. Case No. 52 of 2022.

4. By the impugned judgment the sole appellant has been convicted for the offence under Section 376 of the Indian Penal Code (in short 'IPC') and Sections 5 (अ)(ii)/6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and has been sentenced to undergo 20 years of rigorous imprisonment for the offence under Section 5 (अ)(ii)/6 of the POCSO Act with a fine of Rs. 25,000/- and in default of payment of fine to further undergo additional simple imprisonment of six months. No additional punishment under Section 376 of the IPC has been awarded and earlier custody will be adjusted in total punishment.

Prosecution Case

5. The informant (P.W. 1) in her written application has stated that on 28.01.2022, her daughter/ victim (PW-2) told her that this appellant was regularly committing rape on her for the last two years on the pretext of marriage. It is because of the said sexual act, her daughter had become pregnant and she had a pregnancy of five months. She further alleged that her daughter asked the appellant to solemnize marriage with her because she



had become pregnant then the appellant did not agree on one pretext or the other and continued to commit rape with her. She alleged that now, he was denying to marry her daughter.

6. On the basis of this written application, Sanhuala P.S. Case No. 52 of 2022 corresponding to POCSO Case No. 79 of 2022 dated 28.04.2022 was registered for the offences punishable under Sections 376 of the IPC and Sections 4/6 of the POCSO Act.

7. After completion of investigation of the case, the S.I. Vijay Kumar (P.W. 4) submitted charge sheet against the sole named accused vide Chargesheet No. 91 of 2022 dated 25.05.2022 under Sections 376 of the IPC and 4/6 of the POCSO Act upon which the learned Trial Court took cognizance *vide* order dated 31.05.2022.

8. 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 02.08.2022, charges were framed under Section 376 of the IPC and under Sections 5 (अ) (ii)/6 of the POCSO Act.

9. In course of trial, the prosecution has examined altogether five witnesses and exhibited some documentary evidences. The description of prosecution witnesses as well as



the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses:

PW- 1	Mother of the Victim
PW- 2	Victim
PW- 3	Brother of the Victim
PW- 4	Vijay Kumar
PW- 5	Dr. Anushtha

List of Exhibits on behalf of the Prosecution:

Ext. P1	Signature of victim on written application
Ext. P2	Signature of victim on her statement u/s 161 Cr.P.C.
Ext. P3	Signature of victim on her statement u/s 164 Cr.P.C.
Ext. P4	Complete Formal FIR
Ext. P2/1	Statement of the victim
Ext. P5	Charge-sheet
Ext. P6	Medical report of the doctor and signature

10. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. He took a plea that he had already solemnised marriage with her and she was major.

11. The defence has not adduced any oral or documentary evidence.

Findings of the Learned Trial Court:

12. Learned trial court after examining all the evidences available on the record found that the appellant has established physical relationship with the victim when she was below 18 years. The trial court has relied upon it because an



unmarried girl cannot falsely implicate anyone on this ground. The victim has stated the same under Sections 161 as well as 164 of the Cr.P.C. about rape and carrying of pregnancy. Learned trial court found that according to the medical report (Ext. 6) prepared by Dr. Anushtha, P.W. 5, the victim was found carrying pregnancy of 24 weeks which is also corroborating the statement made by the victim.

13. Accordingly, learned trial court held appellant guilty of the offences punishable under Section 376 IPC and Sections 5 (अ)(ii)/6 of the POCSO Act.

Submissions on behalf of the Appellant

14. Learned counsel for the appellant submits that the learned trial court has committed grave error in taking a view that the victim (PW-2) was a minor at the time of occurrence.

15. Learned counsel for the appellant submits that the victim (PW-2) has stated in her examination-in-chief that at the time of occurrence, she was aged about 18 years. She has admitted that she was in love with the appellant and had secretly married with him about a year ago.

16. Learned counsel submits that in the statement of the appellant recorded under Section 313 CrPC, he has stated



that the victim (PW-2) was major and he had married her one year ago from the date of occurrence. The appellant has also stated that he is innocent and has falsely implicated even though he had married the victim when she was major.

Submission of the State

17. Learned Additional Public Prosecutor for the State has contested the appeal. It is submitted that in this case, the evidences available on the record have been duly considered by the learned trial court.

