

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4520 of 2021**

Arising Out of PS. Case No.-108 Year-2016 Thana- JANDAHA District- Vaishali

Surendra Rai, son of Baiju Rai Resident of Village - Mahua Mukundpur
(panchmukhi Chowk), P.S.- Mahua, Distt.- Vaishali at Hajipur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Saroj Kumar Sharma, Advocate Mr. Anupam Bahadur, Advocate Mr. Vikash Kumar, Advocate
For the Respondent/s	:	Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 04-03-2025

In the present appeal, the appellant has challenged the judgment of conviction dated 15.09.2021 and the order of sentence dated 21.09.2021 passed by the learned Exclusive Special Judge, POCSO-cum-Children Court-cum-Additional District & Sessions Judge, VI, Vaishali at Hajipur, in G.R. No.2706 of 2016, arising out of Jandaha P.S. Case No.108 of 2016, whereby the appellant has been convicted under Section 376(2)(i) of the Indian Penal Code (for short "I.P.C.") and under section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"). For the offence under section 376(2)(i) of the Indian Penal Code, the appellant has been sentenced to undergo rigorous imprisonment for ten years and fine of Rs.51,000/-, in case of default of payment of fine, he



will further undergo rigorous imprisonment for one year. For the offence under section 8 of the POCSO Act, the appellant has been sentenced to undergo rigorous imprisonment for five years and fine of Rs.25,000/-, in case of default of payment of fine, he will further undergo rigorous imprisonment for six months. Both the sentences were directed to run concurrently.

2. The informant namely, Sonelal Singh, gave his *fardbeyan* before the police on 12.07.2016 alleging therein that on 11.07.2016 he along with his minor daughter, aged about 10 years, went to the house of his brother-in-law for attending a marriage. The informant further alleged that he along with his daughter went in *Barat* and when the *Barat* reached at the bride's house, he left his daughter in the vehicle to watch the jewellery kept in the vehicle. Thereafter, everyone became busy in the said marriage. In the meantime, when the time came to present the jewellery to the bride, the said vehicle was not found at the place where it was parked and his daughter was also not present there and therefore, the informant along with other villagers started searching the vehicle and ultimately the said vehicle was found to have been parked one km away from the house of the bride near a school. When the informant and other persons went inside the said school, they saw, in the light of



torch, that his daughter was in objectionable position with the driver of the said vehicle. After seeing the informant, his daughter started crying and said that the driver of the vehicle committed wrong with her and thereafter she became unconscious. When the villagers nabbed the driver, he disclosed his name as Surendra Rai. Thereafter, the daughter of the informant was taken to the local hospital where she was treated. When the local police came, the driver of the vehicle was handed over to the police.

3. After recording of the *fardbeyan*, a formal FIR being Jandaha P.S. Case No.108 of 2016 dated 12.07.20216 was registered for the offences under section 376 of the Indian Penal Code and under sections 4, 6, 8 and 10 of the POCSO Act against the appellant. After institution of the FIR, the police proceeded with the investigation and after completion of investigation charge-sheet was submitted against the appellant under section 376 of the Indian Penal Code and under sections 4, 6, 8 and 10 of the POCSO Act vide charge-sheet No.183 of 2016 dated 30.09.2016.

4. After submission of the charge-sheet, the learned Special Judge took cognizance against the appellant under section 376 of the Indian Penal Code and under sections



4, 6, 8 and 10 of the POCSO Act vide order dated 17.04.2017.
By order dated 24.08.2017, the charges were framed against the appellant under section 376(2)(i) of the Indian Penal Code and under section 4, 6, 8 and 10 of the POCSO Act.

