

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.291 of 2024**

Arising Out of PS. Case No.-183 Year-2021 Thana- BHAGWANPUR District- Begusarai

Anguri Praveen, aged about - Years, Gender-Female, D/O Md Kaushar,
Resident of village- Chhatri Tola, Ward No. 13, P.S- Bhagwanpur, (Tiyay
O.P), Distt.- Begusarai.

... .. Appellant/s

Versus

1. The State Of Bihar

2. Md. Salauddin @ Chhatu, aged about 20 years (Male), son of Md. Alim,
Resident of village- Chatri Total, P.S.- Bhagwanpur, District- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Braj Bhusan Poddar, Advocate
For the Respondent	:	Mr. Ajay Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 27-01-2025

Heard Mr. Braj Bhusan Poddar learned, counsel
for the appellant, Mr. Ajay Kumar Sinha, learned counsel for the
informant and Mr. Binod Bihari Singh, learned APP for the
State.

2. This appeal is arising out of the judgment of
conviction and order of sentence dated 20.01.2024 (hereinafter
referred to as the ‘impugned judgment’) passed by learned
Exclusive Special Judge (POCSO Act)-cum- Additional
Sessions Judge-VI, Begusarai (hereinafter referred to as the
‘learned trial Court’) in POCSO Case No. 58 of 2021 arising out



of Bhagwanpur (Teyai) P.S Case No. 183 of 2021. By the impugned judgment the learned trial Court has acquitted the respondent no. 2 from the charges levelled under Section 376 of the Indian Penal Code (hereinafter referred as 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act (hereinafter referred as 'POCSO Act').

Prosecution Case

3. As per the prosecution case, accused/respondent who is a co-villager of the informant/victim/appellant enticed her and established sexual relation with her against her will. The victim became pregnant. Thereafter, the victim persuaded the accused/respondent to solemnize *Nikah* but the accused/respondent was not ready to solemnize *Nikah*. In due course, the victim became pregnant of six months fifteen days and further stated that on 09.08.2021 the victim was sleeping in her house when the accused came and was taking the victim away from her house for the purpose of committing sexual intercourse with her. The victim gave a loud cry and hearing the commotion, near by people came and rescued her. The parents of the accused/respondent were also supporting the accused/respondent. A Panchayat was organized and *Panches* asked the accused/respondent to solemnize the *Nikah*, but the



accused did not pay any heed to the request of the *Panches*.

4. On the basis of the prosecution report the police registered Bhagwanpur (Teyai) PS Case No. 183 of 2021 on 09.09.2021 under Section 376 of the IPC and under Section 6 of the POCSO Act. After completion of investigation, police submitted a charge-sheet bearing charge-sheet no. 16 of 2022 on 18.01.2022 under Section 376 of the IPC and Section 6 of the POCSO Act against the accused/respondent no. 2, namely, Salauddin @ Chhotu. Cognizance was taken on 02.02.2022. Charges were explained to the accused which he denied and claimed to be tried.

Analysis of Prosecution Witnesses:

5. On behalf of the prosecution, altogether ten witnesses were examined and several documents were exhibited during course of trial and the defence has also produced two witnesses and exhibited several documents to strengthen its case. The statement of the accused has been recorded under Section 313 of the Cr.P.C in which he has denied the allegation and put up a defence of innocence and further stated that: "*his father got a house in Indrawas in 2004 and Devsharan sold his house. Two sons of Devsharan drive cars and the girl's father also works for them. Both the sons of Devsharan together*



implicated him in this case.” The list of the prosecution witnesses as well as defence witnesses and documents exhibited on behalf of the prosecution and defence which are being shown here-under in a tabular form:-

PW-1	Victim
PW-2	Dr. Arun Kumar
PW-3	Raj Ranjan Kumari (Investigating Officer)
PW-4	Dr. Divya Gupta (Medical Officer)
PW-5	Ruksana Khatoon
PW-6	Dr. Kamini Rai (medical Officer)
PW-7	Md. Rahmat
PW-8	Sahana Khatoon @ Saniya Khatoon
PW-9	Md. Kaushar (Father of the Victim)
PW-10	Ashu Kumar Jha (Assistant Director F.S.L)

List of Exhibits by Prosecution:

