

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.333 of 2023

Arising Out of PS. Case No.-121 Year-2021 Thana- BETTIAH CITY District- West
Champaran

=====

Rajdeo Kumar, Son of Prabhu Yadav, Resident of Village- Chawni, P.S.-
Bettiah Nagar (Kalibagh OP), Distt- West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. 'X' C/o Imtiyaj Alam @ Videshi, Resident of Mirja Toli, Ward no. 6, P.S.-
Kalibag (OP) Nagar Bettia, Dist- West Champaran.

... .. Respondents

=====

Appearance :

For the Appellant/s	:	Mr. Samrendra Kumar Jha, Advocate Mr. Shakti Kumar Gaurav, Advocate Mr. Dhananjay Kumar Singh, Advocate
For the Respondent/s	:	Mr. Binay Krishna, Addl.PP

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 26-06-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State. Despite service of
notice on respondent no. 2 – informant, she has chosen not to enter
appearance.

2. The present appeal has been preferred for setting
aside the judgment of conviction dated 25.01.2023 (hereinafter
referred to as the 'impugned judgment') and the order of sentence
dated 02.02.2023 (hereinafter referred to as the 'impugned order')
passed by learned ADJ-VI-cum-Special Judge, POCSO, Bettiah



(West Champaran) (hereinafter called the 'learned trial court') in SGR No. 05/2021 (C.I.S. - POCSO-50/2021) arising out of Bettiah Nagar (Kalibagh OP) P.S. Case No. 121 of 2021.

3. By the impugned judgment, the appellant has been convicted for the offence under Sections 376AB, 324, 307 of the Indian Penal Code (in short 'IPC') and Sections 4, 6, 8 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and by the impugned order, the appellant has been directed to undergo rigorous imprisonment for three years under Section 324 IPC. He has also been ordered to undergo rigorous imprisonment for ten years with a fine of Rs.25000/- under Section 307 IPC and in default of payment of fine, he has to further undergo three months rigorous imprisonment. He has further been ordered to undergo rigorous imprisonment for twenty years with a fine of Rs.75000/- under Section 376AB IPC and Sections 4, 6 of the POCSO Act and in default of payment of fine, he has to further undergo six months rigorous imprisonment. Lastly, he has been ordered to undergo five years rigorous imprisonment with a fine of Rs.25000/- under Section 8 of the POCSO Act and in default of payment of fine, he has to further undergo three months rigorous imprisonment. All the sentences are to run concurrently.



Prosecution Case

4. The prosecution story is based on the *fardbeyan* of the informant (PW-3) who is a ten years old girl recorded by P.S.I. Sudha Kumari Town P.S. Bettiah on 21.02.2021 at 14:10 PM in Emergency Ward, G.M.C., Bettiah. In her *fardbeyan*, the informant alleged that on 20.02.2021 at about 06:00 PM when she was going to purchase medicine for her dadi from a shop near Uttarvari Pokhra, then near Uttarvari Pokhra Temple two persons came on a bicycle and stopped near her. Out of the two persons, she identified one person, namely, Rajdeo Kumar (appellant) and the name of second person is not known to her. Rajdeo Kumar said her that his father is calling her and the second person forcibly put her on the bicycle and tied cloth on her mouth. Rajdeo started riding bicycle and took her near Jhilliya in an empty plot. Both removed her clothes and committed wrong act, bite her lips and assaulted her which resulted in injuries in her eyes. Thereafter, both caught hold of her by neck and slit her neck with a blade which resulted in profuse bleeding and she became unconscious. Both left her there presuming that she had died. After some time, when she regained consciousness, she went to Sanjay Mukhiya and on seeing her, he wrapped *gamcha* around her neck and sent her to Bettiah Hospital for treatment and informed her family members.