5. During the course of trial, altogether eleven witnesses were examined in support of the prosecution case, which are as under :-

P.W.-1	Sudhir Singh (uncle of the bride)
P.W.-2	Fudan Singh (local villager)
P.W.-3	Ramsevak Singh
P.W.-4	Bhola Kumar (brother of the bride)
P.W.-5	Dr. Shailendra Kumar (Pathologist)
P.W.-6	Manju Devi (mother of the bride)
P.W.-7	Victim
P.W.-8	Rakesh Singh
P.W.-9	Sonelal Singh (father of the victim)
P.W.-10	Sanju Devi @ Shanti Devi (mother of the victim)
P.W.-11	Jyoti Kumari (Investigating Officer)

6. Apart from the oral evidences, the documentary evidences were also exhibited on behalf of the prosecution, which are as follows:-

Exhibit- 1	Signature of Sudhir Singh over the <i>Fardbeyan</i>
Exhibit- 1/1	<i>Fardbeyan</i>
Exhibit- 2	Signature of Sudhir Singh on the seizure list
Exhibit- 2/1	Signature of Fudan Singh over the seizure list
Exhibit- 3	Pathological requisition
Exhibit- 4	Pathological Report
Exhibit- 5	Dental requisition
Exhibit- 6	Statement of the victim recorded under section 164 of the Cr.P.C.



Exhibit- 7	Statement of the victim recorded before the police
Exhibit- 8	Formal First Information Report
Exhibit- 9	Production-cum-Seizure list
Exhibit1-10	Application to submit the cloth of the victim for forensic examination.
Exhibit-11	Charge-sheet.

7. After completion of prosecution evidence, the statement of the appellant was recorded under section 313 of the Code of Criminal Procedure, in which the appellant denied the allegation and stated that he is innocent and has falsely been implicated in the present case.

8. The trial court, upon appreciation of the evidence adduced at the trial, has found the appellant guilty of the offences and has sentenced him to imprisonment and fine, as noted above, by its impugned judgment and order.

9. Learned counsel for the appellant has submitted that while convicting the appellant, the trial court has failed to appreciate the fact that there are serious contradictions in the statement of the informant and the victim. He has further submitted that the trial court has failed to appreciate the fact that the prosecution has failed to examine the persons residing near the so-called place of occurrence and the prosecution has failed to establish any cogent reason for commission of the occurrence.



10. It has been submitted by learned counsel for the appellant that no independent witness has been examined by the prosecution side and the witnesses who have been examined are related to the prosecution side. It has also been submitted that there has been delay in filing the F.I.R. and though the victim (P.W.-7) has supported the case but Dr. Priyanka (S.M.O.), Sadar Hospital, Hajipur, has not deposed.

11. Learned counsel for the State has supported the impugned judgment of conviction and sentence and has submitted that the victim girl who is aged about 10 years' old has withstood the cross-examination and has supported the prosecution case. She has no reason to falsely implicate the appellant in the present case.

12. I have considered the submissions of the parties and perused the materials on record.

13. The victim (P.W.-7) in her statement before the Investigating Officer as well as before the Court has consistently stated that she was sleeping in the car and the car was taken by the appellant where he committed rape with her and also threatened her. Other witnesses including the father, mother of the victim girl and P.W.-4, Bhola Kumar, have supported the prosecution case.



14. P.W.-4, Bhola Kumar, is the person who went looking for the car and the victim girl in the night and found the victim girl in the school where the appellant had committed rape with her. The appellant was caught there and thereafter the F.I.R. was lodged and the victim was examined by the doctor. The appellant was arrested on the spot by the police.

15. P.W.-5 is one Dr. Shailendra Kumar Verma, who is working as Pathologist in the Hajipur Sadar Hospital. He has examined the victim girl as per the requisition and found non-motile spermatozoa and R.B.C. cells on the body of the victim girl and he had submitted the pathological report, which is marked as Exhibit-3/1. He had proved the medical report of Dr. Priyanka, which is marked as Exhibit-4. The medical report (Exhibit-4) of Dr. Priyanka supports the fact that sexual assault was committed upon the victim.

16. The Hon'ble Supreme Court in the case of *the State of Punjab vs. Gurmit Singh & Ors.* reported as **1996 AIR 1393 : (1996) 2 SCC 384** has held as follows:-

“...The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving



sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual



assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another persons lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable... ”



17. Considering the fact that the minor victim has been consistent in her deposition and has supported the allegation of rape and also considering the fact that the doctor who examined the victim has found that sexual assault was committed with the victim, I do not find a case for interference as the prosecution as proved its case beyond reasonable doubt. Hence, there is no infirmity in the impugned judgment of conviction and sentence passed by the trial court.

18. For the reasons, as discussed hereinabove, this appeal is dismissed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	27.03.2025
Transmission Date	27.03.2025