Ext. P1/PW-1	Signature of the victim over her statement under Section 164 of the Cr.P.C
Ext. P2/PW-2	Signature of Dr. Arun Kumar over medical report
Ext. P2/1/PW-4	Signature of Dr. Divya Gupta over medical Report
Ext. P2/2/PW-6	Signature of Dr. Kamini Rai over Medical Report
Ext. P3/PW-3	Writing and Signature of S.H.O Manish Kumar over formal FIR
Ext. P4/PW-3	Charge-sheet No. 16 of 2022 dated 18.01.2022



Mark X	DNA report F.S.L No. 603 of 2023 dated 30.08.2023
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List of defence witnesses:

DW-1	Rijwan Miyan
DW-2	Md. Alim

List of exhibits by defence:

Ext. D1	C.C of order sheet of case no. 60M of 2005 Court of S.D.O Teghra
Ext. D2	C.C of SA in complaint case no. 1262 of 2005
Ext. D2/1	C.C of deposition of EW-1 Md. Alam in complaint case no. 1262 of 2005
Ext. D2/2	C.C of deposition of EW-2 Md. Riyajul Haque in complaint case no. 1262 of 2005
Ext. D2/3	C.C of deposition of EW-3 Nasim in complaint case no. 1262 of 2005
Ext. D2/4	C.C of deposition of EW-4 Abful Ajij in complaint case no. 1262 of 2005
Ext. D3	Carbon copy of Sanha no. 279 of 2005 dated 17.06.2005

Findings of the Trial Court

6. The learned trial court after analyzing the evidences on the record found that the medical board did not find any evidence of sexual intercourse but the victim has very



specifically stated about the continued and regular intercourse. Further, learned trial Court, on receipt of DNA report found that the accused/respondent Md. Sallauddin @ Chhotu is not the biological father of child Ramattlla @ Abdulla and noted that earlier the victim was claiming that the child was fathered by the accused/respondent Sallauddin @ Chhotu. The learned trial Court further discussed the judgment of the Hon'ble Gujarat High Court in the case of ***Premjee Bhai Bachho Bhai Khashiya Vs. State*** reported in ***2009 Cr. J. 2888 (Gujarat)*** in which it has been opined that DNA report can be of great significance where there is supporting evidence. depending, of course, on the strength and quality of that evidence. But even if report is positive, it cannot conclusively fix the identity of miscreants but if the report is negative, it would conclusively exonerate the accused from the involvement of charge. In these circumstances and in obedience to the law laid down by the Hon'ble Apex Court in ***Smt.Kanti Devi vs. Poshi Ram*** reported in ***2001 (2) CTC 625 (SC): 2001 (5) SCC 311***, the learned trial Court held that there is no option than to come to a finding that the DNA report conclusively exonerate the accused of the charge. The learned trial Court held that the prosecution had not come forward with the true version of the occurrence. In the



opinion of the learned trial Court, the prosecution failed to prove the charges against the accused beyond all reasonable doubts and the accused was entitled to be acquitted. Accordingly, the sole accused/respondent has been acquitted of the charges leveled against him.

Submission on behalf of the Appellant

7. Learned counsel for the appellant has assailed the impugned judgment saying that the judgment is based on mere conjectures and surmises and is against the materials available on the record. Learned trial court failed to consider and appreciate the examination-in-chief and cross-examination of the prosecution witnesses who have categorically stated that the occurrence was committed by respondent no. 2.

8. Learned counsel for the appellant further submits that the learned trial Court failed to consider the fact that the DNA report was not received in time and that the DNA test report was manipulated by the accused. Learned counsel further submits that all the medical witnesses supported the prosecution case. It is submitted that the victim is a minor. To support his contention, he has submitted that PW- 4 Dr. Divya Gupta who was a member of the medical board has stated in Para- 3 of her cross-examination that the finding of the count of



teeth is not a conclusive finding of age of victim. The trial Court did not consider the submission of the learned APP of the State that the DNA testing machine was not functioning. The judgment of the learned trial court acquitting the sole accused/respondent of the charges under the POCSO Act is bad and the same is liable to be interfered with.

Submission on behalf of the Respondent and State

9. The appeal has been opposed by the learned counsel for the respondent no.2 Ajay Kumar Sinha and learned Additional Public Prosecutor for the State Mr. Binod Bihari Singh. Learned Additional Public Prosecutor for the State has submitted that on a bare perusal of the impugned judgment, it would appear that on the point of determination of age of the victim, the learned trial Court has considered the entire materials available on the record. It is submitted that the principles governing exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C would come to rescue of respondent no. 2. Reliance has been placed in this regard on the judgment of the Hon'ble Supreme Court in the case of *H.D. Sundara and others v. State of Karnataka* reported in (2023) 9 SCC 581 (paragraph '8').

