IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.598 of 2024

Arising Out of PS. Case No.-397 Year-2021 Thana- SAHPUR District- Bhojpur

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Victim D/O Manish Tiwary R/O Vill. and P.O.- Bilauti, P.S.- Shahpur, Dist.- Bhojpur, under Guardianship of his Natural and Legal Gardian namely Manish Tiwari aged about 43 years, S/O Avadhesh Tiwary

... ... Appellant/s

Versus

1. The State Of Bihar
2. Manu Tripathi Son of Mukul Chand Tripathi R/O Vill. and P.O.- Bilauti, P.S.- Shahpur, Dist.- Bhojpur

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arvind Kumar, Advocate
For the State	:	Mr. Ajay Mishra, APP
For the Informant/Victim:		Mr. Ajay Kr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 18-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 19.01.2024 passed by the learned II Additional District and Sessions Judge VI-cum-Special Judge POCSO, Bhojpur in POCSO Case No. 14 of 2022 arising out of Shahpur P.S. Case No. 397 of 2021, whereby Respondent No. 2 has been acquitted by the learned Trial Court from the charges of Sections 354, 448, 504 and 506 of the Indian Penal Code and Section 8 of the POCSO Act.

2. Vide order dated 26.10.2024, notice was issued to

Respondent No. 2, upon which he appeared by filing Vakalatnama through learned Advocate, Mr. Ajay Kumar Singh.

3. The prosecution case, in brief, is that on 11.12.2021, between 9:00AM to 10:00 AM, the informant/victim was alone at home, as her parents had gone out. During this time, the accused, Manu Tripathi (Respondent No.2), came to her residence under the pretext of conducting an election campaign despite the Model Code of Conduct being in force. He unlawfully entered the house and physically abused the victim.

4. On the basis of written complaint of the informant, Shahpur P.S. Case No. 397 of 2021 was instituted under Sections 354, 448, 504, and 506 of the I.P.C. and Section 8 of the POCSO Act and investigation was taken up by the police. The police after investigation submitted charge sheet against Respondent No. 2 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined four witnesses i.e., PW1- Victim, PW2- Victim's Father, PW3- Victim's Mother and PW4- Manoj Kumar, Investigating Officer.

The prosecution has also produced certain documents, which are marked as Exhibits: Exhibit P1-signature of the victim/informant on the written application, Exhibit P2-endorsement of SHO on the written application, Exhibit P2a & 2b-signature of SHO on the backside of the F.I.R., Exhibit X-photocopy of admit card of the victim, Exhibit X-1-photocopy of transfer certificate of the victim, Exhibit 3- handwriting and signature on charge sheet. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial Court has acquitted the accused persons.

6. Learned counsel for the appellant has submitted that the impugned judgment passed by learned Trial Court is bad in law as well as on facts. Further, it was submitted that the learned Trial Court has failed to scrutinize the evidence on the record, which proved the manner of occurrence as well as place of occurrence, erroneously reached on wrong findings.

7. We have heard learned counsel for the appellant and have also gone through the records of the case.

8. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

9. Upon perusal of the record, it is evident that Mukesh and Subhanti to whom the victim allegedly narrated the incident, were not examined at trial. Mukesh is stated to be the scribe of the complaint on the victim's narration. Non-examination of such material witnesses, without any cogent explanation, attracts an adverse inference under Section 114(g) of the Indian Evidence Act, 1872, which reads as :

> *"**Section 114. Court may presume existence of certain facts:** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
> *llustrations*
> *The Court may presume --*
> *(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;*
> *(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;*
> *(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;*
> *(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;*
> *(e) that judicial and official acts have been regularly performed;*
> *(f) that the common course of business has been followed in particular cases;*
> *(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;*
> *(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;*
> *(i) that when a document creating an obligation is*

> *in the hands of the obligor, the obligation has been discharged.*
> *But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it: --"*

10. As the complaint/FIR is not substantive evidence, its contents could have been proved only through the scribe and the victim; in their absence the prosecution failed to lead the best evidence and the defence stands prejudiced. At this juncture, it is noteworthy to point out the decision made by the Hon'ble Supreme Court in the case of ***Malkiat Singh and Ors. vs. State of Punjab*** reported in ***1991 SCC (4) 341***, wherein it was observed that:

> *"The First Information Report given by the Chowkidar was admitted in evidence with the consent of the defence. It is settled law that the First Information Report is not substantive evidence. It can be used only to contradict the maker thereof or for corroborating his evidence and also to show that the implication of the accused was not an after-thought...."*

11. The prosecution has not produced any documentary or medical evidence regarding the age of the victim. In the absence of reliable proof as contemplated by settled principles (birth certificate/school records and, failing those, medical opinion), the fact that the victim was a "child" under Section 2(d) of the POCSO Act remains unproved.

