

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.691 of 2021**

Arising Out of PS. Case No.-125 Year-2019 Thana- SIKARPUR District- West Champaran

Santu Miyan S/O Jahur Ansari @ Jhur Ansari @ Jahur Miyan R/O Village-
Rajpur, P.S.- Shikarpur, District- West Champaran

... .. Appellant

Versus

1. The State of Bihar
2. Dhurandhar Mishra Son of Mritunjay Mishra Resident of Village - Rajpur,
P.S.- Shikarpur, District- West Champaran

... .. Respondents

Appearance :

For the Appellant : Mr. Milind Kumar Mishra, Advocate
For the Respondents : Mr. Dilip Kumar Sinha, Addl.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and**

**HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY)

Date : 16-04-2025

We have heard learned counsel for the appellant,
learned counsel for the informant and learned Additional Public
Prosecutor for the State.

2. The present appeal has been preferred for setting
aside the judgment of conviction dated 09.08.2021 (hereinafter
referred to as the ‘impugned judgment’) and the order of sentence
dated 10.08.2021 (hereinafter called the ‘impugned order’) passed



by the learned Additional District and Sessions Judge 7th cum Spl. Judge, POCSO, West Champaran, Bettiah (hereinafter called 'the learned trial court') in connection with Shikarpur P.S. Case No. 125 of 2019.

3. By the impugned judgment the appellant has been convicted for the offences punishable under Section 377 of the Indian Penal Code (in short 'I.P.C.') and Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act'). Through the impugned order, the appellant has been ordered to undergo rigorous imprisonment for 10 years under Section 377 IPC. Further, he has been ordered to undergo rigorous imprisonment for 20 years with fine of Rs. 20,000/- under Section 4 of the POCSO Act. He has also been ordered to undergo rigorous imprisonment for 20 years with a fine of Rs. 20,000/- under Section 6 of the POCSO Act. He has been ordered to undergo 7 years of rigorous imprisonment under Section 10 of the POCSO Act. All the sentences are to run concurrently.

Prosecution's Case

4. The case of the prosecution in brief is that the sister of the informant lives in his village, she has one son



aged about 5 years. The name of his father is Manu Tiwari who is deaf and dumb. On 25.03.2019 at about 6:00 PM, the appellant established unnatural physical relations with the boy, due to which, his anal canal was injured and blood started oozing out from his anal canal continuously.

5. On the basis of above written application of the informant Shikarpur P.S. Case No. 125 of 2019 was instituted on 25.03.2019 against the appellant for the offences punishable under Sections 377 of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act').

6. After investigation, police submitted charge sheet in above sections. Learned trial court also took cognizance in above sections.

7. The charges were read over to the appellant in Hindi to which he pleaded not guilty and claimed to be tried. Charges were framed for the offence punishable under Sections 377 of the IPC and Sections 4, 6, 10 of the POCSO Act. The statement of the appellant was recorded under Section 313 Cr.P.C. Accordingly, he pleaded innocence.



8. The prosecution examined as many as five witnesses and marked some document exhibits. The description of the witnesses and the documents brought in evidence by the prosecution are given hereunder in tabular form for a ready reference:-

List of Prosecution Witnesses

P.W.-1	Victim
P.W.-2	<i>Mama</i> of the victim (Informant)
P.W.-3	Govind Chandra (Doctor)
P.W.-4	Fanibhushan Singh (I.O.)
P.W.-5	Sandeep Kumar Sahi (seizure witness)

List of Prosecution Exhibits

Ext.-1	Statement of the Victim under Section 164 Cr.P.C.
Ext.-1/A	Thumb impression of the victim
Ext.-2	Compromise petition
Ext.-2/A	Thumb impression of the victim on compromise petition
Ext.-3	Written Application
Ext.-3/A	Signature of the informant on written application
Ext. 3/B	Signature of the Ugranath Jha(the then S.H.O.) on the FIR
Ext.3/C	Signature of Chandra Shekhar Prasad (SHO) on formal FIR
Ext. 3/D	Signature of Ugranath Jha on formal FIR
Ext.-4	Medical Report



Ext.4/A	Signature of the Doctor on Medical Examination Report
Ext.-5	Signature of the I.O. on the seizure list
Ext.-6	Signature of the I.O. on the Charge sheet
Ext.7	FSL Report

Findings of the Learned Trial Court

9. Learned trial court has held that in this case, witness no. 1 the victim has supported the case of the prosecution. He is a boy of five years and his testimony is unblemished and he has withstood the test of cross-examination and Doctor has also found bleeding from the anus. Other witness like PW.-2 the informant and PW.-4 (I.O.) have also supported the case of the prosecution. The I.O. has also seized the bloodstained cloth of the victim. The seizure list witness PW.-5 has not supported the case of the prosecution but overall the statement of the victim is trustworthy and it creates confidence in the mind of the court.