5. On the basis of this *fardbeyan*, Bettiah Nagar (Kalibagh OP) P.S. Case No. 121 of 2021 dated 21.02.2021 was registered under Sections 376(D)/(B)/324/307/34 IPC and Sections 4/6/17 of the POCSO Act. After investigation, Police submitted chargesheet bearing No. 257 of 2021 dated 20.04.2021 against this appellant under Sections 376AB/324/307 IPC and Section 4/6 of the POCSO Act keeping the investigation pending against another accused. On the basis of the chargesheet, learned trial court took cognizance of the offences *vide* order dated 03.08.2021 and directed to split off the record of the accused whose investigation is pending. 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 07.09.2021, charges were framed under Sections 376AB, 324 and 307 IPC and Section 4, 6, 8 of the POCSO Act.

6. In course of trial, the prosecution examined as many as six witnesses and exhibited several documents to prove its' case. The list of the prosecution witnesses and the exhibits produced on behalf of the prosecution are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Mother of the Victim
PW-2	Father of the Victim



PW-3	Victim (Informant)
PW-4	Manish Kumar (S.I.)
PW-5	Randhir Kumar (S.I.)
PW-6	Dr. Santosh Kumar

List of Documents produced on behalf of Prosecution

Exhibit P-1	Signature of the victim on her statement under Section 164 CrPC
Exhibit P-2	Signature of the Victim on <i>Fardbeyan</i>
Exhibit P-3	Signature of the S.H.O. Rakesh Kumar Bhashkar of Bettiah Town Kalibagh O.P. P.S. on the endorsement of the <i>Fardbeyan</i>
Exhibit P-4	Signature of S.I. Manish Kumar on forwarding letter
Exhibit P-5	Signature of the S.H.O. Rakesh Kumar Bhashkar over the formal FIR
Exhibit P-6	Seizure list of bicycle of accused, undergarments and cloth of accused. Mobile of accused recovered from the house of the accused prepared by S.I. Manish Kumar and his signature over the same
Exhibit P-7	Seizure list of pant, hair, clutcher of the victim and blood stained blade recovered from the place of occurrence
Exhibit P-8	Seizure list of broken grass recovered from the place of occurrence
Exhibit P-9	Seizure list of 16 GB pendrive prepared by S.I. Sudha Kumari and her signature over the same
Exhibit P-10	Certification of owner of CCTV Camera Manoj Kumar over the seizure list
Exhibit P-11	Certificate issued by Quran House Academy regarding the age assessment of the victim girl
Exhibit P-12	F.S.L. report in a sealed envelope
Exhibit P-13	C.D.R. report of mobile no. 9523472820 from 18.02.2021 to 20.02.2021
Exhibit P-14	Medical report of the victim prepared by Dr. Santosh Kumar.



Findings of the Learned Trial Court

7. Learned trial court after analysing the evidences available on the record found that the accused Rajdev Kumar took away the victim, who is a minor aged 12 years, on his bicycle, raped her and injured her by blade on her neck. Learned trial court found that the allegation alleged against the accused was proved by mere examination of the victim during trial and condition of the victim during investigation. Learned trial court found that there is no possibility of false statement by the victim as nothing has been contradicted by the defence.

8. Learned trial court after considering all the materials available on the record found that the prosecution has been able to bring home the charges framed against the appellant, hence, he was convicted of the charges under Sections 376AB, 324, 307 IPC and Sections 4, 6, 8 of the POCSO Act.

Submissions on behalf of the appellant

9. Learned counsel for the appellant has assailed the impugned judgment and order on various grounds. It is submitted that the prosecution story is false and concocted. According to the appellant, in the CCTV footage the victim was seen alone on the bicycle. Sanjay Mukhiya would have been the most important



witness as he got the victim admitted in the hospital and the S.I. Sudha Kumari who was present during the treatment of the victim have not been examined.

10. Learned counsel for the appellant submits that there is no medical report to corroborate the prosecution case. The doctor (PW-6) has, in his deposition, kept silence on the assault/recent sexual intercourse with the victim.

11. It is submitted that the blood found on the seized blade was not sent to FSL for matching with the blood of the victim. No vaginal swab was sent to the FSL to ascertain the version of the victim with respect to committing rape by the appellant. The trial court has ignored the contradictory statements given by the victim and has convicted the appellant by ignoring his plea that the case was lodged against him due to his insistence upon the father of the victim to return the debt.

Submissions on behalf of the State

12. On the other hand, learned Addl.P.P. for the State submits that in this case the evidences available on the record have been duly considered by the learned trial court. The victim of this case is a sterling witness and there is no reason to disbelieve her.

