

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.403 of 2016

Arising Out of PS. Case No.-56 Year-2015 Thana- JANDAHA District- Vaishali

Santosh Kumar @ J.c.b. S/o Late Julum Rai, Resident of village- Navnagra
Mohanpur, P.S.- Sitamarhi, District- Shivhar

... .. Appellant/s

Versus

- 1. The State Of Bihar
- 2. XYZ D/O Devak Rai R/O Vill.- Murtuzapur, P.S.- Jandaha, Dist.- Vaishali.

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 231 of 2016

Arising Out of PS. Case No.-56 Year-2015 Thana- JANDAHA District- Vaishali

Vijay Rai son of Bahoran Rai resident of village- Tutturjapur, P.S.- Jandaha,
District- Vaishali

... .. Appellant/s

Versus

- 1. The State Of Bihar
- 2. XYZ D/O Devak Rai R/O Vill.- Murtuzapur, P.S.- Jandaha, Dist.- Vaishali.

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 403 of 2016)
For the Appellant/s : Mr. Madhumay Madhup, Advocate
Mr. Anand Kumar Tiwari, Advocate
Mr. Nilabh Ranjan, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 231 of 2016)
For the Appellant/s : Mr. Baxi SRP Sinha, Sr. Advocate
Mr. Shanti Bhushan Singh, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)
Date : 08-09-2025

We may commence our judgment with the celebrated observation of the Hon'ble Justice Krishna Iyer (as his Lordship then was)-

“Rape is a crime more serious than murder as it destroys the very soul of the hapless female.”

“When a female is raped, what is inflicted is not mere physical injury but a deep sense of some deathless shame.”

2. At the same time, it is our observation that an accused who is falsely implicated in a case of sexual violence is not only socially castigated and declined to accept even by the members of his own family, but he also dies regularly being a victim of a false allegation, suffering conviction and sentence for prolonged period of time until his case is appreciated and re-evaluated by the higher judiciary.

3. Now the facts of the instant appeals.

4. Both the appeals are directed against a common judgment and order of conviction and sentence by virtue of which appellants, namely, Vijay Rai and Santosh Kumar @ J.C.B. were convicted for the offence under Section 376(D) of the IPC and Section 6 of the POCSO Act. For the offence under Section 376(D) of the IPC, they were sentenced to suffer rigorous imprisonment for 20 years each with fine of Rs. 25,000/- each and



for the offence under Section 6 of the POCSO Act, they were sentenced to suffer rigorous imprisonment for 10 years with fine of Rs. 10,000/- each in default of payment of fine amount, the appellants were directed to suffer Simple Imprisonment for One month each. For the offence under Section 341 and 323 of the IPC, the appellants were convicted to sentence to suffer imprisonment of one month each and 06 months each respectively.

5. At the outset, it is necessary for us to narrate the prosecution case which was registered as Jandaha P.S. Case No. 56 of 2015 dated 29th March 2015 under Section 341/323/376(D) of the IPC and Sections 4 and 6 of the POCSO Act on the basis of a statement made by the victim girl to the SHO Jandaha, P.S. It appears from the FIR that on 29th March 2015, at about 7:00 PM, the victim girl was present with her father in their grocery shop situated near Hari Prasad Petroleum Pump. At that time, she was feeling nature's call and took her father's mobile phone and went to a bushy area by the side of the shop to release herself. When she was sitting to defecate, the appellants and one Munchun Kumar came to her and wrongfully restrained her. She tried to raise an alarm but the said accused persons tied her mouth with the help of her wearing veil (odhna/Dupatta). When she protested, the appellants and the said Munchun Kumar assaulted her with fists



and blows causing swelling and bleeding injury on her mouth and other parts of body. She lost her consciousness. Then, the accused persons tried to commit rape upon her. At that time, her father came to the spot. Seeing the father of the victim, the appellants and another accused fled away. However, the villagers and local people chased them and apprehended them. The mobile phone of the victim which she took from her father was recovered from the appellant, namely, Santosh Kumar.

6. The police was informed who came to the spot, recorded the statement of the victim and arrested the accused persons. S.I. Jyoti Kumari of the same P.S. was instructed to investigate into the case.

7. During the investigation, the investigating officer recorded the statement of the witnesses under Section 161 of the CrPC, got the victim girl medically examined by the Medical Officer attached to Sadar Hospital, Hajipur. Her ossification test was also done. It was revealed from the ossification test that on the date of the commission of the offence, the victim was aged between 11 years to 14 years. On completion of investigation, the Investigating Officer submitted charge-sheet against the accused persons under Sections 376(D)/341/323 of the IPC as well as Section 4 and 6 of the POCSO Act.



8. Since the offence under the POCSO Act is exclusively triable by the Special Court, the case was committed to the learned Special Judge, POCSO Act, Vaishali at Hajipur. On the basis of the charge-sheet and the case diary, he framed charge against the accused persons under Sections 341/323/376(D) read with Section 34 of the IPC and Sections 4 and 6 of the POCSO Act.

