

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.481 of 2023

Arising Out of PS. Case No.-408 Year-2020 Thana- MUZAFFARPUR TOWN District-
Muzaffarpur

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Niranjan Bhardwaj @ Raju s/o Pundeo Mishra, Resident of Sikandarpur,
Prabhat Jarda Factory Road, Near Harvest Moon Public School, P.S.
Sikandarpur, O.P. District- Muzaffarpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Manoj Kumar No. 1, Amicus Curiae
For the State	:	Mr. Manish Kumar No. 2, Addl.PP
For the Informant	:	Mr. Rahul Kumar, Advocate
		Mr. Akash Raj, Advocate
		Ms. Nikita Mittal, Advocate

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

Date : 17-12-2025

Heard Mr. Manoj Kumar No. 1, learned Amicus Curiae
on behalf of the appellant, Mr. Rahul Kumar, learned counsel for
the informant and Mr. Manish Kumar No. 2, learned Additional
Public Prosecutor for the State.

2. The present appeal has been preferred for setting
aside of the judgment of conviction dated 06.02.2023 (hereinafter
referred to as the ‘impugned judgment’) and the order of sentence
dated 10.02.2023 (hereinafter referred to as the ‘impugned order’)
passed by learned Additional Sessions Judge, VI-cum-Special
Judge, POCSO Act, Muzaffarpur in POCSO G.R. No. 01 of 2021



arising out of Nagar P.S. Case No. 408 of 2020 (C.I.S. No. 01 of 2021).

3. By the impugned judgment and order, the appellant has been convicted for the offences punishable under Sections 363, 366(A), 376(3) of the Indian Penal Code (in short 'IPC') and Sections 6 and 12 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). He has been ordered to undergo rigorous imprisonment for twenty years under Section 6 of the POCSO Act and has been ordered to pay a fine of Rs.30,000/-. In case of non-payment of fine, the appellant shall undergo an additional simple imprisonment for one year. The appellant has also been sentenced under Section 12 of the POCSO Act for a period of three years rigorous imprisonment and has been ordered to pay a sum of Rs.3,000/- as fine. In case of non-payment of fine, he would be required to undergo an additional simple imprisonment for three months. Both the sentences shall run concurrently. For the offences under Section 363 and 366(A) IPC, the appellant has been awarded five years rigorous imprisonment and a fine of Rs.5,000/- under each of the Sections and in case of non-payment of the same, he will undergo an additional simple imprisonment for six months. No separate sentence has been



awarded for the offence committed under Section 376(3) IPC, keeping in view Section 42 of the POCSO Act.

Prosecution Case

4. The prosecution case is based on a written information submitted by the father of the victim (PW-2) in Sikandar O.P., Muzaffarpur. In his written information dated 09.07.2020, the informant brought it to the notice of the police station that his daughter (X) aged about 12 years was missing since 8th July, 2020 (10:00 AM). He was under impression that like any other day, she had gone to meet her friends but she had not returned till 11:00 AM of 9th July, 2020. The informant searched her the whole night in the neighbourhood and at relatives house but his daughter could not be traced. Thereafter, he furnished the information.

5. The FIR being Nagar P.S. Case No. 408 of 2020 was registered on 09.07.2020 at 09:00 AM under Section 363(A) IPC against unknown.

6. The victim girl (X) was recovered on 15.09.2020 by police when she was found with the appellant in a Scorpio vehicle near Hero Honda Agency, Muzaffapur at 08:30 PM.

7. After investigation, police submitted a chargesheet bearing Chargesheet No. 1127 of 2020 dated 21.11.2020 against



the appellant for the offences punishable under Sections 363, 366(A), 376 IPC and Sections 4 and 12 of the POCSO Act. Learned court took cognizance vide order dated 22.02.2021.

8. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried. Accordingly, On 11.03.2022, charges were framed for the offences punishable under Sections 363, 366(A) and 376(AB) IPC as also under Sections 6 and 12 of the POCSO Act.

9. On behalf of the prosecution, altogether six witnesses were examined. The victim (X) and her father (Y) both deposed as court witnesses under Section 164 of the Code of Criminal Procedure (in short ‘CrPC’) and the defence examined one witness, namely, Deepak Kumar (DW-1). The list of witnesses and the documents exhibited in course of trial are as under:-

List of Prosecution Witnesses

PW-1	Victim
PW-2	Father of the Victim
PW-3	Mother of the Victim
PW-4	Uncle of the Victim
PW-5	Dr. Rashmi Rekha
PW-6	Tribhuwan Prasad Chaudhary (I.O.)