10. Learned counsel for the respondent no. 2 has



further submitted that the appellant had filed a false case against the Respondent No. 2. DW-1 Rijwan Miyan has stated in his examination-in-chief that there was a land dispute going on between DW-2 Md. Alim father of the accused and one Devsharan since 2004. There was a case pending related to it and that the present case was falsely instituted against the accused/respondent by PW-1 because Devsharan asked her parents to falsely implicate the accused/respondent. PW-9, father of the appellant worked for Devsharan. He further submits that DW-2 Md. Alam has stated that he did not have good relations with Devsharan and the present case was falsely instituted against the accused/respondent.

11. On the strength of the aforementioned submissions, learned Additional Public Prosecutor and learned counsel for the respondent no.2 submitted that no interference is required with the impugned judgment of the learned trial Court.

Consideration

12. We have heard learned counsel for the appellant, learned counsel for the respondent and learned Additional Public Prosecutor for the State as also perused the trial courts records.

13. Before we proceed to consider the rival



submissions of the parties, it would be necessary to appreciate the evidences available on the record.

14. PW-1 the victim in the instant case, she has stated in her examination-in-chief that her grandmother lived separately from her parents house. She also stated that she was at her grandmother's place on the date of occurrence. She has further stated that she did not sign the written report/statement made to the police. However, in Para-9 of her cross-examination she stated that she put her signature on the statement given to the police. Further she stated in her FIR, that on 29.08.2021 the accused/respondent allegedly tried to rape her but in Para-10 of her cross-examination, she has stated that she does not remember the date of occurrence or the time of occurrence. She further stated that the alleged occurrence took place at her house.

15. PW-5 Ruksana Khatun is the mother of the victim. In her examination-in-chief she stated that PW-1 was a student in Class-5. After a period of five months, her daughter informed her that she was pregnant and that Chotu @ Raja was the father of the child. In her cross-examination, she stated that she has not seen the alleged occurrence. She also stated in Para-4 of her cross-examination that the occurrence took place at the



house of the accused/respondent. PW-7 is a hearsay witness. PW-8 Sahana Khatoon @ Saniya Khatoon is the grandmother of the victim. In her cross-examination she stated that her granddaughter used to be in front of her eyes at home.

16. PW-9 Md. Kaushar is the father of the victim stated in his examination-in-chief that for a period of eight months, the accused/respondent was harassing the victim and allegedly doing wrong with her. He further stated that the complaint was made by PW-5. According to PW-9, the age of the victim was 12 years at the time of occurrence.

17. PW-3 Raj Ranjini Kumari is the Investigating Officer in the instant case. In her examination-in-chief, she stated that the place of occurrence of the alleged offence was the victim's house. She stated that there was no evidence to verify the age of the victim except for Aadhar Card. In Para 9 of her cross-examination, she stated that she did not take the statements of any person living near the victim's house. Further in Para-10, she stated that there were no eye-witnesses of the occurrence. Further, the clothes of the victim were not taken by her for examination.

18. The present case is based on a written application submitted by the appellant alleging that the



accused/respondent established sexual relations with her on the false promise to marry and thereafter threatened to throw her in the water and kill her if she disclosed his misdeed to anyone. PW-2, 4, 6 were members of the Medical Board which was constituted by the Superintendent, Sadar Hospital for examination of the victim. The detailed medical report submitted by them is as follows:-

*We the member of the Medical Board
Examined Victim at 02:10 PM on 10-09-
2021 at Sadar Hospital, Begusarai found
the following on her person.*

Height:- 5'2"

Weight:- 46 kg

Secondary Sex Characters:- Developed

H/o menarche:- 12 years of age.

LMP- 6 months amenorrhea

Sv/s Sallauddin

Married:-

Detail of Children No:-

*External finding:- No injuries on any part
of the body including front and back.*

*Internal finding:- No seminal stain on
genitalia and thighs, No injury on genitalia,
hymen old healed tear, vaginal swab taken
and send to pathology for presence of
spermatozoa.*

M.I- Black til on right mandible.