Submissions on behalf of the appellant

10. Learned counsel for the appellant has submitted that the impugned judgment and order is bad in the eye of law as well as in facts and circumstances of this case. Learned trial Court has failed to apply its judicial



mind while passing the impugned judgment. Trial Court could not appreciate that the evidence of friend of the victim, namely, 'X' is necessary as he is said to be the eye witness of the occurrence. It has also been submitted that the parents of the victim have also not been examined. He further submitted that while awarding sentence, the learned trial Court had not gone through the penal provisions as existed under POCSO Act, on the date of occurrence, i.e., 25.03.2019 and the sentence has been awarded under amended provision which came into effect on 16.08.2019.

11. As against this, the learned Additional Public Prosecutor for the State has submitted that trial Court has rightly appreciated the materials on the record and has rightly sentenced the appellant. He further stated that in this case, only the testimony of the victim is sufficient for convicting the appellant as the victim is most trustworthy and sterling witness.

12. We have heard learned counsel for the parties and also perused the records of the trial court.

Consideration

13. In this case, to bring home the guilt of the accused-appellant, prosecution has examined the victim as



PW-1. Before examining him, the learned trial Court has asked him some questions as he is a minor and aged about 5 years to ascertain his competence to depose. Learned trial Court has recorded its satisfaction that the victim is competent to depose before the Court. The first question which has been put to the victim by the learned trial Court is what had happened to him. In answer to this question, the victim has detailed the occurrence and has stated that Santu (appellant) knocked him down, opened his pant and established carnal intercourse. The witness has further stated that he was going with one of his friend 'X'. Santu (appellant) had also brought his friend with him. The witness has also stated that this appellant has also committed carnal intercourse with 'X' as well. He has further stated that he started bleeding and after that he came to his home and told his mother that he is feeling pain in his anus when he showed his anus to his mother, she found that he was bleeding. After that, the mother of the victim went to police station and informed the police. This witness has further stated before the police that when Santu committed carnal intercourse with him, police arrested him. He has



also stated that Santu is his co-villager and lives in a different house.

14. PW.-1 has further stated that he was rushed to the Doctor where he was bandaged. This witness has also stated that he has given his statement before the Magistrate under Section 164 of the Cr.P.C. and has put his Left Thumb Impression (L.T.I.) which has been marked as Ext-1 and 1/A on the identification of the victim. During cross-examination, regarding the place of occurrence, he has stated that the place of occurrence is in his village and has also stated that no one was there. He has stated that the field in which he was knocked down by the appellant was a paddy field. He has also stated that when he raised alarm, no one came there. This witness has also stated that when his friend 'X' was subjected to carnal intercourse, he had also raised alarm. This witness has also stated that he has not disclosed about the occurrence to anybody else, except to his mother.

15. The case of the prosecution revolves around the statement of the victim (PW.-1). The victim of this case is a sterling witness, he has withstood the test of the cross-examination and his veracity is unblemished. Regarding



sterling witness, the Hon'ble Apex Court has held in the case of **Rai Sandeep v. State (NCT of Delhi)**, reported in **(2012) 8 SCC 21 (para-22)** which is being reproduced below for ready reference :-

“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."

16. Similarly in the case of **Kuriya v. State of Rajasthan** reported in **(2012) 10 SCC 433** it has been observed by the Hon'ble Apex Court which is being reproduced hereunder for ready reference :-

Generally Witnesses of "sterling worth" Meaning, explained Linguistically, "sterling worth" means "thoroughly excellent" or "of great value" -This term, in context of criminal jurisprudence, held, cannot be of any rigid meaning and would mean a witness worthy of credence, one who is reliable and truthful - This has to be gathered from entire statement of witnesses and demeanour of witnesses, if any, noticed by court - Herein, statements of witnesses are reliable, trustworthy and deserve credence by court - They do not seem to be based on any falsehood - Conviction confirmed - Words and