List of Exhibits on behalf of Prosecution

Exhibit ‘P-1/PW-1’	Statement u/s 164 CrPC of the victim along with her signature on it
Exhibit ‘P-2/PW-2’	Statement u/s 164 CrPC of PW-2 along



	with his signature on it
Exhibit 'P-3/PW-2'	Signature of PW-2 on the written application
Exhibit 'P-4/PW-5'	Medical report of the victim by Dr. Rashmi Rekha
Exhibit 'P-5/PW-5'	Pathological report by Dr. R.K. Singh
Exhibit 'P-6/PW-5'	Supplementary pathological report by Dr. Rashmi Rekha
Exhibit 'P-7/PW-6'	Endorsement on written statement
Exhibit 'P-8/PW-6'	Formal FIR
Exhibit 'P-9/PW-6'	Chargesheet No. 1127 dated 21.11.2020

10. The statement of the accused was recorded under Section 313 CrPC on 4th August, 2022. In his statement, he has taken a plea that he was innocent and he was bringing the victim from Motihari to drop her at her house but he had been falsely implicated.

Findings of the Learned Trial Court

11. The learned trial court having examined the evidences available on the record and upon consideration of the submissions of the prosecution and the defence recorded that the prosecution had been able to prove it's case beyond all reasonable doubts.

12. On the age of the victim girl, the learned trial court has found that the informant had produced a photocopy of the date of birth certificate of the victim issued by the Directorate of Statistics and Evaluation, Government of Bihar in which the date



of birth of the victim is mentioned as 02.04.2007. The learned Magistrate who recorded the statement of the victim under Section 164 CrPC had also assessed the age of the victim as 13 years and the victim has also stated that she was aged about 13 years. Apart from these materials, the learned trial court has also held that the defence has not questioned the minority of the victim and no such plea has been taken by the defence. Thus, on 09.07.2020, the victim was a minor who was covered under the definition of the word “child” under Section 2(d) of the POCSO Act.

13. The learned trial court found that from the evidence of the prosecutrix (X), it is proved that she was kidnapped and then she was given biscuit having some intoxicated substance and she was confined in a room where the appellant had repeatedly established physical relationship with her. The trial court found that the statement of the victim recorded under Section 164 CrPC (Exhibit ‘P-1’) is fully consistent with her statements made in course of trial and there is nothing on the record to disbelieve the victim girl.

14. The learned trial court has noticed the evidence of the I.O. (PW-6). PW-6 identified the handwriting and signature of the then Officer-in-Charge Om Prakash on the endorsement made



on the formal FIR which has been marked Exhibit 'P-7'. The formal FIR has been marked Exhibit 'P-8'. The I.O. (PW-6) has stated that the informant had given another information by giving an application that when he saw the CCTV camera of Harvest Moon Public School, he found that this appellant was there in a white coloured four-wheeler car at 10:02:48. The victim was missing since then and he again came at the outpost on 11.09.2020 that the appellant had come between 11:30 AM and 2:00 PM. He provided the mobile number of the appellant on the basis of which the I.O. had got the call detail and tower location whereafter raid was conducted and spy was deputed. The I.O. had deposed that on the basis of the information received from the spy that the accused was coming from Motihari, a police team reached near Honda vehicle agency at 8:30 PM when the Scorpio was seen and in that Scorpio, the appellant together with the victim were found. They were brought to the police station and relatives of both the victim and the appellant were called. The statement of the victim was recorded on the next day under Section 164 CrPC. Mother of the victim (PW-3) had made available the photocopy of the birth certificate of the victim. PW-6 has proved the chargesheet submitted in his handwriting and signature as Exhibit 'P-9'.



15. The learned trial court having examined the entire evidence on the record found that the victim was minor and she was kidnapped by the appellant. She was taken to Motihari where she was kept for two months and eight days and the appellant repeatedly committed rape on her. As regards the medical evidence, the trial court found that non-availability of any mark of injury on the private part cannot be a ground to take a view that no sexual act has been committed with the victim. The victim has stated that the appellant had repeatedly committed sexual acts with her, therefore, the fact that no spermatozoa was found on the body of the victim is no basis to take a different view. The learned trial court held that the prosecution has duly proved the case and the presumptions under Section 29 of the POCSO Act is fully established and the defence has not brought any material to rebut the presumption on the strength of preponderance of possibility.

