

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3028 of 2023

Arising Out of PS. Case No.-103 Year-2019 Thana- MAHILA P.S. District- Bhojpur

Hare Ram Ram @ Hareram Kumar S/o Rang Lal Ram R/o Village-
Hareyadih, Nonar, P.S- Piro O.P.(Hasan Bazar), Distt.- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ravindra Kumar, Adv.

For the Respondent/s : Mr. Zeyaul Hoda, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 03-01-2025

Heard the parties.

2. The present matter was taken on board for considering the prayer of bail and suspension of sentence of above named accused/appellant, namely, Hare Ram Ram @ Hareram Kumar during pendency of appeal under Section 389(1) of the Code of Criminal Procedure (in short Cr.P.C.) as raised through memo of appeal itself, which preferred under Sections 374(2) of the Cr.P.C., for which a submission was advanced as not to pressed for the present.

3. Accordingly, I.A. No. 01 of 2024 stands dismissed as not pressed.

4. At this point, learned counsel for the appellant



submitted that appellant namely, Hare Ram Ram @ Hareram Kumar is in custody for more than one year and six months against sentence of five years, therefore this appeal be heard finally in view of Section 374(4) of the Cr.P.C.

5. Learned APP for State while opposing the prayer of bail and suspension of sentence submitted that on earlier occasion the bail prayer of appellant was also dismissed as not pressed vide order dated 27.09.2023 of this Court, whereas he didn't objected the submission of learned counsel of appellant regarding final hearing of this matter.

6. Accordingly, this matter was taken up for final hearing on board.

7. The above-mentioned appeals have been preferred by the appellants/convicts under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the judgment of conviction dated 12.06.2023 and order of sentence dated 17.06.2023 passed by learned Additional District and Sessions Judge VI cum Special Judge POCSO, Bhojpur, in POCSO Case No. 36 of 2019 (arising out of Mahila P.S. Case No. 103 of 2019),



whereby the concerned trial court has convicted the appellant/convict for the offences punishable under Sections 354 of the IPC and sentenced them to undergo rigorous imprisonment for three years and fine of Rs. 5,000/- in default of payment, learned trial court further ordered appellant to undergo rigorous imprisonment for three months. The sole appellant has been further awarded five years rigorous imprisonment under Section 10 of the POCSO Act alongwith fine of Rs. 5,000/- where in default of payment of fine the appellant is further ordered to undergo three months rigorous imprisonment. Both the sentences shall ordered to run concurrently.

8. The brief case of prosecution as per written information of the informant (PW-1) is that on the day of occurrence i.e., 11.06.2019 at about 2.00 P.M. her four years old daughter was playing at her door, the accused/appellant namely, Hare Ram Ram, who is *dewar* of the informant (victim's mother) came there and took the victim in his lap and carried away her to his cowshed, for which she did not raised doubt as it was usual. Thereafter, she went on work. It



is further alleged that after 10 minutes when the victim did not return the informant/PW-1 found victim weeping loudly on asking she told that the accused/appellant took her inside Cowshed thereafter put her on “*Chowki*”, committed wrong work upon her. She further alleged that in presence of several persons, when pant of victim was opened, white color liquid like substance was found on her body. When the informant went to the house of appellant he was not present there.

9. On the basis of aforesaid written information, the police registered a case, as Mahila P.S. Case No. 103 of 2019 for the offence under Sections 376, 511 of the Indian Penal Code and section 6 of POCSO Act, against the appellant.

10. To substantiate its case, the prosecution has examined altogether six witnesses, who are as under:-

Prosecution Witnesses No(s).	Names
P.W. 1	Mother of the victim
P.W. 2	Grandmother of the victim
P.W. 3	victim
P.W. 4	Dr. Vijyeta Prasad
P.W. 5	Raj Keshri Kunwar @ Dhan Keshri Kunwar
P.W. 6	Ranjana Sinha (IO)



11. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-P-1	Signature of informant on <i>fardbeyan</i>
Exhibit-P-2	Signature of informant on production cum seizure list
Exhibit-P-3	Medical Report of victim
Exhibit-P-4	Endorsement and signature of SHO on <i>fardbeyan</i>
Exhibit-P-5	Seizure list
Exhibit-P-6	Charge sheet
Exhibit-P-7	FSL Report

12. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all incriminatic evidences as surfaced against him during trial and claimed his complete innocence and false implication.

13. Neither any defence witness nor any document was exhibited in support of defence by appellants/convicts.

14. Upon the basis of evidences as surfaced during the trial and also by taking note of the argument as



advanced by the learned counsel appearing on behalf of the parties, the learned trial court convicted appellant/convict and passed order of sentence, as stated hereinabove.

15. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellant/convict preferred the present appeal.

16. Hence the present appeal.

Argument on behalf of the appellant/convict:

17. Mr. Ravindra Kumar, learned counsel for the appellant/convict submitted that the statement of victim as recorded under Section 164 of the Cr.P.C. and her testimony deposed before the Court being PW-3 appears full of contradictions on material aspects *qua* crime in question. It is submitted that the said contradictions regarding occurrence was completely overlooked by learned trial court. It is also pointed out that in view of the depositions of PW-1 and PW-6 who is the Investigating officer of this case seizure list also appears doubtful. It is submitted that doctor didn't find anything adverse. Learned counsel further submitted that the prosecution could not connect appellant with crime in question



on the basis of forensic report as appellant/convict was not examined medically in view of Section 53A of the Cr.P.C., though he apprehended immediately after the occurrence. It is pointed out that the victim is own niece of appellant and out of property dispute, the present false implications was raised. It is also submitted that from the adduced evidence it cannot be said that prosecution established foundational aspect of crime in question during the trial and, therefore, conviction cannot be secured merely by importing the provision of presumptions as available under Section 29 and 30 of the POCSO Act.

Argument on behalf of State:

18. Mr. Zeyaul Hoda, learned APP appearing on behalf of State categorically submitted that though admittedly there are material contradictions out of testimony of different prosecutions witnesses but all of them are consistent on the point of pulling pant of victim by appellant. In this context it is submitted that victim herself stated during the trial that appellant pulled her pant and committed thereafter "wrong work" upon her which reflect that same was pulled with



“sexual intent” though he admitted that this part is lacking from her statement recorded under Section 164 of the Cr.P.C. It is submitted that the statement recorded under Section 164 of the Cr.P.C. is not a substantial piece of evidence therefore weightage be given to the testimony of victim which recorded during the trial and, therefore, the convictions as recorded by learned trial court is not bad in eyes of law and therefore same does not required any interference at appellate stage.

19. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

20. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

21. The most important witness of crime in question is victim herself, who examined during the trial as **PW-3**. It appears from the perusal of record that occurrence took place on 11.06.2019 at 2 P.M., while victim went outside her home for playing to nearby area, from where



appellant/convict took her to an isolated room of his outer courtyard and after pulling down her pant committed wrong work upon her. Victim deposed categorically that during occurrence appellant did not open her cloth rather he touched her body only. It was further deposed that she fled away from the place of occurrence and immediately came to her mother and thereafter narrated the occurrence to her mother that appellant committed wrong upon her, whereafter an altercation took place between her mother and appellant/convict. She also deposed to undergo medical examination. She identified accused appellant before the Court during the trial.

21.1. Upon cross-examination, she deposed that appellant remains alone in his house along with his mother and father. During occurrence parents of convict were available at home but she did not raised any alarm when she was picked up by appellant/convict in her lap. She did not receive any injury during the occurrence and there was no bleeding. It was stated by victim that after the occurrence an altercation took place between the appellant and her mother.



She denied the suggestions regarding enmity between her parents and appellant, arising out of drainage system.

22. PW-1 is the informant of this case who is none but the mother of the victim. It was deposed by her that she know about the occurrence as she was told by her victim daughter, who by that time 5 years old. It was deposed that she after opening pant of her daughter found some white sticky substance on her lower part of her body whereafter she went police station and lodged this case. She identified her thumb impression upon written information given to police *qua* present crime in question on 11.06.2019, which upon her identification exhibited as **exhibit-P-1**. She also handover the pant of her victim daughter to police, which was duly seized and was also signed by her which upon her identification exhibited as **exhibit-P-2**. It was also deposed that her victim daughter was also medically examined. She identified the appellant/convict during the trial and deposed that he is related to her being brother-in-law(*dewar*).

22.1. Upon cross examination, she categorically stated that she is not the eye witness of the occurrence. She



also stated that on the date and time of the occurrence, her victim daughter was wearing frock of green color and pant of black color. It was categorically stated that the victim said her that she was raped by appellant/convict after opening her pant and upon so when she examined her after opening her pant, she found some dirty substance. She did not noticed blood in any part of body of her daughter. She categorically deposed that her daughter received injury on her leg. She also stated that mark was on pant of victim daughter. She didn't notice any injury mark on the body of her daughter. She shows aforesaid cloth mark to several persons gathered over there like Meena Devi, Dhan Keshri Kumar, Mother of Hareram Ram and other several persons, who said that it is a mark of some bad work. The said cloth was seized in police station. It was also categorically stated that the statement of her victim daughter was recorded by police and on next very day her daughter was examined medically. Initially she stated that police never visited the place of occurrence but subsequently it was stated that police visited place of occurrence but she is unable to collect the date and time. The



place of occurrence was not investigated by police before her rather same was shown by her mother-in-law to police. She did not notice anything which may be relevant with crime in question at place of occurrence. She denied any altercations with family of appellant/convict prior to this occurrence.