Phrases "Sterling worth" and "witness of sterling worth" - Criminal Law - Penal Code, 1860 - Sections 299-304 -- Culpable Homicide and Murder - Trial, Sentencing and Other Issues - Generally - Ss. 302/34 and 364/34 - Criminal Law - Trial Witnesses - Generally Criminal Law - Criminal Trial- *Proof* - Generally - Evidence Act, 1872 - S. 155 (Paras 23 to 31)

17. PW-2 is the informant who has stated that on the date of the occurrence, he was at his house and his sister lives in his village. His sister called him and when he went to his sister's place, he came to know that Santu (appellant) has committed carnal intercourse with his nephew. When he saw his nephew, he found that he was bleeding. After this, he went to the police station where police got conducted the medical examination of the victim. Written application has been marked as Ext.-3 and his signature has been marked as Ext.-3/A. In cross-examination, this witness has stated that he does not know as to what was written in the application and that he is not having any personal knowledge about the occurrence and he has not seen the occurrence but he has stated that after the occurrence he had a talk with the victim and he took him to the hospital.



18. PW-3 is the doctor and he has stated that on 25.03.2019 he was posted at PHC, Narkatiaganj as Medical Officer and on that day, he examined the victim and found following injuries on his person. Injury No. (1)- bleeding per anal canal and injury no. (2)- bodyache. Opinion regarding injury no. 1 and injury no. 2 is reserved because it is referred to MJR hospital, Bettiah for needful treatment and to rule out second assault.

19. In cross-examination, this witness has stated that he has examined the victim at 9:00 PM, the victim was brought to the doctor by police and family members of the victim. The time of injury may be 4:00 hours. When he was suggested whether such injury is possible by falling on hard surface, the Doctor has stated that this is not possible as the injury is on the part which is not exposed. He was also suggested that bleeding may be also due to piles. To this suggestion, the Doctor has stated that a boy of five years does not suffer with piles.

20. PW-4 is the I.O. of this case and this witness has supported the case of the prosecution and has stated that he has investigated the case and has filed charge sheet. He has also stated that he had seized the blue colour jeans



of the victim which was bloodstained. The seizure list was prepared by him. Sandeep Sahi and Dharendra Kumar Mishra are the independent witnesses. The pants were presented by the mother of the victim. The seizure list has been marked as Ext-5 and charge sheet has been marked as Ext-6 on the identification of the I.O. In cross-examination, this witness has stated that the statement of the parents of the victim was not recorded by him as the father of the victim is dumb and the mother of the victim is hard of hearing.

21. PW-5 is Sandeep Sahi who has identified his signature on the seizure list which has been marked as Ext-5.

22. In this case, defence has not adduced any evidence.

23. Ext- 7 is the FSL Report and from perusal of said report, it transpires that the result of the examination is following:-

“(1) Blood has been detected at places in the exhibit marked ‘A’.

(2) Semen could not be detected in the exhibit marked ‘A’.

(3). Serological report on origin and group of blood would follow.

Ext.-A is one paper packet which contained one old dirty torn blue jeans of a child which bore reddish brown stains at places”.



24. The serological report on origin and group of blood have not been sent by the FSL. Section 29 of the POCSO Act provides presumption as to certain offences which is being reproduced hereunder for ready reference :-

“Where a person is prosecuted for committing or abetting or attempting any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

25. In this case, the appellant has been charged with the offences punishable under Sections 4 and 6 of the POCSO Act which is defined under Sections 3 and 5 of the POCSO Act respectively and the victim is aged about 5 years and in view of Section 29 of the POCSO Act, the Court shall presume that such person has committed the offence. In this case, the prosecution has not only proved the foundational facts rather prosecution has been able to prove the case beyond all reasonable doubts.

26. In this case, the victim who is aged about 5 years and his deposition has been recorded by the trial Court after conducting competence test. The statement of the victim regarding occurrence is unrebutted. Defence has



not made out any peculiar defence as to under what circumstances, the appellant may be falsely implicated. The medical evidence which has been adduced by the Doctor PW-3 supports the version of the prosecution.