Submissions on behalf of the Appellant

16. Mr. Manoj Kumar No.1, learned Amicus Curiae for the appellant submits that in this case, the prosecution has not duly proved the age of the victim girl. The I.O. (PW-6) has stated that the mother of the victim had made available a xerox copy of the date of birth certificate and the learned trial court has also stated about filing of xerox copy of the date of birth certificate of the



victim but the said certificate has not been exhibited in course of evidence. It is submitted that even if the defence had not questioned the victim and her parents with regard to the age of the victim girl, it was incumbent upon the prosecution to prove the age of the victim in order to attract presumption under Section 29 and 30 of the POCSO Act.

17. Learned Amicus Curiae has further submitted that the victim was allegedly staying with the appellant for more than two months but she had never raised any *hulla* and it has come in evidence that her birthday was celebrated in a hotel where 10-15 friends of the appellant were also present but even on that occasion the victim did not raise any voice.

18. Learned Amicus Curiae submits that the CCTV footage of the school camera has not been brought in evidence, therefore, a mere statement of the parents of the victim that the appellant was seen standing with a white coloured car when the victim came out of her house would not be a clinching evidence to prove that the appellant had allured and taken her away from the guardianship of her parents.

Submissions on behalf of the State and the Informant

19. On the other hand, learned Additional Public Prosecutor for the State submits that in this case, the age of the



victim girl has never been questioned by the defence. There is no whisper of suggestion to the prosecution witnesses, including the victim that she was not a minor. It is submitted that some lacuna on the part of the Investigating Officer alone would not confer any benefit upon the accused. In this case, the I.O. (PW-6) has admitted that he was made available a xerox copy of the date of birth certificate of the victim, therefore, it was his duty to verify the same by visiting the school in which the victim was studying in Class-VII but the I.O. did not do so. Moreover, despite the fact that the learned trial court has noticed availability on the record of the xerox copy of the date of birth certificate, the trial court did not call the competent authority from the school administration with the school admission register and the court did not take steps for exhibiting the xerox copy of the date of birth certificate as a secondary evidence. In such circumstances, where there are some materials on the record of the learned trial court with regard to the date of birth of the victim and the defence is not at all questioning the age of the victim, no benefit shall enure to the defence.

20. Learned counsel submits that in this case, the age of the victim was never facts in issue as defined under the Indian Evidence Act, 1872 (now Section 3 of the Bharatiya Sakshya Adhiniyam, 2023). In the present case, the victim herself deposed



that her date of birth is 02.04.2007, she was never questioned by the defence with respect to her age. The father of the victim also deposed that the victim was a minor, even he was not questioned by the defence.

21. Referring to the provision of Section 34(2) of the POCSO Act, 2012, it is submitted that a bare reading of the same would show that if any question arises in any proceeding before the Special Court as to whether a person is a child or not, such question has to be determined by the Special Court. The Special Court would be duty bound to determine the age of the victim if the defence has challenged the age. In this connection, learned counsel has placed reliance upon paragraph '24' of the judgment of the Hon'ble Division Bench of this Court in case of **Kumod Mandal vs. State of Bihar in Criminal Appeal (DB) No. 193 of 2021**. Learned counsel has also relied upon paragraph '15' of the judgment of the Hon'ble Supreme Court in the case of **P. Yuvaprakash vs. State represented by Inspector of Police** reported in **(2024) 17 SCC 684** wherein the Hon'ble Supreme Court has observed that wherever the dispute with respect to the age of a person arises in 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 J.J. Act. It is submitted that in the



present case, there was no such dispute with regard to the age of the person. Thus, the plea of the appellant at this stage with regard to the age of the victim has no basis to stand.

22. Learned counsel further submits that the victim was recovered with the appellant after two months and eight days and both of them were found in the Scorpio vehicle. Even in his statement under Section 313 CrPC, the accused has admitted about his presence with the victim in the Scorpio vehicle and has stated that he was coming with the victim from Motihari. It is submitted that the evidence of the victim in this case is in the kind of a sterling evidence and there is no reason to disbelieve the victim in this case.

23. Learned counsel for the informant has endorsed the submissions made on behalf of the State.

Consideration

24. We have heard learned Amicus Curiae for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State, as also perused the trial court's records. First of all, we will deal with the submission of learned Amicus Curiae with respect to the determination of age of the victim ('X'). It appears on perusal of the records that in his written information furnished to the police station, the father of the victim



(PW-2) has stated that the age of the victim is about 12 years. When the victim was recovered and her statement was recorded under Section 164 CrPC, her age was recorded as about 13 years. We have found from the trial court's records that the learned Special Judge (POCSO Act) has held that the victim would fall under the category of a 'child' as defined under Section 2(d) of the POCSO Act.

