

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.425 of 2021

Arising Out of PS. Case No.-75 Year-2018 Thana- MAHILA PS District- Buxar

Chandan Sah, S/O- Late Madan Sah, Resident of Village- Koransarai, P.S.-
Koransarai, District- Buxar.

... .. Appellant

Versus

1. The State of Bihar
2. Baby Devi, Wife of Kashinath Sharma, R/O Vill.- Koransarai, P.S.-
Koransarai, Dist.- Buxar.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Patanjali Rishi, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 08-01-2025

Heard Mr. Patanjali Rishi, learned counsel for the
appellant and Ms. Shashi Bala Verma, learned Additional Public
Prosecutor for the State.

2. The appellant in this case has challenged the
judgment dated 05.03.2021 (hereinafter referred to as the
‘impugned judgment’) and the order dated 09.03.2021 (hereinafter
referred to as the ‘impugned order’) passed by the learned
Additional District and Sessions Judge-VI-cum-Special Judge,
POCSO Act, Buxar (hereinafter referred to as the ‘learned trial
court’) in POCSO case No. 54 of 2018, arising out of Buxar
(Mahila) P.S Case No. 75 of 2018 dated 18.09.2018 registered



under Sections 341, 323, 504, 506, 376/34 of the Indian Penal Code (in short 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act').

3. By the impugned judgment, the learned trial court has held the appellant guilty of the offence of rape as defined under Section 376 of the IPC. The learned trial court having convicted the appellant for the said offence imposed upon the appellant sentence of rigorous imprisonment for ten years and a fine of Rs. 20,000/- (Rupees Twenty Thousand Only) for the offence committed under Section 376 IPC and in default of payment of fine, he will undergo further six months of simple imprisonment. The appellant has been further sentenced to undergo rigorous imprisonment for twelve years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand Only) under Section 4 of the POCSO Act. In default of payment of fine imposed, he shall undergo six months of simple imprisonment.

4. Although, the appellant has been found guilty under Sections 341, 323, 504 and 506 of the IPC but according to the learned trial court, these offences have been committed in order to commit the main offence of rape and penetrative sexual assault on the victim. Therefore, no further punishment is required to be awarded to the appellant.



Prosecution Case

5. The prosecution case is based on the *fardbeyan* of the victim (X) aged about 14 years recorded by the S.H.O. of Mahila Police Station Buxar (PW-6) on 18.09.2018 at 3:00 AM at Mahila Police Station, Buxar. In her *fardbeyan*, the victim has alleged as under :-

While she was going alone to see Vishwakarma Pooja on 17.09.2018 at around 7:00 PM, in the meantime, her co-villager Chandan Sah (appellant) came there and forcibly made her to sit on his motorcycle by grabbing her mouth and took her to a lonely place around bushes where he removed her jeans and committed rape on her. When the victim cried and raised protest, the appellant threatened her that if she would tell this to anyone in her home he will shoot her and her family members. Thereafter, he dropped her near her house by his motorcycle and fled away. The victim narrated the whole incident to her step-mother who informed about the incident to her uncle and grandmother. When her mother and uncle went to the house of the appellant and told about the incident to mother and sister of the appellant, they threatened them to falsely implicate the informant's side in rape case. Thereafter, the present case was lodged.



6. Upon investigation of the case, the I.O. has found sufficient materials to proceed against the accused persons, accordingly, he submitted a chargesheet against the present appellant, his mother and sister for the offences under Sections 341, 323, 504, 506, 376/34 of the IPC and Section 6 of the POCSO Act. The learned Special Judge, POCSO Act, Buxar took cognizance of the offences vide order dated 02.01.2019. The charges were explained to the accused persons who denied the charges and claimed to be tried. Thereafter, the learned trial court framed charges under Sections 341, 323, 504, 506 and 376 of the IPC as also under Section 6 of the POCSO Act on 27.08.2019 against the appellant. So far as the other accused were concerned, against them charges were framed under Sections 341, 323, 504 and 506 of IPC. In ultimate analysis of the evidences on the record while the appellant has been convicted, the other two accused have been acquitted of the charges against them.