18. Learned Addl.PP for the State has submitted that in the written application of the informant (PW-1), she has stated that the appellant was committing rape on her minor daughter (PW-2) on the pretext of marriage for the last two years and when she got pregnant, he refused to marry her.

Consideration

19. This Court has perused the trial court records, it is evident on perusal of the written information dated 28.04.2022 (Exhibit 'P1') that the mother of the victim has submitted the written information with the Officer-in-Charge of Sanhaura Police Station.

20. On the basis of the said written information, Sanhaura P.S. Case No. 52 of 2022 was registered on



28.04.2022 for the offences punishable under Section 376 of the Indian Penal Code (in short 'I.P.C.') and Section 4/6 of the POCSO Act. In her written information, the informant (P.W. 1) alleged that this appellant was regularly committing rape on her 16 years old daughter namely 'X' for the last two years. It is because of the said sexual act, her daughter had become pregnant and she had a pregnancy of five months. She further alleged that her daughter asked the appellant to solemnize marriage with her because she had become pregnant then the appellant did not agree on one pretext or the other and continued to commit rape with her. She alleged that now he was denying to marry her daughter.

21. In course of trial, however, the informant (P.W.-1) has stated that her daughter was aged about 18 years at the time of occurrence, she had been in love with the appellant and had a pregnancy of five months from the appellant. She has stated in Paragraph '3' of her deposition that now the accused says that the child in the womb of the victim was not his child and he had refused to marry her. In her cross examination, P.W.-1 has stated that she has lodged this case only because the appellant did not marry the victim as the family members of the appellant were not ready for this marriage. In Paragraph-8 she has further stated



that if the appellant becomes ready to marry her daughter then she would marry her daughter with the appellant. She has admitted that her daughter had been in love with the appellant. In Paragraph- 11 she has stated that she had not written the application which was submitted in the police station. She has also stated that the application was not read over to her and she had only given a thumb impression on the written application. From the deposition of P.W.-1, itself, it is clear that she had put her thumb impression on the written application without being aware of the contents of the same.

22. The victim has been examined as P.W. 2. She has stated in her examination-in-chief that at the time of occurrence, she was aged about 18 years. She has admitted that she was in love with the appellant and had secretly married with him about a year ago but when this fact was brought to the notice of her parents, then her parents refused to recognize the marriage and they said that the marriage in the village would not be good, in the meantime, she had become pregnant whereafter her mother sent her to the house of the appellant to live with him but when she reached the house of the appellant then the parents of the appellant did not allow her to live. P.W. 2 claimed that she had become pregnant about seven months ago thereafter she had



lodged the case but she has stated in her examination-in-chief that she had not gone to the police station, her mother had gone to the police station to lodge the case. She has stated in Paragraph- 2 that on the request of her mother, people in the police station had written the application, she had identified her signature thereon which has been marked as P-1/ P.W.2. In her cross-examination P.W. 2 has stated in paragraph that it is true that the appellant had not committed any forcible rape upon her rather the relationship was made on sweet-will and volition with consent of each other. In Paragraph-9 she has stated that she had married the appellant on her own will and she wanted to live with him for her whole life as his wife and she did not want to file the case. (emphasis supplied)

23. Rohit Kumar (P.W.3) is the brother of the victim, who has not supported the prosecution case and has been declared hostile.

24. The I.O. Vijay Kumar (P.W. 4) has deposed that in course of investigation, he had recorded statement of Pramod Mahto and Rohit Kumar and has inspected the place of occurrence and he had also arrested the accused. He has stated that the victim had herself reached the police station where her statement was recorded under Section 161 Cr.P.C. by Nita, who



was the S.H.O. of the police station. He has identified the writing and signature of Nita (P-2/1, P.W.-4). P.W.4 has further proved the charge-sheet bearing 91 of 2022 dated 25.05.2022 which has been marked as Exhibit P-5/P-4. In his cross-examination, P.W.4 has stated that he was the investigating officer of the case right from beginning. The informant is illiterate and he cannot say in whose writing the information was submitted in the police station. He has stated that the victim had told him that she was pregnant for five months from the appellant and she had stated in course of investigation that for last two years she was establishing physical relationship with him and was meeting him outside.