25. In course of trial, the victim has been examined as PW-1. She has categorically stated in paragraph '2' of her examination-in-chief that her date of birth is 02.04.2007. In course of her cross-examination, the defence has never questioned her over her minority. No suggestion was given to her that she was major on the date of occurrence. Her father (PW-2) has also stated that he had lodged the case of missing of her minor daughter. In his cross-examination, he has stated that the victim girl was studying in St. Xavier's School and she was in Class-VII at the time of occurrence. The defence did not question PW-2 over the age of the victim. Mother of the victim (PW-3) and uncle of the victim (PW-4) were not questioned with regard to the age of the victim girl. Doctor (PW-5) has proved the signature on the report (**Exhibit 'P-4/P-5'**), on which she has recorded the age of the victim on estimation basis as 13 years. The defence did not raise



any doubt with regard to the correctness of the age recorded on **Exhibit 'P-4/P-5'**.

26. The I.O. (PW-6) has stated that he was made available a xerox copy of the date of birth certificate by the mother of the victim on which the date of birth of the victim was mentioned as 02.04.2007. The I.O. was cross-examined by defence at length. In course of his cross-examination, the defence did not question the age of the victim as stated by the I.O. on the basis of the said xerox copy of the date of birth certificate provided to him by the mother of the victim. It is, therefore, evident that in the present case, the defence never raised any issue with regard to the age. At this stage, we quote Section 34(2) of the POCSO Act as under:

“34. Procedure in case of commission of offence by child and determination of age by Special Court.—

(1)

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.”

27. In the case of **Kumod Mandal**, a Division Bench of this Court has taken a view with regard to the determination of age of a victim and it has been observed as under:-

“(24) From bare perusal of this provision, it appears that the trial court was duty bound to determine the age of the victim as the appellant has challenged the



age of the victim. As such, the presumptions under Sections 29 and 30 of the POCSO Act do not attract in this case”

28. In the case of **P. Yuvaprakash** (*supra*), the Hon’ble Supreme Court was dealing with a case in which the defence had questioned the age of the victim on the date of establishing the physical relationship. The Hon’ble Supreme Court observed in paragraph ‘15’ of its judgment as under:-

“**15.** 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 court concerned has to determine the age by considering the following documents:

“**94. (2)(i)** The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, 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.”

29. From the judgments mentioned hereinabove, to this Court it appears that determination of age of a victim by the Special Court must precede with a challenge to the age of the victim by the defence. If the defence has not set up any case during cross-examination questioning the age of the victim girl, the issue with regard to determination of age of the victim cannot be raised



unless it is shown that the victim has been assessed minor on the basis of some fraudulent act. We, therefore, find no force in the submission of learned Amicus Curiae with regard to the determination of age of the victim.

30. To this Court, it appears that the victim (PW-1) is a sterling witness and her evidence would fall in the category of a wholly reliable evidence as envisaged under Section 134 of the Evidence Act (now Section 139 of the Bharatiya Sakshya Adhiniyam, 2023). She was recovered from the Scorpio by the I.O. (PW-6). At the time of her recovery, the appellant was present with her in the vehicle. In fact, this is an admitted fact. In course of her cross-examination, defence has suggested PW-1 that she was celebrating with her friend at Motihari, in the meantime she met the accused and asked him to take her and drop her at residence but in the meantime police caught hold of the accused. PW-1 denied the suggestion but the kind of suggestion given by the defence to PW-1 clearly shows that the appellant and the victim both were coming from Motihari when the police intercepted them on 15th September 2020.

31. This Court finds that in her 164 CrPC statement, the victim has stated that on 8th July 2020 at about 10:00-10:30 AM when she was going to deliver some articles to her *bhabhi*, the



appellant came to her and fed her biscuit which was containing some intoxicated substance. She has stated that the appellant allured her and asked her to come with him. She ate the biscuit and under influence of intoxicant, she went away with her. She has stated that the appellant had committed wrong act with her and forcibly established physical relationship repeatedly. On her denial to do so, he was beating her and whenever he was going outside the house, he was putting a lock at the main gate. She asked her many times that she should be allowed to go to her home but he was not agreeing and he was beating her. She has stated that yesterday night the appellant had started to take her to her house but on way he was caught by police. The 164 CrPC statement (Exhibit 'P-1/PW-1') was recorded immediately after recovery of the victim. In course of trial, the victim (PW-1) has remained wholly consistent. She has reiterated the manner in which she was taken away by the appellant and kept confined for two months eight days at Motihari during which the appellant was forcibly making relationship with her. The victim (PW-1) has stated that she was knowing the accused for last about one year as he was in his neighbour residing as a tenant in the house of a Judge Sahab. In course of her cross-examination, the defence could not elicit any



material contradiction in her testimony so as to take away her creditworthiness.