7. On behalf of the prosecution as many as seven witnesses have been examined. The defence examined one witness, namely, Kamlesh Kumar Tiwari. The complete description of the prosecution witnesses whose oral testimonies have been recorded by the learned trial court and the documentary



evidences proved on behalf of the prosecution are provided hereunder in tabular form for ready reference :-

List of Prosecution Witnesses

PW-1	Victim
PW-2	Bharat Sharma
PW-3	Baby Devi
PW-4	Dr. Madhu Singh
PW-5	Dr. Yogendra Kumar
PW-6	Kanchan Kumari
PW-7	Shivmitra Chaudhary

List of Exhibits on behalf of Prosecution

Exhibit-1	Signature of victim on Fardbeyan
Exhibit-1/A	Signature of witness -Baby Devi on Fardbeyan
Exhibit- 1/B	Signature of witness Bharat Sharma on Fardbeyan
Exhibit-2	Signature of Victim on Seizure list
Exhibit-3	Signature of Victim on 164 Cr.P.C.
Exhibit-4	Signature of Victim on Seizure list
Exhibit-2/A	Signature of witness Bharat Sharma on Seizure list
Exhibit-5	Signature of witness Baby Debi on Medical Report
Exhibit-6	Signature of Witness Baby Devi on Seizure list
Exhibit-7	Injury report
Exhibit- 8	X-ray Report
Exhibit- 9	FSL Report
Exhibit-10	Writing of P.S. Written on F.I.R
Exhibit-10/1	Writing of Fardbeyan
Exhibit-10/2	Signature of S.H.O. Registration of F.I.R
Exhibit- 10/3	Signature of Kanchan Kumari on Fardbeyan
Exhibit- 10/4	Signature of the SHO on back side of F.I.R
Exhibit-11	Original FSL Report-1
Exhibit-11/1	Original FSL Report-2



8. After recording of the prosecution evidences, statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure (in short 'CrPC') on 05.01.2021. The appellant denied the correctness of the incriminating circumstances upon him and came out with a plea that he has been falsely implicated in this case.

Findings of the Learned Trial Court

9. The learned trial court examined the oral testimonies and the documentary evidences led on behalf of the prosecution and further considered the defence of the accused – appellant. The learned trial court came to a finding that the victim in this case was aged between 14 and 16 years at the time of occurrence. In her statement under Section 164 CrPC, she disclosed her age as 13 years. In her evidence, she has stated her age as 14 years but no question has been put to her regarding her age by the defence counsel in suggestion. PW-3, who is mother of the victim, has stated her age as 14 years but even she has not been cross-examined on this point and no suggestion has been given. The learned trial court, therefore, concluded that the victim was certainly aged between 14 and 16 years, therefore, as defined under Section 2(d) of the POCSO Act, she would be a child within the meaning of the said Act and the provision of the POCSO Act



would be attracted. Learned trial court found that apart from the oral testimony of the victim, the medical report of the victim (Exhibit-7) which has been proved by Dr. Madhu Singh (PW-4) would show that hymen of the victim was found ruptured, red and inflamed, posterior part of labia minora was also red and inflamed and the doctor has opined that she had sexual act in recent past (within 12 to 48 hours). The learned trial court, therefore, held that it proves the occurrence, an injury of rape on the body of victim. The incident of rape was committed on 17.09.2018 while the medical examination of the victim was done on the next date i.e. on 18.09.2018, therefore, the medical report corroborates the incident of rape with the victim.