9. As the accused persons pleaded not guilty, trial of the case commenced. During trial, prosecution examined as many as 10 witnesses to bring home the charge.

10. The defence case, as disclosed from the trend of cross-examination of the witnesses, is mere denial of the prosecution case. It is further submitted on behalf of the defence that the victim is in the habit of instituting false cases, making similar allegations against various persons, and in support of such contention, copies of the FIR under Section 156(3) of the CrPC and the charge-sheet of Jandaha P.S. Case No. 94/2019 have been placed during the hearing of the instant appeal.

11. Amongst the witnesses, PW-2 is the victim; PW-1 is her father; PW-3 to PW-6 are witnesses from the locality who assembled near the place of occurrence and in front of the shop of PW-1 after the alleged incident. PW-7 and PW-8 are the witnesses



to the seizure. PW-9 is the I.O., and PW-10 is the Medical Officer who examined the victim.

12. It is needless to say that in an offence of penetrative sexual assault, or rape, or sexual assault, the evidence of the prosecutrix or the victim girl is of utmost importance. Her evidence cannot be considered as an evidence of accomplice. On the other hand, her evidence is required to be looked into with the similar weight as that of an injured witness. She is the injured of the occurrence; therefore, it is consistently held in a plethora of decisions by the higher courts that even the sole evidence of the prosecutrix can be the basis of conviction if it inspires confidence. In *Ganesan v. State represented by its Inspector of Police*, reported in (2020) 10 SCC 573, a three-Judge Bench of the Hon'ble Supreme Court held that in a case involving sexual harassment, molestation etc. conviction of the accused is permissible on the basis of sole testimony of the prosecutrix.

13. In this case, the Hon'ble Supreme Court relied on its earlier decision in *State of Maharashtra v. Chandraprakash Kewalchand Jain*, reported in (1990) 1 SCC 550 wherein, it is held in paragraph 16 as hereunder:-

“16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be



accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”



14. In a very recent decision in the case of ***Lok Mal v. State of U.P.***, reported in **(2025) 4 SCC 470**, it is held by the Hon'ble Supreme Court that merely because, in the medical evidence, there is no major injury mark around the private part of the victim, this cannot be a reason to discard the otherwise reliable evidence of the prosecutrix.

15. It is not necessary that in each and every case where rape is alleged, there has to be an injury to the private parts of the victim, and it depends on the facts and circumstances of a particular case. In the instant case, the victim was overpowered by three young and stronger accused persons. It is in her evidence that she was first assaulted by fists and blows on her face and chest. Therefore, absence of injury in the private parts may not be very fatal for the purpose of considering the issue as to whether the trial court rightly convicted the appellants in accordance with law or not. If the evidence of the prosecutrix is considered to be of sterling nature, on her sole testimony, conviction can be warranted. In support of our observation, the decision of the Hon'ble Supreme Court in ***Rai Sandeep v. State (NCT of Delhi)***, reported in **(2012) 8 SCC 21**, paragraph number 22, may be relied on.

16. Following the observation made by the Hon'ble Supreme Court regarding appreciation of evidence in a case of



sexual violence and bearing the above-mentioned principles in mind, let us now consider the evidence of the witnesses in the instant case. It is found from the initial statement of the prosecutrix which was recorded within few hours of the incident that three accused persons attempted to commit rape upon her. However, in her evidence, as PW-2, she developed her case making statement on oath that the accused persons committed rape upon her (उसके बाद हमारे साथ गलत काम किया)

17. PW-1, namely, Devak Rai, is the father of the victim girl. It is found from his evidence that when his daughter was not returning after about fifteen minutes of her departure to defecate, he proceeded to the place of occurrence. He found that accused Vijay Kumar and Santosh Kumar caught hold of her and were assaulting her. He saved his daughter and informed the matter to the police. The police came and took her to the local police station and arrested the accused persons. The victim made her statement in the police station and thereafter, she was sent to the hospital for medical examination.

18. PW-3, Chandan Singh, stated in his evidence that on the date of occurrence at about 7:00–7:30 PM, he saw the daughter of PW-1 with bleeding injury on her face. He heard from the local people who assembled there that the appellant Vijay Rai assaulted



her and committed an indecent act with her. The nature of evidence of PW-3 is hearsay.

19. The evidence of PW-4, PW-5, and PW-6 is also hearsay in nature.

20. PW-6, Munna Sahini, was declared hostile by the prosecution.

21. PW-7, Shanti Bhushan Prasad, stated in his statement that he saw the daughter of PW-1 with bleeding injury on her face. She was telling that Vijay Kumar and Santosh Kumar committed rape upon her. Evidence of other witnesses is not material and does not call for detailed discussion because they are also hearsay, and PW-8 is a relative of PW-1.

22. Beside the victim, evidence of PW-10, Dr. Sarita Shankar, is very important for the purpose of arriving at a conclusive decision in the instant appeal. She medically examined the victim girl on 29th March 2015 and found the following injuries:

“Swelling of face, more on the left side, Bluise black mark of abrasion on left and right cheek, swelling on right side of right eye, swelling of lips and gum, swelling on the



upper part of left side of chest, slight abrasion
on right leg on right and left side.”