25. The doctor (P.W.5) who examined the victim on 29.04.2022 has proved the medical report (Exhibit P-6/ P.W.5). The doctor had found in the U.S.G. report that there was a single live foetus of 24 weeks period of gestation (pregnancy) and the expected date of delivery was 20.08.2022. In cross-examination she has stated that she had assessed the age of victim as 17 years which may be more or less by one year. We have also noticed that the victim (P.W. 2) had recorded her statement under Section 164 Cr.P.C. in which also she had stated that the appellant had established physical relationship with her



in the affair and during the period of about two years, but now he was not willing to marry her.

26. This Court has gone through the statement of the appellant recorded under Section 313 Cr.P.C. In his statement this appellant has stated that the victim (P.W. 2) was major and he had married her one year ago from the date of occurrence. The appellant has also stated responding to the circumstances put to him that the victim (P.W. 2) was his wife. He denied the prosecution evidences that he had said that the child in the womb of P.W. 2 was not his child and he asked her to marry someone else. The appellant lastly claimed that he was innocent and was falsely implicated even though he had married when the victim was major.

27. We have found that the learned trial court has convicted the appellant by recording a finding that the appellant had established physical relationship with the victim (P.W. 2), when she was minor. The trial court has not taken into consideration the judicial pronouncement on the subject which say that while assessing the age of the victim under the POCSO Act, if the age is being assessed on the basis of medical report, an addition/subtraction of +/-2 years would be required to be given and after that addition the upper extremity of the age is



required to be considered.

28. In this regard, we would like to rely upon the judgment of the Hon'ble Supreme Court in the Case of ***Rajak Mohammad Vs. State of Himachal Pradesh*** reported in (2018) 9 SCC 248 and the judgment of the Hon'ble Division Bench of Delhi High Court in the case of ***Court on its own Motion Vs. State of NCT of Delhi (Crl. Ref.2/2024 judgment dated 02.07.2024)*** reported in 2024 SC OnLine Delhi 4484, a margin of plus/minus two years in the age is required to be considered. In the case of **Rajak Mohammad** (*supra*), the Hon'ble Supreme Court has observed in paragraph '8', '9' and '10' as under:-

"8. On the other hand, we have on record the evidence of Dr Neelam Gupta (PW 8), a Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.

9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

10. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged



occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.”

29. By relying upon the judgment of the Hon’ble Supreme Court in the case of **Rajak Mohammad** (*supra*), a Division Bench of Delhi High Court in the case of **Court on its own Motion** (*supra*) while considering a reference held in paragraph ‘46’ of its judgment as under:-

“46. As an upshot of our foregoing discussion, the Reference is answered as under:-

(i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?

Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on ‘bone age ossification report’, the upper age given in ‘reference range’ be considered as age of the victim.

(ii) Whether the principle of ‘margin of error’ is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.

Ans: Yes. The margin of error of two years is further required to be applied.”

30. We have noticed that the medical report (Ext. P6) says that the victim was about 17 years of age. If +/- 2 is added



to the age assessed in the medical report, the upper extremity of the age would come to 19 years at the time of occurrence. Even the victim (P.W. 2) has stated that at the time of occurrence she was aged about 18 years.

31. In such circumstance, when the victim is found to be major on the date of occurrence, her categorical statement in course of trial that the appellant had not committed any forcible rape upon her and she had entered into physical relationship with her own will and volition and that it was a consented relationship, would leave no doubt in taking a view that it was not a case of forcible rape. In fact, the basic fact for bringing the prosecution case within the scope and ambit of the POCSO Act would vanish and the presumptions as contained under Section 29 of the POCSO Act would also not be available to the prosecution.

32. In result, we find that the learned trial court has committed grave error in taking a view that the victim (P.W. 2) was minor at the time of occurrence.

33. In view of the discussions made, hereinabove, we set aside the impugned judgment and order of sentence and acquit the appellant giving benefit of doubt.

34. The appellant is in jail he shall be released



forthwith, if not wanted in any other case.

35. The appeal stands allowed.

36. Let a copy of this judgment with the Trial Court records be sent down to the learned Trial Court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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