

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.558 of 2019**

Arising Out of PS. Case No.-22 Year-2016 Thana- MAHILA P.S. District- Bhagalpur

Pawan Kumar Mandal, Son of Sri Kailash Mandal, Resident of Village -  
Madhuban Tola, P.S.- Pirpainti, District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar Bihar

... .. Respondent/s

**Appearance :**

|                      |   |                                                                                                                                                             |
|----------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s  | : | Mr.Vindhya Keshri Sinha, Advocate<br>Mr.Niraj Kr. Singh, Advocate<br>Ms.Vijaya Laxmi Srivastava, Advocate<br>Ms.Muskan Singh, Advocate<br>Ms.Ruby, Advocate |
| For the Respondent/s | : | Mr.Satya Narayan Prasad, APP<br>Mr.Avinash Shekhar, Amicus Curiae                                                                                           |

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**and**  
**HONOURABLE MR. JUSTICE DR. ANSHUMAN**  
**CAV JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)**

**Date : 16-12-2025**

Judgment of conviction, dated 12.03.2019 and Order of sentence, dated 16.03.2019, passed by the learned Additional District and Sessions Judge-I-cum-Special Judge (POCSO Act), in GR No. 1508 of 2016, arising out of Bhagalpur Mahila Police Station Case No. 22 of 2016, whereby and whereunder, the appellant was guilty and convicted under Section 235 of the Cr.P.C. for committing offence under Section 4 of the POCSO Act and thereby sentenced to suffer rigorous imprisonment for life with fine of Rs 50,000 in default rigorous imprisonment for one year.

2. The judgment of conviction and order of sentence



is under challenge in the instant appeal.

3. Bhagalpur Mahila Police Station Case No. 22 of 2016 was registered on 11<sup>th</sup> of May 2016 under Section 376 / 420 of the IPC and Section 4 of the POCSO Act on the basis of a written complaint submitted by the prosecutrix stating herself a minor girl aged about 16 years on the date of lodging the complaint. It is alleged by the prosecutrix that marriage of her cousin sister was solemnized with the cousin brother of the appellant. After such marriage, both the appellant and the prosecutrix came closer to each other. They often used to cut jokes and visit each other's houses. In course of time, their friendly relationship turned into a love affair. As a result of the love affair, both of them cohabited and that time the appellant promised to marry her. Subsequently on such promise of marriage, the appellant took her inside the agricultural land outside the village and established physical relationship with her. When the prosecutrix later put pressure upon the appellant to marry her, he denied. Then the prosecutrix informed the matter to her parents. Thus, it was alleged that the appellant committed penetrative sexual assault/rape, upon her on false promise of the marriage.

4. The SHO of Bhagalpur Mahila Police Station,



namely Gyan Bharti, took up the case for investigation. During investigation, she got the prosecutrix medically examined and obtained the medical examination report. She also visited the place of occurrence and recorded its topography in the case diary, arrested the accused, examined the witnesses, got the statement of the victim girl recorded under Section 164 of the Cr.P.C., and finally submitted a charge-sheet against the accused/appellant under Sections 376 and 420 of the IPC and Section 4 of the POCSO Act.

5. Since the offence under the POCSO Act is exclusively triable by the learned Special Judge, the case was committed to the court of the learned Additional Sessions Judge, First Court-cum-Special Judge, POCSO Act, for trial. The lower court record reveals that on 4<sup>th</sup> of May 2017, the learned Judge in the court below framed charges against the appellant under Section 376, 420 of the IPC and Section 4 of the POCSO Act. The accused pleaded not guilty when the charges were read over and explained to him. In order to bring home the charges against the accused, the prosecution examined as many as 12 witnesses. Among them, P.W. 1 is the prosecutrix herself; P.W. 2 is the mother of the prosecutrix; and P.W. 3, Dilip Mandal, and P.W. 4, Akhilesh Kumar, claimed to be