23. On internal examination, the medical officer found the hymen of victim ruptured at the same time. She also recorded that only one tip of finger enters painfully inside the vagina of the victim, forcheatte remain congested on right side and posterior side. She sent the victim girl for ossification test and on the basis of the ossification test, she found the approximate age of the victim girl to be between 11 years and 14 years. The injury report has been marked as Exhibit- 4.

24. On close perusal of the injury report, it is found that the Medical Officer did not state as to whether the hymen of the victim was freshly ruptured or it was an old tear. When the victim was feeling pain while entering one finger inside the vagina, and there was no injury inside the vagina or even bleeding per vagina, the allegation of gang rape by more than one person seems to be concocted and imaginary. We have already noted that the victim girl stated in the FIR that the appellants and another person tried to commit rape upon her. Thus, the initial statement before the police by the victim girl does not constitute any allegation of commission of rape. The medical report also does not suggest any rape upon the victim.



25. Now comes the question as to whether there was attempt of rape or not. It is found from the medical evidence that the victim did not sustain any injury in or around her private part. If there is a forcible penetrative sexual assault by two grown up persons, there must have been some injuries around the private part of the victim. It is needless to say that the word "attempt" has not been defined in the IPC or any other law. However, it is no longer *res integra* that, in order to prove an attempt to commit an offence, the prosecution is under an obligation to prove all the ingredients of the parent offence, short of the actual commission of the offence. For example, in the case of attempt to murder, the prosecution is under an obligation to prove the ingredients of Section 300 of the IPC, minus the actual commission of murder. If the attempt had been accomplished, then the accused would have been guilty of committing murder. In the case of attempt to rape, the same theory is applicable. It is for the prosecution to prove that the accused performed all the acts short of actual penetration. No such evidence is forthcoming in the instant case. Even the father of the victim did not say whether the wearing apparel of the victim was opened or if she was wearing her apparel when she was rescued. If there was an attempt to rape, the accused persons ought



to have tried to disrobe her; there is no evidence whether she was disrobed.

26. For the reasons stated above, we are also not in a position to hold the accused persons guilty for committing offence under Section 376(D) read with Section 511 of the IPC.

27. Both the appellants were held guilty of penetrative sexual assault. We have already come to a decision, on the basis of the evidence of the victim girl and the medical officer, that there was no penetrative sexual assault. Therefore, the appellants cannot be held guilty of committing an offence under Section 6 of the POCSO Act.

28. However, it is found from the medical evidence that the victim was assaulted on her face, right eye, left side of her chest and other parts of the body. She received bleeding injury on her face. Section 7 of the POCSO Act defines sexual assault in the following words:

*“7. **Sexual assault.** —Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”*



29. In the instant case, it is established from the evidence of PW-2 (victim), PW-1 (father of the victim), and PW-10 (medical officer) that the appellants assaulted the victim with fists and blows on her chest. Therefore, while assaulting her chest, the appellants touched the portion of the body consisting of her breast. In view of such evidence, we hold that the appellants committed the offence of sexual assault within the meaning of Section 7 of the POCSO Act.

30. Section 8 of the POCSO Act prescribes the punishment for sexual assault. The provision reads as follows:

“8. Punishment for sexual assault.—Whoever commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.”

31. We have also found from the evidence on record that the prosecution had been able to prove in the trial court the charges under Section 341 and Section 323 of the IPC.

32. Considering the facts and circumstances of the case, and in view of the fact that the appellants do not have any criminal antecedents, we are of the view that they should be sentenced to the minimum punishment for the offence of sexual assault.



Accordingly, the appellants are convicted of committing an offence under Section 7 of the POCSO Act and are sentenced to rigorous imprisonment for three years with a fine of Rs. 1,000/-, and in default, simple imprisonment for 15 days.

33. The order of conviction and sentence for the offence punishable under Section 341 and Section 323 of the IPC is affirmed.

34. For the reasons stated above, the appellants are acquitted of the charge under Section 376(D) read with Section 34 of the IPC and Section 4 and 6 of the POCSO Act.

35. It is submitted by the learned Advocates for the appellants that the appellants have been in custody for 10 years. It is unfortunate that, for an offence punishable under Section 7 of the POCSO Act, the accused persons have been unnecessarily facing imprisonment for 10 years.

36. The period of punishment which has been granted by this Court for the offence punishable under Section 8 of the POCSO Act and Section 341/323 of the IPC shall be set off against the actual incarceration and if the appellants suffer rigorous imprisonment for more than three years, they be released on bail at once. Let a copy of this judgment be sent to the trial court for information and necessary compliance through the registry.



37. Since the trial court granted compensation of Rs. 1,00,000/- (one lakh only) for committing offence of rape and penetrative sexual assault upon the victim in favour of her and we have found that no such offence was committed, the order of compensation passed by the trial court is quashed and set aside.

38. Let a plain copy of this judgment be supplied to the learned advocates for the appellants, free of cost.

(Bibek Chaudhuri, J)

(Dr. Anshuman, J)

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