Investigation Suggested:- 1. X-ray Rt. Wrist-AP view

2. X-ray Rt. Knee AP view

3. X-ray Pelvis-AP view

4. X-ray Mandibles Lt. & Rt. Oblique

5. USG:- A single live foetus with variable presentation of 25 weeks size (24-08-2021)

Vaginal Swab for Exam of Spermatozoa:- Spermatozoa not found.

Dental details:- 7654321/1234567

7654321/1234567

Total Number of teeth clinically present-28

X-ray finding- X-ray of Victim was done in Sadar Hospital Begusarai on 10-09-2021, X-ray plate no-6213/10-09-2021

X-ray right wrist AP view:- Epiphysis of the lower end of the radius and ulna fused.

X-ray right knee joint AP view:- Epiphysis of the lower end of femur and upper end of tibia and fibula fused

X-ray pelvis AP view:- Epiphysis of the iliac crest partially fused.

X-ray mandible left and right lateral oblique view:- Last molar tooth not present on the both side of mandible hence on the basis of above radiological and dental findings the age of Victim lies 17-18 yrs (Seventeen to Eighteen years)

Opinion:- No evidence of recent sexual assault found in patient but she has



pregnancy of 26 weeks.

19. In the case of ***P Yuvaprakash v. State (2023 INSC 626)*** the Apex Court held that while acquitting an accused whenever a dispute with respect to the age of the person arises in context of her being a victim under POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of Juvenile Justice Act, 2015. The court noted in Paras-13 and 14 as follows:

“13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a



panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the concerned authority, i.e. Committee or Board or Court.”

20. In the present case, it is observed that the age of the victim is doubtful. PW-5 and PW-8 had stated in their examination-in-chief that the appellant was about 15 years at the time of occurrence of the alleged offence. PW-1, the victim has stated that she does not know her age and PW-9 has stated that the victim was 12 years of age at the time of occurrence. But as per the medical report (*Exhibit P2*) prepared by the medical



board the age of the victim was somewhere between 17-18 years. In light of the pronouncement of the Apex Court in ***P. Yuvaprakash (Supra)*** since the age of the victim was not known, the right course of action would have been to consider the matriculation certificate or the date of birth certificate issued by the Municipal Authority or Panchayat. However as per the statement of PW-3 the Investigating Officer there were no documents other than Aadhaar Card to verify the age of the victim. As such, since there is no concrete proof of age of the victim in the absence of matriculation certificate or a birth certificate issued by the Municipal Authority or Panchayat, the report of the Medical Board assumes importance. Hence, the claim that the victim is a minor has not been established by the prosecution.

21. The Supreme Court in the case of ***Saroj v. Iffco-Tokio General Insurance Co., 2024 INSC 816***, set aside a High Court's decision to accept the date of birth mentioned in the Aadhaar Card to determine the age of the victim. It was held by the Court that:

In this regard, attention is drawn towards Office Memorandum dated 2-0.12.2018 issued by MeitY through UIDAI, where it has been stated that "An Aadhaar number



can be used for establishing identity of an individual subject to authentication and thereby, per se its not a proof of date of birth” (copy enclosed).

*5. This aspect of the Aadhar Act, 2016 has been reiterated/highlighted/stressed upon by different High Courts in recent judgments. The most recent one is given by the Hon’ble High Court of Bombay, in the case of **State of Maharashtra V/S Unique Identification Authority of India And Ors.** dated 28.07.2023 (copy enclosed).*

6. In view of the above, it is required that use of Aadhaar, as a proof of DoB needs to be deleted from the list of acceptable documents.

22. The trial Court’s reliance on the law laid down by the Hon’ble Gujarat High Court in ***Premjee Bhai Bachho Bhai Khashiya v. State of Gujarat (Supra)*** is correct in the instant case and thus does not require any interference. PW-3 the Investigating Officer in the instant case had stated in her examination-in-chief that she could not verify the age of the victim and could only rely on the Aadhaar card. Further, in Para-10 of her cross-examination she stated that she could not find any eye-witnesses to the alleged occurrence. Further, no clothes of the victim were recovered from the place of occurrence. PW-



8, the grandmother of the appellant/victim has stated in Para-3 of her cross-examination that the appellant used to stay in the house everyday in front of her eyes. The same has been stated by PW-9 in Para-5 of his cross-examination, thus, raising serious doubts as to how the family members of the appellant/victim were not aware that the appellant was being subjected to regular sexual assault by the respondent.