witnesses of the occurrence. From the evidence of PW6, Kishori Mandal, it is ascertained that local people came to know about the incident, and they tried to amicably settle the dispute between the prosecutrix and the appellant in a village meeting, but no decision could be arrived at. PW7, Shiv Kumar Mandal, is the father of the prosecutrix. He stated on oath that on 4<sup>th</sup> of May 2016, at about 1 :00 A.M. at night, his wife told him that the prosecutrix was missing from her home. The witness informed the matter to the Sarpanch of local panchayat. The Sarpanch of the village and other people conducted a search for the girl. She was recovered at about 3:00 / 4:00 A.M. On being asked, the prosecutrix informed them that the appellant committed rape upon her several times on a false promise of marriage. The matter was referred to the panchayat. A village shalish was held, the appellant was not present, in the said meeting. The father of the appellant, namely, Kailash Mandal refused to accept the proposal of the panchayat of arranging marriage of the prosecutrix with the appellant. Then P.W. 7, his wife and son Abhimanyu Kumar Mandal brought the prosecutrix to Bhagalpur Mahila Police Station. The prosecutrix lodged a complaint in the police station. P.W. 7 also put his signature on the said complaint, it was written by the son of the



P.W. 7, Abhimanyu Kumar. The written complaint was marked as Exhibit 1 and the signature of the P.W. 7 was marked as Exhibit 1/1. P.W. 8 Abhimanyu Kumar is the son of the P.W. 7. He corroborated the evidence of the P.W. 7 in his evidence. He also signed on the written complaint as scribe and his signature was marked as Exhibit 1/2. P.W. 9 is the Investigating officer of the case. P.W. 10, Vinod Mandal, failed to throw any light over the said incident. On the other hand, he stated on oath that he heard that marriage of the appellant would be solemnized with the daughter of P.W. 7, Shiv Kumar Mandal. Same is the evidence of P.W. 11 Dwarika Mandal and P.W. 12 Yamuna Kapri. The statement of the prosecutrix recorded under Section 164 of the Cr.P.C. on 13<sup>th</sup> of May 2016 was marked as Exhibit 2. The medical examination report of the prosecutrix was marked as Exhibit 3 and Exhibit 4 was the formal FIR. After examination of the witnesses on behalf of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. The defense case, as disclosed from the trend of cross-examination of the witnesses on behalf of the prosecution and examination of the accused under Section 313 of the Cr.P.C., appears to be complete denial of the prosecution case.

6. Only point for consideration in the instant appeal is



as to whether the learned Trial Judge was justified in holding the appellant guilty for committing offence under Section 4 of the POCSO Act and the order of conviction and sentence is sustainable or not.

7. When the instant appeal was taken up for argument, we noticed that the prosecutrix was not represented by her learned counsel. Since the instant appeal is pending from 2019, we proposed to appoint Mr. Avinash Shekhar, learned Advocate as Amicus Curiae to assist this Court on behalf of the prosecutrix. He graciously accepted the proposal and advanced his argument on behalf of the prosecutrix.

8. We have also heard Mr. Mr.Vindhya Keshri Sinha, learned Senior Counsel on behalf of the appellant and Mr. Satya Narayan Prasad, learned APP on behalf of the State of Bihar.

9. The evidence on record shows that the marriage of the elder sister of the prosecutrix was solemnized with the cousin brother of the appellant. The prosecutrix and appellant became acquainted after the said marriage. In course of time, they came close to each other. Friendship developed between them and it culminated in a love relationship. It is alleged by the prosecutrix that on the promise of marriage, the appellant committed penetrative sexual assault with her.



10. That they used to meet together the agricultural land on a bamboo plank ('machan') in an objectionable condition. This was corroborated by two independent witnesses, namely, Dilip Mandal (P.W. 3) and Akhilesh Kumar (P.W. 4). The aforesaid witnesses saw the prosecutrix and the appellant in an objectionable and naked condition on the said bamboo plank.