10. In the learned trial court, the defence raised a plea of delay of eight hours in filing of the FIR. It was argued that as per the FIR (Exhibit-1) and the statement of the victim under Section 164 CrPC (Exhibit-3), the incident of rape had occurred on 17.09.2018 at about 07:00 PM whereas the FIR in the matter was registered on the next day at 03:00 AM. The learned trial court having examined the materials on the record found that the victim in this case is aged about 13 years, the incident had taken place on 17.09.2018 at 07:00 PM and just thereafter the victim informed the incident to her mother, thereafter, the matter was reported to police



and the FIR was registered at 03:00 AM on the next day i.e. on 18.09.2018. In the opinion of the learned trial court, there is no delay in reporting the case to the police in spite of number of problems faced by the victim's family in reporting such a heinous offence of rape to the police.

11. Another plea taken on behalf of the defence was that there are apparent contradictions in the evidence of the prosecution witnesses. The learned trial court has dealt with this with reference to various paragraphs of the testimonies of the victim. It has been found that the pattern of cross-examination by the defence indicates that the defence wanted to show that everything was consensual but the learned trial court having found that the victim who was a girl below 16 years of age and she was not in a position to give her consent, the plea of the defence would not be acceptable.

12. Referring to the presumption of culpability as contained under Section 29 of the POCSO Act, the learned trial court held that the defence could not discharge its burden. The another plea taken on behalf of the defence was that the accused has been falsely implicated in this case on account of previous land dispute. On this point, the learned trial court found that no document has been brought in support of such dispute. PW-2 was



suggested in paragraph '11' and '12' of the cross-examination that to usurp the land of accused, this wrong case has been filed. PW-3 was suggested differently in paragraph '15' that because the victim is the step-daughter of PW-3, therefore, this wrong case has been filed against the accused. In paragraph '9' of her deposition, PW-3 has shown her ignorance that 9 *katthas* of land of the accused which is in front of her house, they want to usurp and for that reason, a wrong case has been filed.

13. In its ultimate analysis, the learned trial court, as recorded above, found that all the three ingredients of a criminal trial i.e. (i) genesis of the occurrence, (ii) place of occurrence and (iii) manner of occurrence, have been duly proved. The appellant has been accordingly convicted and sentenced.

Submissions on behalf of the Appellant

14. Mr. Patanjali Rishi, learned counsel for the appellant has taken this Court through the evidences available on the record. Once again, before us, submissions have been made with reference to the various circumstances appearing from the evidence of the prosecutrix that it seems to be a case of consensual act of the victim. Learned counsel submits that the victim (PW-1) has stated that when she was going to visit Vishwakarma Puja on 17.09.2018 at 07:00 PM, this appellant came on a black coloured motorcycle,



stopped her on way, gagged her by mouth and made her to sit on the motorcycle whereafter, he took her to the bushes at a lonely place, opened her jeans and committed wrong act with her. It is submitted that the victim had gone on the motorcycle of the appellant and it could not have been possible for the appellant to drive the vehicle as well as to control the victim in a manner so that she could not have raised any hue and cry, still the victim did not raise *hulla*. She has stated that when she was made to sit on the motorcycle, she had placed her hand on the seat. When she was going to visit the Vishwakarma Puja, the other villagers were also going on the road but no one tried to save her. In these circumstances, the statement of victim that she was grabbed by her mouth and forcibly made to sit on the motorcycle would not be believable. Learned counsel submits that on a complete reading of the testimony of the prosecutrix (PW-1), it would appear that she is not a credible witness much less a sterling witness, as such, it would not be safe to convict the appellant on the basis of her testimony.

15. Learned counsel further submits that though the victim is said to be a minor, below 16 years of age, but the prosecution has not brought, in fact, any evidence on the record to prove her age, therefore, the learned Special Judge, POCSO Act,



could not have usurped the jurisdiction to try this case as the basic foundation to bring home the case under Section 29 of the POCSO Act are not available in this case.

16. Referring to the medical evidence on the record proved by Dr. Madhu Singh (PW-4), learned counsel submits that in her cross-examination, PW-4 has stated that the kind of external injuries found on the private part of the victim may happen due to the effect of some insect bite. Learned counsel submits that the appellant has been falsely implicated in this case on account of land dispute and the defence case setup in course of cross-examination of PW-2 and PW-3 is consistent.