23. PW-2 is the grandmother of the victim she also appears hearsay witness of the occurrence as she was informed regarding occurrence by victim herself.

23.1. Upon cross-examination it was stated that appellant/convict is related with her as nephew. It was stated that both family lives separately. She stated that she was present when the occurrence was narrated to PW-1 by victim. She also noticed mud like mark on pant of the victim. She also accompanied informant to police station. She deposed at instance of Rita Devi/PW-1. She stated a new fact during her cross-examination that after the occurrence the thigh of victim become swollen and whole body becomes red. This fact was never deposed by PW-1/informant of this case and also by victim/PW-3.

24. PW-4 is Dr. Vijyeta Prasad, who examined



victim on 12.06.2019 at Sadar Hospital, Ara finding of which
are under :-

“(i) Mark of Identification:-

A wound on right hand.

(ii) On P/A examination - Soft NAD

(iii) No medical history.

(iv) Weight - 12 kg. Height - 3 feet

(v) Dentician - IDCBA/EDCBA, ABCDE / ABCDE

*(vi) On P/V examination - Hymen intact. No
tear. No bleeding. No any injury found on her
private area.*

*(vi) No SWAB taken for microscopical
examination.*

(vii) X-ray done on SHA. RLVS-62.

Report shows -

*X-ray Pelvis & B/L hip - A/P view shows no
fusion of epiphysis of bones at pelvic joint.*

*X-ray right elbow - A/P and lateral view shows -
No fusion of epiphysis of bones at elbow joint.*

*X-ray right wrist A/P and lateral shows - No
fusion of epiphysis of bones at right wrist.”*

25. PW-5, is Raj Keshri Kunwar @ Dhan Keshri Kunwar, who is a cousin grandmother of the victim she supported the occurrence and deposed that she came to know regarding present occurrence from PW-1/informant. She did not made her statement before the police during investigation.

26. PW-6 is Investigating Officer of this case who



after recording statement of PW-1 lodged present case regarding alleged occurrence dated 11.06.2019 which has been registered as Mahila P.S. Case No. 103/2019 dated 11.06.2019 for the offence under Section 376/511 of the IPC and 6 of the POCSO Act making appellant as an accused. The FIR was endorsed by SHO namely, Madhuri Kumari. He identified her signature regarding endorsement to lodge case, which upon his identification was exhibited as **exhibit-P-4**. He received the charge of investigation and thereafter recorded the statement of informant/PW-1 and also witnesses namely, Mina Devi and Ram Ji Ram (not examined). It was also deposed by him to prepare seizure list, which bears his signature, which upon his identification exhibited as **exhibit-P-5**, during the trial. He visited the place of occurrence and also got examined victim medically and recorded her statement under Section 164 of the Cr.P.C.. He also sent seized material for forensic examination and after completion of investigation he submitted charge-sheet bearing no. 112 of 2019 on 10.12.2019 for the offence punishable under Section 376(1) of the IPC and 6 of the POCSO Act against



appellant which upon his identification was exhibited as **exhibit P-6.**

26.1. Upon cross-examination, he stated to record the statement of the informant at first substance and thereafter recorded the statement of the victim. He did not examined the body of victim, while recording her statement. He did not noticed any mark of injury on the body of victim and therefore he did not issued any injury report. He did not noticed any mark related with occurrence at place of occurrence. It was categorically stated by him that he did not noted the statement of victim as recorded under Section 161 of the Cr.P.C. in case diary. He denied the suggestion that he never visited the place of occurrence.

CONCLUSION:-

27. From the aforesaid available evidence, it appears that several material contradictions surfaced out of testimony of PW-3 *qua* her statement recorded under Section 164 of the Cr.P.C., where she stated nothing about receiving injury or about bleeding. She did not even stated there that any "wrong work" was committed upon her by appellant. It



was stated that after the occurrence the appellant returned home by taking her in lap and thereafter, she visited to doctor. From the facial perusal of her statement as recorded under Section 164 of the Cr.P.C. it transpires that the victim received injury out of which some bleeding took place. The statement is not sufficient to suggest that her pant was pull down with sexual intent by appellant. It appears that she denied completely to receive any injury during occurrence and also any bleeding as stated by her while recording her statement under Section 164 of the Cr.P.C.