13. Learned Addl.P.P. further submits that on disclosure made by the appellant, pant, hair cluture and the blooded blade



were recovered from the place of the occurrence. The bicycle has been seized from the house of the accused. The undergarments and cloth of the accused were seized as per Exhibit P-6. The seizure list of broken grass recovered from the place of occurrence is Exhibit-P-8 and the seizure list of 16 GB pen drive prepared by S.I. Sudha Kumari and the signature over the same was of S.I. Manish Kumar have been duly proved. Exhibit-P10 is the certification of owner of CCTV camera Manoj Kumar who has certified that the camera belongs to him and he had given permission for perusal of the said camera and with his permission S.I. Manish Kumar had collected the footage from the camera.

14. It is submitted that the age of the victim has been duly proved by virtue of the certificate issued by Quran House Academy School (Exhibit P-11) and the medical report of the victim (Exhibit P-14) has been proved by Dr. Santosh Kumar (PW-6). Defence has not questioned the age of the victim.

15. It is submitted that there are clinching materials on the record from which the guilt of the appellant has been proved beyond all reasonable doubts.

16. It is further submitted that on a bare perusal of Sections 29 and 30 of the POCSO Act, it would appear that where a person is prosecuted for committing any offence under Sections



3, 5, 7 and 9 of the POCSO Act, the Special Court shall presume that such person has committed the offence unless the contrary is proved. The primary facts which are required to be proved to raise the presumption are available on the record, therefore, the onus would shift upon the accused to prove his innocence. In this case the appellant would not be able to raise any suspicion/doubt over the prosecution story.

Consideration

17. We have heard learned counsel for the appellant and learned Addl.P.P. for the State as also perused the trial court records. The victim in this case is PW-3. The I.O. (PW-5) had verified the age of the victim. He had collected the age certificate issued by the school of the victim, namely, Quran House Academy School. The said certificate has been marked Exhibit P-11). According to the certificate the date of birth of the victim is 09.06.2011. Exhibit P-11 has been marked exhibit without objection and from the pattern of the cross-examination of the prosecution witnesses, it is evident that the defence has not questioned the age of the victim being minor at the time of occurrence.

18. The victim girl (PW-3) has stated that on the date of occurrence at about 5.00-5.30 PM she had gone to purchase the



medicine when this appellant and one another person came near the temple, the another person made her to sit on the bicycle. Second person put a cloth in her mouth and took her behind the Depot where this appellant opened her slacks pant and second person caught hold of her hand. She has stated that the appellant Rajdeo uncle had given her a bite and inserted his finger in her urination part and committed bad act with her. She has further stated that the second person was forcibly holding her whereafter she started soughting then both the uncles cut her neck by a blade, threw her in a garbage thinking that she had died, thereafter she regained her consciousness and somehow with the help of the wall she could reach to the house of Sanjay uncle who identified him, he put his Gamcha on her neck and took her to the hospital. Her Abu and Ammi both reached the hospital, thereafter she came to the Mahila police station where her statement was recorded. PW-3 has also proved her statement under Section 164 Cr.P.C. on which she had put her signature. She has identified her signature on the fardbeyan also. Both the documents have been marked Exhibit P-1 and P-2 respectively. In her cross-examination, PW-3 was asked about the distance between the place of occurrence and the house of Sanjay Mukhiya and that how many houses are situated in between the two places, PW-3 expressed her unawareness. In her



further cross-examination, she has stated about the sequence in which she was made to sit on the bicycle. She has reiterated that she was taken to hospital by Sanjay uncle and after 10-15 minutes her parents also reached the hospital. The defence suggested the victim that her father had taken a loan of Rs.4,80,000/- from the appellant for purchasing the various equipment of the gym and on asking her father to return the money, there was a quarrel between her father and the appellant. PW-3 denied the suggestion. She also denied the suggestion that her father and Rajdeo were quarreling even prior to the occurrence. The defence suggested her that the alleged occurrence had been committed by some one else whom she could not identify but because of the enmity with the accused he has been falsely implicated. The victim (PW-3) denied the suggestion.