11. According to the prosecution case, the prosecutrix was ravished for the last time on 4<sup>th</sup> of May, 2016. She was medically examined by Dr. Shilpi Rani at LNGP Sadar Hospital, Bhagalpur on 11<sup>th</sup> of May, 2016. The Medical Officer did not find any mark of injury on any part of the body of the prosecutrix including her private part. On clinical examination, the Medical Officer found vagina of the prosecutrix lax and admits two fingers. The Medical Officer advised radiological determination of age and sent her to the department of Radiology of the J.L.N. Medical and Hosipital, Bhagalpur for X-ray of pelvis, X-ray of bone of left wrist joint of- A.P Lat, X-ray of Bone of left elbow jt- AP and X-ray of bone left ankle jt- A.P. lat and for U.S.G., lower abd (ut & anexa) to determine as whether the prosecutrix was pregnant or not.

12. On the basis of radiological report, the Medical Officer did not find any evidence of recent sexual intercourse



but on the basis of her findings, the vagina was lax, chances of previous sexual intercourse was not ruled out.

13. The learned Senior Counsel on behalf of the appellant, at the outset, submits that Section 2 (D) of the POCSO Act defines child which means any person below the age of 18 years.

14. It is contended by the learned Senior Counsel on behalf of the appellant that indisputably relationship between the appellant and the prosecutrix was consensual and due to the result of love affair. Therefore, this is not a case where the victim girl was subjected to penetrative sexual assault by force. Of course it is submitted by learned Senior Counsel on behalf of the appellant that consent is immaterial. However a minor girl is subjected to sexual assault.

15. However prosecution hopelessly failed to prove that at the time of occurrence, the prosecutrix was below 18 year of age.

16. The issue of determination of the age of the prosecutrix came up for consideration before the Hon'ble Supreme Court in *Jarnail Singh v. State of Haryana*, reported in (2013) 7 SCC 263. At the relevant point of time, the Juvenile Justice (Care and Protection of Children) Act, 2000, and the



Juvenile Justice (Care and Protection of Children) Rules, 2007, were in force.

17. The Hon'ble Supreme Court held in Jarnail Singh (supra) that meaning of determining of "minor" conclusively has been expressed in Rule 12 (3) of the 2007, Rules. Under the aforesaid provision, the age of child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a



panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.

18. The Hon'ble Supreme Court also held in the aforesaid judgment that though Rule 12 of 2007 Rules is strictly applicable only to determine the age of child in conflict with law, the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix.

19. The provisions of Rule 12 (3) of 2007 Rules is codified in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2005. Section 94 run thus:-

*“94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under*



*any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.*

*(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —*

*(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, 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:*

*Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.*

*(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”*

20. Thus, a close reading of sub-Section (2) of Section 94 states that where the Juvenile Justice Committee or



the Juvenile Justice Board has reasonable grounds for doubt regarding the age of the child, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, 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.

21. It is pointed out by the learned Senior Counsel on behalf of the appellant that in the instant case the Investigating Officer did not taken any attempt to collect the school leaving certificate or matriculation or equivalent certificate of the prosecutrix. There is absolutely no evidence that whether any of such certificate was not in custody of the prosecutrix or her parents. If any of such certificates were not available the date of birth of the prosecutrix could have been proved by any certificate issued by the municipal corporation, municipality or panchayat.



22. The I.O. did not taken any attempt to collect such certificate. The Trial Court relied on ossification test report. However, ossification test report can be the basis of age determination test only in the absence of any certificates envisaged in Section 94 (2) (I) and (ii) of the 2015, Act.

23. In the instant case, according to the learned Senior Counsel on behalf of the appellant, the prosecutrix hopelessly failed to prove that the prosecutrix was a child at the time of the incident. It is submitted by the learned Senior Advocate on behalf of the appellant that in the ossification test report, the Medical Officer opined that the age of the prosecutrix on the relevant time of ossification test was below 18 years. According to him the said report is vague.