17. It is lastly submitted that at the stage of Section 313 CrPC while recording the statement of the appellant, the entire incriminating materials which were brought by the prosecution in course of trial were not placed before him which has caused serious prejudice to the appellant. Referring to question no. 2 recorded in the statement under Section 313 CrPC, learned counsel would submit that in fact question no. 2 should have been divided into two parts but a composite question was put to the appellant, which is not the correct way to provide appropriate opportunity to an accused to explain the circumstances. It is his submission that in such circumstance where the accused has not been provided



proper opportunity at the stage of Section 313 CrPC, it would be just and proper to set aside the impugned judgment and order and remit the matter to the learned trial court for a trial afresh.

Submission on behalf of the State

18. The appeal has been opposed by Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State. Learned Additional Public Prosecutor submits that in this case, the age of the victim has never been questioned by the defence. The mother of the victim (PW-3) has stated in her examination-in-chief that the incident is of 17.09.2018 at 07:00 PM. Her daughter aged about 14 years had gone to visit the Vishwakarma Puja that day when the occurrence took place. The victim recorded her statement under Section 164 CrPC in which the learned Magistrate assessed her age as 13 years and the victim claimed her age as 14 years. In course of trial, the victim has been examined as PW-1. She has stated her age about 14 years and she was studying in class VIII. Defence examined PW-1 and her mother at length but did not question the age of the victim. No suggestion was shown to the witnesses that the victim was major on the date of occurrence. It is submitted that Dr. Yogendra Kumar (PW-5) who was posted as Medical Officer at Sadar hospital, Buxar and had examined the victim girl on 18.09.2018 as a member of the Medical Board



deposed that according to radiological finding, age of victim is in between 15 and 16 years. The defence cross-examined PW-5 but did not question the opinion of the doctor with regard to the age of the victim based on radiological findings.

19. Learned Additional Public Prosecutor has further submitted that in this case, the ocular evidence of the prosecutrix and the prosecution witnesses such as her uncle (PW-2) and mother (PW-3) are getting fully corroborated by the medical evidence (Exhibit '7') which is medical report proved by Dr. Madhu Singh (PW-4) and the FSL report (Exhibit '11' and '11/1'). The Doctor has clearly opined that the victim was subjected to recent sexual act within 12-48 hours and there were injuries present on the external part of the private part of the victim.

20. As regards the submission that the accused was not made aware of the incriminating materials brought against him by the prosecution at the stage of Section 313 CrPC, learned Additional Public Prosecutor submits that the appellant admitted before the learned trial court that he had heard the entire deposition of the witnesses. He was apprised of the evidence on the record that on 17.09.2018 at 07:00 PM, he had committed rape upon the victim girl at Koransarai and he had threatened her that she would not tell it to anyone in her home. So far as the question



no. 4 is concerned, the learned trial court made aware of the circumstances brought against the accused by pointing out that he had committed rape upon the victim knowing that she was a minor and was aged about 13 years. It is submitted that the accused has, though, stated that he has been falsely implicated but has not come out with any plea that there was any land dispute between the accused and the informant and/ or with an intention to usurp a piece of land of the accused which is in front of the house of the informant, he has been falsely implicated by the informant. It is, thus, submitted that despite opportunity available to the accused to explain the circumstances under which he could have been falsely implicated, he has not come out with any statement in this regard.