28. In aforesaid context *qua* occurrence, the depositions of PW-4 also appears important where upon examination of victim, hymen was found intact and no tearing was there, no bleeding and no injury was found in or around her private part. Even doctor categorically stated that he did not find any external injury on the body of the child including external or internal private part of the child. He also did not find any sign regarding rape in background of aforesaid medical evidence. If the testimony of victim be considered true then certainly some major contradiction appears to be



surfaced regarding the occurrence in view of aforesaid medical evidence.

29. PW-1 categorically stated during the trial, who is informant of this case and mother of victim and who met with the victim immediately after the occurrence that she noticed injury on her leg but said injury was not noticed by doctor upon medical examination on the very next day. As far bodily injury is concerned, PW-2 stated that after the occurrence the thigh of victim was swollen and body turns red but the said fact was also not deposed either by PW-1 or PW-3 (victim herself) and also was not noticed by PW-4 who conducted medical examination upon the victim. All such oral and scientific contradictions regarding injury makes the occurrence improbable on its face.

30. From the deposition and testimony of PW-1 who is the informant of this case, it appears from her examination-in-chief itself that she noticed "white substance" on the body of the victim after opening her pant, whereas in her cross-examination she stated that she noticed the mark of "white substance" on pant of the victim, whereas PW-2 said



that mark of mud like sticky substance was available on the pant of the victim. Upon forensic examination the said mark was found as human semen of a person having blood group-B in terms of **exhibit-P-7**. Admittedly, the appellant/accused was not examined medically after his arrest in view of Section 53 (A) of the Cr.P.C. not even his blood sample was obtained and no DNA test was done. In absence of the blood group of the appellant/convict he cannot be connected with forensic report which shows that the semen is of a human of blood group- B. Hence, the forensic report i.e., **exhibit-P-7** appears not conclusive in itself. The victim as a child is not a disputed fact and same was also not disputed at this appellate stage.

31. The understanding of victim regarding occurrence was well ascertained by the learned trial court while examining the victim by putting certain preliminary questions and after being satisfied she was examined. The understanding of victim was also affirmed by PW-1/informant who is none but the mother of the victim by stating during the trial that her child is well acquainted with the meaning of



“*balatkar*” (rape/penetrative sexual assault) but said fact is completely absent while recording her statement under Section 164 of the Cr.P.C. and also while testifying as PW-3, where she categorically stated that appellant did not open his pant during the occurrence and only touched her. This fact also creates a doubt regarding semen on the body part of the victim. Moreover, I.O./PW-6 stated that he did not record statement of victim under Section 161 of Cr.P.C. in case diary, which deprived appellant further to draw any attention towards contradiction as to impeach her credibility, which deprived appellant from his valuable right of defence.

32. Hence, having all such affirmative evidence regarding understanding of victim *qua* crime in question, testimony of victim and also her statement recorded under Section 164 of the Cr.P.C., can not be viewed with doubt for reason that she was only of 5 years old at the time of occurrence in view of submission as advanced by learned APP.

33. In aforesaid context, it would be apposite to reproduce para 22 of the legal ratio as approved by Hon’ble Supreme Court as available through ***Rai Sandeep vs. State***



(NCT of Delhi) reported in **(2012) 8 SCC 21**, which reads

as follows:-

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other



attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

34. Hence, from aforesaid factual and legal discussion, particularly by taking contradiction of statement of victim recorded under Section 164 of the Cr.P.C., and also her testimony, it can be said safely that she failed to qualify the test of “sterling witness”. As prosecution failed to established the foundational aspect of crime in question, import of presumption as available under Section 29 and 30 of the POCSO Act, does not arises.

35. Hence the appeal stands allowed.

36. The impugned judgment of conviction dated 12.06.2023 and order of sentence dated 17.06.2023 passed by learned Additional District and Sessions Judge VI cum Special Judge POCSO, Bhojpur, in POCSO Case No. 36 of 2019 (arising out of Mahila P.S. Case No. 103 of 2019) is hereby set aside/quashed.

37. Appellant namely, Hare Ram Ram @ Hareram Kumar is in custody in connection with this case, he is directed



to be released forthwith, if not required in any other case.

Fine, if any paid, by appellant, be returned to appellant immediately.

38. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.01.2025
Transmission Date	09.01.2025