24. Referring to a decision in the case of *P Yuvaprakash v. State of T.N.*, reported in (2024) 17 SCC 684, the Hon'ble Supreme Court upon appreciation of evidence found that the victim deposed that she was in love with the accused and she was adamant to live with him. She even consumed poison, when she was denied to live with the accused and was hospitalised. Though she rescinded from her statement, medical evidence shows that there was no sexual injury on her private parts and there was no evidence to show that the victim



was sexually assaulted within 48 hours before medical examination.

25. Under such circumstances, the Hon'ble Supreme Court held that the prosecution failed to establish that there was penetrative sexual assault as a result of coercion and compulsion by the accused.

26. It is submitted by the learned Senior Counsel on behalf of the appellant that factual circumstances of this case is almost same like that of the reported decision mentioned above. In the FIR itself the victim declared that there was a love affair between her and the accused. As a result of love affair, there was a physical relationship between the two more than once. The medical officer did not find any injury on her private part. Therefore he invites the Court to apply the ratio of P. Yuvaprakash (supra).

27. In P. Yuvaprakash (supra) the Hon'ble Supreme Court got the opportunity to state the law relating to determination of age of the prosecutrix. It was held by the Hon'ble Supreme Court that in respect of determination of age of the prosecutrix, Section 94 (2) of the 2015, Act is applicable. In the said reported decision, prosecution tried to prove the age of the victim relying on the transfer certificate and extract of



admission register. The Hon'ble Supreme Court held that the said two documents of the victim were not what Section 94 (2) (i) mandated. The said documents were also not in accordance with Section 94 (2) (ii) of the 2015 Act.

28. In the instant case, the prosecution failed to produce the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board, if available and in the absence thereof "the date of birth certificate given by the a corporation or a municipal authority or a panchayat." The prosecution relied on a ossification test report where the medical officer stated that the victim was below 18 years of age.

29. It is held in Modi's Medical Jurisprudence & Toxicology, 23<sup>rd</sup> Edition at page 292 :-

*"The determination of age on tests based on physical peculiarities, where test of ossification has not been done, is generally not very certain. Where the opinion of the doctor was formed by judging the teeth, appearance and voice, the Court observed that a certificate based on it was worthless. The indication o age afforded by appearance of wisdom teeth is notoriously untrustworthy. A medical officer may give an opinion as to the age of a prosecutrix on the basis of the general development of her body, like her*



*secondary sex characters. Where opinion is based on particulars with regard to height, weight etc, where the indications given by the doctor could be observed by a layman, the statement of the doctor is a mere opinion”*

30. The test of ossification of bones is of value in determining age. Where it is to be determined whether the age of a girl is below 1 years, an x-ray examination of the bones is absolutely necessary.

31. Modi further describes, “ opinion based on fusion of epiphysis of the bones are more trustworthy. An ossification test, though not a sure test, is generally accepted as the best available test for the determination of the age of the human beings. However, it is certainly not conducive and slight variation in that opinion is always possible. There can be a variation of a year or two on either side in the opinion regarding age based on ossification test.”

32. On this issue, the decision of the Hon’ble Supreme Court in ***Jaya Mala vs Home Secretary, Government Of Jammu & Kashmir*** reported in ***AIR 1982 SC 1297*** and ***Dholu son of Jyutu Gond v. State of Madhya Pradesh*** reported in ***(1985) Crimes 157 (M.P)*** may be referred to in support of assessment of age of a person on the basis of ossification test that it varies by two years on either side.



33. It is needless to say that when two views are possible regarding the age of the victim i.e., when the medical officer upon ossification test says that the victim was below 18 years of age she might be 16 years of age or 19 years of age at the time of alleged incident and the Court shall always accept the age of the victim that favours the accused. Thus, on the basis of the ossification test, it might be ascertained that the victim was either 18 / 19 years at the relevant point of time when there was a consensual sexual intercourse between the parties.