Consideration

21. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on going through the entire evidences available on the record, we find that in this case, the victim/informant has fully supported her case. She has narrated the entire occurrence which took place on 17.09.2018 at 07:00 PM in which she was forcibly taken away by the appellant on his motorcycle to a lonely place where this appellant committed rape on her. PW-1 has stated that after she was left at some distance from her house, she came her home and told the entire



story to her mother. She has also stated that she had told the entire story to the Officer Incharge of the police station who recorded the same, she had read the said recording of her statement and on finding the same correct, she had put her signature. At her instance, this has been marked Exhibit '1'. She has also identified the signature of her mother and uncle on the *fardbeyan* (Exhibit '1'), the signatures have been marked Exhibit '1/A' and Exhibit '1/B' respectively. PW-1 has also proved the seizure list (Exhibit '2'), her statement recorded by the Magistrate (Exhibit '3') and the medical report (Exhibit '7') showing her treatment by the doctors. From the pattern of cross-examination of PW-1, it is crystal clear that the defence has not questioned her age and minority and no suggestion at all has been given to this witness in course of her cross-examination that she was major. A complete reading of the evidence of PW-1 makes this Court to believe her testimonies beyond any doubt. She is the victim of the case and the defence having miserably failed to create any dent in her deposition, this witness would be put in a category of wholly reliable witness within the meaning of Section 134 of the Indian Evidence Act.

22. The uncle (PW-2) and the mother (PW-3) of the victim have fully supported the prosecution case. PW-2 is the uncle of the victim who was told the entire occurrence by the



victim. The defence suggested him that there is land of the accused in front of the door of the informant. This witness expressed his unawareness about it. The defence again suggested him that no such occurrence had taken place and only to usurp the said land, the informant had got lodged this case through her step-daughter. This witness denied the suggestion. The defence has not brought on record any document of a land to substantiate its suggestion that the accused is holding a piece of land in front of the house of the informant. Even the description of the land had not been mentioned by the defence in course of trial.

23. This Court further finds that when the mother of the victim came to be examined, the defence did not mention about the presence of any land of the accused in front of her house. The only suggestion given to PW-3 may be found in paragraph '15' of her deposition wherein the defence suggested that the victim is her step-daughter who is being misused against the accused persons. This Court, therefore, agrees with the findings of the learned trial court that the defence is not even consistent with regard to the case of a false implication.

24. So far as the medical evidence is concerned, the deposition of Dr. Madhu Singh (PW-4) fully corroborates the ocular evidence. PW-4 had examined the victim as a member of



the Medical Board. She has proved the entire report written and signed by her along with other members of the Board. The report has been marked Exhibit '7'. The relevant part of the report (Exhibit '7') finds place in paragraph '1' of the deposition of PW-4 which is being reproduced hereunder for a ready reference:-

“No external injury found on her head, neck, face, chest, abdomen, back and limbs. Breast were developed. Axillary & Pubic hair were present on private parts examination hymen was found ruptured red and inflamed. Posterior part of labia minor was also red and inflamed. Vaginal swab taken. Vaginal swab examination report given by Dr. Anil Kr. Singh. No spermatozoa found either alive or dead on low and high power of microscopic examination. A few epithelial cells are seen.”

25. PW-4 was cross-examined by the defence. In paragraph '4' of her cross-examination, she has reported that there was external injury on the private part of the victim. She has stated that she had not written the reason of swelling and redness and this may happen due to any insect bite. It is this part of her cross-examination that has been placed before this Court by learned counsel for the appellant to submit that even the medical evidence is not a clinching proof of the fact that the external injury present in the private part of the victim was result of a recent sexual act. This Court would not accept this submission of learned counsel for the appellant for the simple reason that the entire evidence of PW-



4 is to be read as a whole and no part of it may be read in isolation. PW-4 has clearly noticed on examination of the private part of the victim that hymen was ruptured, red and inflamed. At the same time, posterior part of labia minor was also red and inflamed. She has clearly opined that the victim had sign of sexual act in recent past within 12-48 hours. The medical evidence (Exhibit '7') fully corroborates the evidence of PW-1 which has been found credible by this Court.