32. Father of the victim (PW-2) has deposed that after submitting information in the police station with regard to the missing of his daughter when he returned and saw the CCTV footage of Harvest Moon Public School, which is in front of his house, he found that this appellant started with a four wheeler white colour vehicle and at the same time his minor daughter hurriedly came out of her house and from that time she went missing. This witness has stated that the appellant was also missing from his house, therefore, he had reasons to believe that the appellant had allured and kidnapped his minor daughter. He was informed by police on 15.09.2020 about recovery of his daughter whereafter he had gone to Town Police Station where he found the victim girl and the appellant. His daughter informed him that the appellant had committed wrong act with her. His statement was also recorded under Section 164 CrPC wherein he had disclosed the entire facts. He proved his signature on the written information which has been marked Exhibit 'P-3'. In cross-examination, he has stated that the appellant was residing at a distance of 100 feet from his house but he was not on visiting terms and prior to the occurrence, his daughter had not made any



complaint against him. This Court has noticed that even as PW-2 has stated that the appellant had also gone missing from the same time, the defence did not question him on this. It is, thus, evident that the victim was taken away by the appellant and for that reason he was also missing from his house since then.

33. Mother of the victim (PW-3) and uncle of the victim (PW-4) are the other prosecution witnesses who have supported the prosecution case. The doctor (PW-5) had not found any bruises, cut mark or any trauma on the body of the victim but on P/V examination he found the hymen ruptured, however, there was no foreign body, no bleeding and no mark. PW-5 has proved the report (Exhibit 'P-4') and the pathology report (Exhibit 'P-5'). In his cross-examination, the doctor was asked as to whether bleeding would take place if rape is committed upon a minor for the first time? The doctor opined that if rape is committed on a minor for the first time, bleeding may take place or bleeding may not take place. It is evident from the suggestion itself that the defence put question to doctor (PW-5) with a presupposition that the victim was a minor.

34. The I.O. (PW-6) has stated that he had assumed the charge of investigation and had recorded the statement of the witnesses prior to recovery of the victim girl. The witnesses had



raised suspicion taking name of the accused and had stated that the accused had committed this act. This Court finds that the I.O. (PW-6) has remained negligent in the matter of further investigation after recovery of the victim girl because he had not recorded the statement of the victim under Section 161 CrPC but on the very next day, her statement was recorded before a learned Magistrate under Section 164 CrPC which has been marked Exhibit 'P-1'. This would, however, not ensure any benefit to the accused-appellant.

35. In this case, the defence has examined one Deepak Kumar as a witness. The defence witness is not related to the appellant but he resides in the same *mohalla* with the appellant. He had come to depose on his own. In his examination-in-chief, he has stated that the appellant has no criminal antecedent and he is known as a social worker and having clean image, he is engaged in politics. He was suggested by the prosecution that he was a tutored witness and was deposing at the instance of the wife of the appellant and he had made false statements which he denied.

36. We further find that in his statement under Section 313 CrPC, the appellant has though claimed that he is innocent but has stated that he was coming from Motihari with the victim to



drop her at her house but he was falsely implicated. His age at the time of his statement is disclosed as 42 years.

37. From the entire materials on the record, we find that in this case, the victim being a minor was allured and taken away by the appellant who was at the relevant time aged about 40 years. He was neighbour of the victim and was known to the victim, therefore, he was in a position to allure her. From the entire materials on the record, we find no reason to disbelieve the victim. In our opinion, the victim is a sterling witness. The victim has narrated the entire incident and how she was kept confined for over two months during which the appellant repeatedly established relationship with her.

38. We find no reason to interfere with the impugned judgment and order of the learned trial court.

39. This appeal has no merit. It is dismissed accordingly.

40. Let a copy of the judgment together with the trial court records be sent down to the learned trial court.

40. We acknowledge the assistance rendered by Mr. Manoj Kumar No. 1, learned Advocate as Amicus Curiae for the appellant. A consolidated sum of Rs. 15,000/- (Rupees Fifteen Thousand/-) shall be paid to the learned Amicus Curiae by the



Patna High Court Legal Services Committee within one month
from the date of receipt of a copy of this judgment.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

SUSHMA2/Rishi-

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2025
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