34. The learned Amicus Curiae on the other hand submits that the victim herself stated in her complaint that she was aged about 16 years at the relevant point of time. The defence did not raise any objection with regard to the age of the victim during trial of the case. Determination of age under Section 94 (2) of the 2015, Act can only be pressed to action when the question as to the age of the victim or a juvenile in conflict with law is in issue. In other words, if a doubt or question is raised about the juvenility of the child in conflict with law or the victim, Section 94 (2) shall be pressed into action. From the four corners of evidence on record, it appears that the accused did not challenge the age of the victim.



Therefore, in appeal such question cannot be raised by the defence.

35. Secondly it is submitted by the learned Amicus Curiae on behalf of the informant that in a case of minor victim consent is not at all material. Even if the incident is consensual the accused is liable to be convicted and he was rightly convicted and sentenced by the Trial Court.

36. The learned Advocate on behalf of the State has also adopted the argument advanced by the learned Amicus Curiae.

37. Protection of children from sexual offences Act, 2012 was promulgated to protect the children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidentally thereto.

38. It is found that minor children are the most vulnerable sections of society who become victims of sexual assault. According to the NCRB report titled "Crime in India" published in September, 2025, there were 70,053 recorded cases of sexual offences involving children in 2023, an increase from 66,996 cases in 2022, which highlights a concerning trend. Therefore, the legislature, on its own wisdom, promulgated the



POCSO Act, consisting of higher punishment even than offences under Section 376 of the IPC. Since it is a special act, all the requirements of offence are to be proved strictly. So far as the victims are concerned, they must be below 18 years of age. Therefore, it is the primary duty of the prosecution to collect evidence that the victim was below 18 years of age on the date of commission of offence.

39. In the instant case prosecution did not take any attempt to collect such evidence. Secondly, the relationship between prosecutrix and the accused was indisputably consensual. They were made physically involved more than once. Local villagers also saw them in objectionable condition on a bamboo plank “*Machan*” several times.

40. Under such circumstances, it is our duty to consider if the charge under Sections 376 / 420 of the IPC was established on due consideration of evidence on record.

41. In ***Mahesh Damu Khare v. State of Maharashtra*** reported in ***(2024) 11 SCC 398***, the following observations were made:-

*“27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship*



*must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.*

*28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.”*

42. Relying on the above-mentioned paragraphs in Mahesh Damu Khare (supra), the Hon’ble Supreme Court in ***Samadhan v. State of Maharashtra & Anr*** in ***Cr. Appeal No. 5001 of 2025*** decided on 24<sup>th</sup> of November, 2025 held in paragraphs no. 28 and 29 as hereunder:-

*“28. We find that the present case is not a case where the appellant lured respondent No.2 solely for physical pleasures and then vanished. The relationship continued for a period of three long*



*years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.*

*29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.”*

43. In view of the above discussion, we have no other alternative but to hold that prosecution has failed to bring home the charge against the accused even under Sections 376 / 420 of the IPC. Mere breakup of a relationship between a consenting couple cannot result in the initiation of a criminal proceeding. What was a consensual relationship between the parties at the initial stage cannot be given a colour of the criminality when



the said relationship does not fructify into marriage.

44. For the reasons stated above, we are of the view that the judgment and order of conviction passed by the Trial Court is liable to be dismissed.

45. Accordingly, the Judgment of conviction, dated 12.03.2019 and the Order of sentence, dated 16.03.2019, passed by the learned Additional District and Sessions Judge-I-cum-Special Judge (POCSO Act), in G.R. No. 1508 of 2016, arising out of Bhagalpur Mahila Police Station Case No. 22 of 2016, are set aside.

46. The instant appeal is allowed.

47. The appellant be released at once, if he is in jail.

**(Bibek Chaudhuri, J)**

**Dr. Anshuman, J:** I agree.

**(Dr. Anshuman, J)**

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