19. From the pattern of the cross-examination of the victim, it is evident that the defence has not questioned her age. The defence has also not questioned the happening of the occurrence with the victim (PW-3). On the one hand, the defence is that there was a quarrel between the appellant and the father of the victim when he demanded return of loan amount of Rs.4,80,000/- and at the same time the defence is that the occurrence was committed by some one else whom the victim



could not identify. As regards the loan transaction, there is no witness in whose presence the appellant had given the loan to the father of the victim.

20. The mother of the victim has been examined as PW-1 and the father of the victim has been examined as PW-2. Both of them have supported the prosecution case. They have stated what they were informed by the victim girl. PW-1 has denied the suggestion of the defence that the appellant had given Rs.4,80,000/- to her husband for opening of fitness gym. Her husband had earned in Saudi where he was in a job, he had established a gym at Bettiah where the gym had become popular and earned good name. PW-2 has stated that the statement of the victim was recorded in the government hospital on the next day of the occurrence at 3.20 PM. She has denied the suggestion of the defence that she was tutoring the victim to make a statement before the police which she had given. PW-2 denied this suggestion. PW-2 also denied the suggestion that he had taken money from the appellant to set up the gym.

21. Manish Kumar (PW-4) is the officer in-charge of Bettiah Town Kalibagh O.P. He has proved the signature of the then officer in-charge Rakesh Kumar on the endorsement made on the application as Exhibit P-3. He had forwarded the fardbeyan to



Bettiah Town P.S. on which he has identified his signature marked Exhibit P-4. He has also proved the formal FIR on which the officer in-charge Rakesh Kumar Bhashkar had put his signature. This has been marked Exhibit-5.

22. PW-4 has stated that S.I. Sudha Kumari had recorded the restatement of the victim in GMCH Emergency Ward in which the victim had supported her case. The accused was arrested and in course of investigation the bicycle, mobile and cloth of the accused were seized. He has proved the seizure list as Exhibit P-6. According to PW-4, the accused had confessed his guilt and on the disclosure made by him, the used blade and undergarments of the victim were recovered as per seizure list (Exhibit P-7). PW-4 had also seized the black colour slacks pant and Gulabi colour hair cluture and the blood-stained blade from the place of occurrence in course of inspection on the basis of disclosure of the accused. He had found that the grass at the place of occurrence were in damaged condition from which it appeared that the occurrence had taken place there. He had recorded the statement of Sanjay Sharma who had taken the victim to the hospital. PW-4 had collected the damaged grass from the place of occurrence. He has proved the seizure list (Exhibit P-8). He sent the appellant to G.M.C.H., Bettiah for medical examination. The



doctor had taken the sample of front part of the penis of the appellant on which the grass was present.

23. PW-4 has proved the seizure list of the seizure of the pen drive in which the video footage of the recording showing the victim girl sitting on the carrier of the bicycle which was riding by the appellant. PW-4 has also proved the certificate issued by the owner of the CCTV which has been marked Exhibit P-10. PW-4 had found injury on the neck and on the eyes of the victim. In his cross-examination, PW-4 has stated that when he first saw the victim in the hospital, the doctor was present with the victim. He had conducted the inspection of the place of occurrence where for the first time the victim had met the accused. PW-4 had seized the bicycle of the accused from his house and also seized his clothes which he was wearing, sealed them at the spot. He denied the suggestion of the defence that the appellant had been falsely implicated because of the dispute between the father of the victim and the appellant on account of money transaction.

24. The another I.O. is Randhir Kumar Bhat (PW-5) who had taken over the investigation from Manish Kumar (PW-4). He got recorded the statement of the victim under Section 164 Cr.P.C. PW-5 had obtained the injury report of the victim from G.M.C.H., Bettiah and obtained the CDR of the mobile number which was in



the name of the appellant. He has proved the CDR of the mobile phone of the appellant which has been marked Exhibit P-13. In his cross-examination, this witness was suggested that the FSL report and the mobile call detail which he had submitted were fake, PW-5, however, denied the suggestion.