Consequently, the provisions of the POCSO Act cannot be invoked, and the statutory presumption under Section 29 does not arise. At this juncture, it is noteworthy that in the case of ***Rishipal Singh Solanki vs. State of Uttar Pradesh & Others*** rerported in ***(2022) 8 SCC 602***, the Hon'ble Supreme Court explained the law relating to the determination of age in claims of juvenility. The Court held that when someone raises a claim of juvenility, the initial burden of proof lies on that person to satisfy the Court. However, if the person is able to produce documents mentioned under Rule 12(3)(a)(i),(ii), and (iii) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 framed under the Juvenile Justice (Care and Protection of Children) Act, 2000, or under Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, then such documents would be enough for the Court's prima facie satisfaction. On the basis of these documents, a presumption of juvenility can be drawn. The Court also emphasized that if age determination is based on school records or similar evidence, then such records must be considered in light of Section 35 of the Indian Evidence Act. This is because public or official records maintained in the discharge of official duty carry more credibility compared to private documents.

12. Further, the victim's statement was not recorded under Section 164 CrPC. While such statement recording is not a legal *sine qua non* for conviction, but in cases hinging on the victim's version and hearsay narration to third parties, a recorded statement serves as an assurance against tutoring and embellishment. Its absence particularly when material witnesses are withheld weakens the probative force of the prosecution case.

13. On perusal of the record, it is evident that the Investigating Officer (PW4) does not support the prosecution version on material particulars. Initially, the case was instituted on 11.12.2021 on the basis of the victim's written complaint, wherein offences under Sections 354, 447, 504 and 506 of the IPC were registered. The Investigating Officer inspected the place of occurrence, prepared a description of the house and surroundings, and recorded statements of the victim, her parents, and one Yogendra Tiwari, who supported the version of the victim. Thereafter, the matter was transferred to the Mahila Police Station, Bhojpur, for specialized investigation.

14. At Mahila Police Station, the statement of the victim was formally recorded under Section 161 Cr.P.C and age verification documents, including her birth certificate, Aadhaar

card and school certificate, were collected. These documents confirmed her minority, thereby attracting the provisions of the POCSO Act. Though medical examination could have further corroborated the allegation, the victim and her parents declined medical testing. The Investigating Officer, therefore, proceeded without medical evidence.

15. It further appears that during investigation, certain contradictions came on record. The victim admitted that she did not narrate the incident to anyone immediately and certain material facts, such as the allegation that the accused caught or pressed her down, did not find mention in the original complaint. Similarly, her mother alleged that the accused entered the house and misbehaved with the victim, whereas her father stated only that the accused attempted to take political advantage during election campaigning and did not specifically narrate any misbehaviour. These inconsistencies were duly noted by the Investigating Officer.

16. Nevertheless, after considering the evidence on record, including the consistent portion of the victim's testimony, corroboration from her mother, proof of age, and circumstances of the accused's entry into the house, the Investigating Officer formed an opinion that sufficient materials

existed to proceed against the accused. Accordingly, charge sheet was submitted on 31.03.2022 under Sections 354, 448, 504, 506 IPC and Section 8 of the POCSO Act. These investigative lapses create a reasonable doubt which the prosecution has failed to disprove.

17. Criminal charges must be proved beyond reasonable doubt. Here, the withholding of material witnesses, failure to prove age (thereby excluding POCSO), the absence of a Section 164 statement, and the Investigating Officer's non-support cumulatively casts shadow of reasonable doubt on the prosecution case. The omissions are not mere irregularities; they are fatal defects depriving the Court of reliable and legally admissible proof of the essential facts.

18. We find that the findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal case, the identity of the accused is to be established, so as to prove his guilt beyond the shadow of all reasonable doubts. Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

19. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the

Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das vs. State of Tripura*** reported in ***(2011) 9 SCC 479***, paragraphs 13 & 14 of which read as under:

> ***"13.*** *It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.*
>
> **14.***There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law.*

> *While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference………"*

20. In the case of ***Ghurey Lal versus State of Uttar Pradesh*** reported in (***2008) 10 SCC 450*** in paragraph 75, the Hon'ble Supreme Court reiterated the said view and observed as under:

> *"75. The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable."*

21. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the learned Trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not

be upset in absence of strong and compelling grounds.

22. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

23. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Alok Kumar Pandey, J)

Anushka/-

AFR/NAFR	
CAV DATE	
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