27. In totality of the discussions made hereinabove, it is clear that prosecution has been able to prove its case beyond all reasonable doubts for the offences under Section under Section 377 of the Indian Penal Code (in short 'I.P.C.') and Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). On perusal of the provision of the POCSO Act as existed on the date of occurrence were as under :-

“4. Punishment for penetrative sexual assault. - Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

6. Punishment for aggravated penetrative sexual assault. - Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”



28. After the amendment w.e.f. 16.08.2019, Section 4 and 6 of the POCSO Act read as under:-

“4. Punishment for penetrative sexual assault. - ¹[(1)] Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ²[ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

³[(2)] Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]

¹[6. Punishment for aggravated penetrative sexual assault. -

(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean

1. S. 4 renumbered as sub-S. (1) thereof by Act 25 of 2019, S. 3 (w.e.f. 16-8-2019).

2. Substituted by Act 25 of 2019, S. 3(b), for “seven years” (w.e.f. 16.08.2019).

3. Inserted by Act 25 of 2019, S. 3(b) (w.e.f. 16.08.2019).

1. Substituted by Act 25 of 2019, S. 5 (w.e.f. 16.08.2019). Prior to its substitution, S. 6 read as under :- “6. *Punishment for aggravated penetrative sexual assault.* - Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”



imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]”

29. The learned trial Court has not considered the fact that the date of the occurrence in this case is 25.03.2019 and the amendment has come much after the date of occurrence. Learned trial court has sentenced the appellant according to the Sections 4 and 6 of the POCSO Act as amended vide Act No. 25 of 2019 w.e.f. 16.08.2019 which is erroneous.

30. On the point of sentence, we would like to refer paragraph nos. ‘14’, ‘15 and ‘16’ of the judgment in the case of **Mofil Khan and Another v. State of Jharkhand** reported in **(2021) 20 SCC 162**. Paragraph nos. ‘14’, ‘15’ and ‘16’ are being quoted hereunder for a ready reference:-

“14. One of the mitigating circumstances is the probability of the accused being reformed and rehabilitated. The State is under a duty to procure evidence to establish that there is no possibility of reformation and rehabilitation of the accused. Death sentence ought not to be imposed, save in the rarest of the rare cases when the alternative option of a lesser punishment is unquestionably foreclosed (see : *Bachan Singh v. State of Punjab*¹¹). To satisfy that the sentencing aim of reformation is unachievable, rendering life imprisonment completely futile, the Court will have to highlight clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the criminal,

11. *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580]



along with other circumstances (see : *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*¹²). In *Rajendra Pralhadrao Wasnik v. State of Maharashtra*¹³, this Court dealt with the review of a judgment¹⁴ of this Court confirming death sentence and observed as under : (*Rajendra Pralhadrao Wasnik case*¹³, SCC p. 483, para 45)

“45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the “special reasons” requirement of Section 354(3)CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.”

15. It would be profitable to refer to a judgment of this Court in *Mohd. Mannan v. State of Bihar* [*Mohd. Mannan v. State of Bihar*¹⁵, in which it was held that before imposing the extreme penalty of death sentence, the Court should satisfy itself that death sentence is imperative, as otherwise the convict would be a threat to the society, and that there is no possibility of reform or rehabilitation of the convict, after giving the convict an effective, meaningful, real opportunity of hearing on the question of sentence, by producing material. The hearing of sentence should be effective and even if the accused remains silent, the Court would be obliged and duty-bound to elicit relevant factors.

12. (2009) 6 SCC 498 : (2009) 2 SCC (Cri) 1150

13. (2019) 12 SCC 460 : (2019) 4 SCC (Cri) 420

14. *Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2012) 4 SCC 37 : (2012) 2 SCC (Cri) 30]

15. (2019) 16 SCC 584 : (2020) 2 SCC (Cri) 382]



16. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. There is a bounden duty cast on the courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the petitioners.”

31. We would also like to refer a judgment of the Hon’ble Supreme Court in the case of **Bachan Singh v. State of Punjab** reported in **AIR 1980 SC 898**. Paragraph ‘204’ of the said judgment is quoted hereunder for ready reference:-

“204. Dr. Chitale has suggested these mitigating factors :

"Mitigating circumstances: In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
- (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 2 and 4 above.
- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
- (6) That the accused acted under the duress or domination of another person.



(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

32. At the time of judgment in the year 2021, the appellant was 25 years old, therefore, in the year 2019 when occurrence took place, he was 23 years old. No evidence has been brought on record to show that he is a habitual offender and there is no chance of his reformation, hence, considering the facts and circumstances, we uphold the finding of conviction under section 377 of the IPC and Sections 4, 6 and 10 of the POCSO Act but modify the sentence to 10 years each in view of the Sections 4 and 6 of the POCSO Act as existed on the date of occurrence. Fine, if any, imposed by trial court shall remain the same.

33. In result, this appeal stands partially allowed.

34. Let the records of the trial court together with a copy of this judgment be sent down to the trial Court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Shubham/-

AFR/NAFR	
CAV DATE	
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