23. Further, as per Exhibit D-1 produced by the respondent, it appears that there was a land dispute between the respondent's father, DW-2 and one Devsharan, who was the employer of the PW-9, father of the appellant. As such, there was animosity between the parties which raises considerable doubts over the commission of the alleged offence.

24. The F.S.L report states as follows:

Observations:-

- 1. Human DNA have been recovered from the source of each of the exhibit marked-A and B respectively.*
- 2. The male and female origin of DNA recovered from the source of exhibits marked-A and B were established by DYS391, Yindel and Amelogenin marker,*
- 3. From the comprehensive analysis of test result of above individuals as shown in table, It is found that under each of the*



Eleven STR Loci viz- VWA, CSF1PO, TPOX, D8S1179, D18S51, D2S441, D22S1045, D13S317, D10S1248, D12S391 and DS1338 the source of exhibit marked-B (Source-Blood sample of Ramattula @ Abdulla) is lacking either of the alleles present in the Autosomal STR genetic profile generated from the source of exhibit marked-A (Source-Blood sample of Md. Sallauddin @ Chhotu).

Conclusion:-

On the basis of observation it is sufficient to conclude that the source of exhibit marked-A (Source- Blood sample of Md. Sallauddin @ Chhotu) found excluded as the Biological father of the source of exhibit marked-B (Source- Blood sample of Ramattula @ Abdulla).

25. The Apex Court in the case of ***Nandlal Basudev Badwaik v. Lata Badwaik (AIR 2014 SC 932)*** held that:

“The result of DNA test is said to be scientifically accurate...Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue.”

26. In case of appeal against acquittal, the



principles required to be applied by the Appellate Court are drastically different from those which are applied in case of appeal against conviction.

27. In *Harbans Singh v. State of Punjab, 1961 SCC OnLine SC 40*, Hon'ble Supreme Court has held that "*a Court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower Courts to acquit the accused and should interfere only if satisfied, after such examination that the conclusion reached by the lower Court that the guilt of the person has not been proved is unreasonable.*"

28. In *Chandrappa Vs. State of Karnataka, (2007) 4 SCC 415*, Hon'ble Supreme Court after referring to several authorities has held that "*an appellate Court, must bear in mind that in case of acquittal, the presumption of his innocence is reinforced, reaffirmed and strengthened by the trial Court and if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the Trial Court.*"

29. In *Murugesan Vs. State, (2012) 10 SCC 383*, Hon'ble Supreme Court has held that "*so long as the view taken by the Trial Court is not impossible to be arrived at and reasons*



therefor, relatable to the evidence and materials on record, are disclosed any further scrutiny in exercise of the power under Section 378 Cr.P.C was not called for.”

30. In *H.D. Sundara v. State of Karnataka (supra)*, Hon’ble Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a



finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

(Emphasis Supplied)

31. In *Babu Sahebagoada Rudragoudar Vs. State of Karnataka, 2024 SCC Online SC 561*, Hon’ble Supreme Court, after referring to relevant precedents, has observed as follows:

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal



would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

32. On perusal of the statements made by the prosecution witnesses, it is evident that there are material inconsistencies in the statements made by them with respect to the place of occurrence and age of the victim. Further, PW-10, Assistant Director of F.S.L Laboratory had stated that the DNA report bearing no. 603 of 2023, dated 30.08.2023 had been prepared by him and that the accused Md. Sallauddin @ Chhotu is not biological father of child Ramattulla @ Abdulla. This fact bears importance in light of the constant allegation made by the appellant that the child born was fathered by the accused/respondent Sallauddin @ Chhotu and the accused from the beginning denied this fact. Further as per Exhibit X **“no evidence of recent sexual assault was found on the patient but that she had pregnancy of 26 weeks.”**

33. In the totality of the circumstances which are appearing from the evidences on the record, we are of the considered opinion that the learned trial Court has not committed any error in appreciation of the evidences. It is a case of acquittal in which the presumption of innocence of the



accused is, in fact, affirmed by the learned trial Court. There is no reason for this Court to take a view that the accused-Respondent No. 2 is guilty of the charge in question. In fact, this Court is of the opinion that the prosecution case has rightly failed before the learned trial Court.

34. We find no reason to interfere with the impugned judgment of the learned trial Court. Accordingly, this appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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