25. Dr. Santosh Kumar (PW-6) has proved the injury report of the victim as Exhibit P-14). He had found injuries on mid of neck 9 cm x ½ cm x muscle deep on anterior aspect of neck. The mode of injury was mentioned as sharp trauma and the nature of the injury has been found grievous endangering to life. In his cross-examination, he has stated that the dimension of the injury is not superficial because it is three dimension injury.

26. In this case, the FSL report has been proved as Exhibit P-12. The result of examination as available on Exhibit P-12 reads as under:-

- “1. Blood has been detected at places in the exhibit marked ‘C’.
2. Blood detected in the exhibit marked ‘A/ii’ was too small for serological test.
3. Semen has been detected in the exhibit marked ‘A/i’.
4. Blood could not be detected in the exhibits marked ‘A/i’, ‘A/iii’, ‘A/iv’, ‘B’, ‘D’ and ‘E’.
5. Semen could not be detected in the exhibits marked ‘A/ii’, ‘A/iii’, ‘A/iv’, ‘B’ ‘D’ and ‘E’.



6. Grass could not be detected in the exhibit marked 'D'.

7. Opinion on other point could not be furnished due to non availability of grass in the exhibit marked 'D'."

27. It would appear from description of the articles contained in the packet marked 'A', 'B' and the envelope marked 'C', 'D' and 'E' which read as under:-

"The packet marked as 'A' contained one janghiya, one ganji, one shirt and one pants which were further marked as i, ii, iii and iv respectively in this laboratory.

1. The dirty dark chocolate brown colour janghiya marked 'A/i' bore brownish stains. It also bore greyish white stains which were stiff to feel and which produced characteristic bluish white fluorescence in ultra violet light.

2. The old torn white sando ganji marked 'A/ii' bore a dot of reddish brown stain. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

3. The blue full shirt marked 'A/iii' bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

4. The old dirty khaki-green-brown-black printed full pants marked 'A/iv' bore brownish stains. It also bore greyish stains which were neither stiff to



feel nor did they produce any characteristic bluish white fluorescence in ultra light.

5. The packet marked 'B' contained one old dirty torn black leggings adhered with some grasses which bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra light.

6. The envelope marked 'C' contained one razor blade which bore reddish brown stains at places.

7. The test tube marked 'D' contained one cotton ball on plastic stick said to be penis swab which bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

8. The envelope marked 'E' contained some dry grasses which bore brownish stains. It also bore greyish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.”

28. The injury report of the doctor which has been marked Exhibit P-14 is being reproduced hereunder:-

“IW mid of neck 9 cm x ½ cm muscle deep on anterior aspect of neck.

M.I.- Old cut scar mark Lt. Wrist.

Mode of Injury – Sharp or trauma

Nature of Injury – Grievous endangering to life.”

29. This Court further finds that while recording the statement of the appellant under Section 313 Cr.P.C., he was



informed of the evidences brought by the prosecution against him and that on his disclosure, the blade used in the occurrence, the bicycle and the mobile were recovered were brought to his notice which he denied. The appellant was called upon to say in his defence, he pleaded innocence but has not stated about any enmity with the father of the victim.

30. On perusal of the entire evidences on the record once again, this Court finds that the learned trial court has duly discussed the evidence of the victim and also considered the defence of the appellant. The learned trial court has rightly recorded that the accused is named in the crime and his name was firstly taken by the victim in injured condition in the hospital where she was being treated. This Court agrees with the views expressed by the learned trial court that the victim has been examined and cross-examined but the defence could not take any contradiction in her statement.

31. To this Court, it appears that the victim in this case has withstood the test of the cross-examination, her statements are duly corroborated by the medical evidence and the recoveries made by the I.O. from the place of occurrence. In fact, this Court has noticed that the I.Os (PW-5) and (PW-6) were not suggested by the defence that there was no recovery of the blood-stained



blade and other materials from the place of occurrence. The I.Os have duly established the prosecution case by proving the place of occurrence and the circumstances which were found there at the time of their inspection. On the face of the evidences available on the record, we find no reason to take a different view from that of the learned trial court. No ground for interference has been established by the appellant.

32. In result, this appeal fails. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Sushma2-Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.07.2025
Transmission Date	01.07.2025