26. This Court further finds that the undergarments of the victim was seized vide seizure list (Exhibit '2'). It was sent to the Forensic Science Laboratory for examination. Shivmitra Chaudhary (PW-7) is the Hawaldar who brought the box containing Exhibit 'A' and Exhibit 'B' (which were the samples). Exhibit 'A' is the undergarment of the victim and a report of the FSL which has been marked as Exhibit '11' shows that the blood has been detected at places in the Exhibit marked 'A' and semen has been detected in Exhibit marked 'A'. Though semen of the accused-appellant was also taken and marked Exhibit 'B' which was sent to the FSL but the FSL report (Exhibit '11') states that semen could not be detected in the Exhibit marked 'B'. The another report of the FSL (Exhibit '11/1') shows that Exhibit marked 'A' containing blood and semen had species of human



origin. These are the additional materials on the record apart from the evidence of the prosecutrix which prove the prosecution case.

27. This Court has found that the learned trial court has duly appreciated the entire evidences available on the record. On re-appreciation of the entire evidences, this Court finds no reason to interfere with the impugned judgment.

28. On the point of sentence, learned counsel for the appellant has submitted before us that the learned trial court has awarded a sentence of twelve years rigorous imprisonment and a fine of Rs. 30,000/- for the offences under Section 4 of the POCSO Act. The submission is that while considering as to how sentences are to be awarded to an accused of crime, the learned trial court was required to take into consideration certain relevant factors. In the present case, the learned trial court has observed that to send a strong deterrent message to the perpetrators of the crime, the crime of such nature requires an exemplary punishment.

29. At this stage, we take note of some judicial pronouncements on the subject. In the case of **Santa Singh Vs. State of Punjab** reported in **1976 AIR 2386**, the Hon'ble Division Bench of the Supreme Court observed as under:-

“Modern penology as pointed out by this court regards crime and criminal as equally material when the right sentence has to be picked out. It turns the



focus not only on the crime, but also on the criminal and seeks to personalize the punishment so that the reformist component is as much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature, sometimes altogether irrelevant, if not injurious, at the stage of fixing the guilt, may have to be brought to the notice of the Court when the actual sentence is determined. The material may be placed before the Court by means of affidavits, but if either party disputes the correctness or veracity of the material sought to be produced by the other, an opportunity would have to be given to the party concerned to lead evidence for the purpose of bringing such material on record. The hearing on question of sentencing would be rendered devoid of all meaning and content and it would become an idle formality if it were merely confined to oral submissions without any opportunity being given to the parties and particularly to the accused, to produce material in regard to the various factors bearing on the question of sentence, and if necessary, to lead evidence for the purpose of placing such material before the Court... Of course, care would have to be taken by the Court to see that this hearing on question of sentence is not abused and turned into an instrument for unduly protracting the trial/proceeding. The claim of due and proper hearing would have to be harmonized with the requirement of expeditious disposal of the proceedings.”

30. In the case of Gurmukh Singh vs. State of Haryana reported in **(2009) 15 SCC 635**, the Hon’ble Supreme



Court has laid down various factors which are required to be considered while awarding punishment to a convict. One of the factors which is required to be considered is the conduct and behaviour of the accused after the incident.

31. From the catena of judgments of the Hon'ble Supreme Court on the point of sentence, it would transpire that the possibility of reformation and rehabilitation of a convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him. It has been held that it would be a bounden duty cast on the courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent.

32. From the judgment of the learned trial court, we find that at the time of judgment, the appellant was aged about twenty six years. There is no evidence that he cannot be reformed. Section 4 of the POCSO Act provides for a minimum sentence of ten years to a convict. In the present case, we are of the opinion that the sentence of twelve years awarded by the learned trial court is fit to be reduced to a period of ten years under Section 4 of the POCSO Act. Thus, we modify the sentence awarded to the appellant under Section 4 of the POCSO Act to a rigorous imprisonment for ten years. The amount of fine and the sentences awarded for the other



charges shall remain intact. All the sentences shall run concurrently.

33. In result, this appeal is partly allowed.

34. The trial court records together with a copy of the judgment shall be sent to the learned trial court.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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