

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.838 of 2023

Arising Out of PS. Case No.-14 Year-2019 Thana- SAHARGHAT District- Madhubani

Ram Snehi Mukhiya @ Chhakauriya Son of Late Tilyug Mukhiya, Resident
of Village - Patar, P.S. - Saharghat, District – Madhubani.

... .. Appellant

Versus

1. The State of Bihar

2. [REDACTED], Resident of Village - Patar,
P.S. - Saharghat, District – Madhubani.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Murari Narain Chaudhary, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 22-07-2025

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. This appeal has been preferred for setting aside the judgment of conviction dated 18.03.2023 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 23.03.2023 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-VII-cum-Spl. Judge (POCSO), Madhubani (hereinafter referred to as the ‘learned trial court’) in Trial No. 97 of 2023, POCSO G.R. Case No. 11 of 2019 arising out of Saharghat P.S. Case No. 14 of 2019. By the impugned judgment, the appellant has been convicted for the



offences under Section 376 of the Indian Penal Code (in short 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and by the impugned order, he has been ordered to undergo rigorous imprisonment for life with a fine of Rs.10,000/- under Section 6 of the POCSO Act read with Section 376 IPC and in default of payment of fine, he has to further undergo simple imprisonment for six months.

Prosecution Case

3. The prosecution case in brief is that the informant (PW-1), who is the grandfather of the victim (PW-4), in his written application stated that on 28.01.2019 at 07:00 PM, his villager Ramsnehi Mukhiya (appellant) took his granddaughter (victim) aged about 8 years on the pretext of feeding her Kurkure and *pakodi*. After sometime, when his granddaughter did not return, they started searching for her. During search, a sound was heard from the village's '*basbitti*' (bamboo grove), so he and his son (PW-3) went to the '*basbitti*' and saw that Ramsnehi Mukhiya was committing wrong with his granddaughter and his granddaughter was crying. The private part of his granddaughter was covered with blood. Thereafter, they took the victim to Madhwapur Hospital for her treatment and the villagers caught Ramsnehi Mukhiya and handed over to the police.



4. On the basis of this written application of the informant, Saharghat P.S. Case No. 14 of 2019 dated 29.01.2019 was registered under Sections 376(AB) IPC and Sections 4 and 6 of the POCSO Act against this appellant. After investigation, police submitted chargesheet bearing Chargesheet No. 28 of 2019 dated 20.03.2019 under Section 376(AB) IPC and Sections 4 and 6 of the POCSO Act against the appellant. Thereafter, vide order dated 27.03.2019, the learned trial court took cognizance of the offences mentioned above. The charges were read over to the appellant in Hindi to which he pleaded not guilty and claimed to be tried, accordingly, vide order dated 13.05.2019, charges were framed against the appellant for the offences under Section 376 IPC and Sections 4 and 6 of the POCSO Act.

5. In course of trial, the prosecution examined seven witnesses and exhibited several documentary evidences. The description of the prosecution witnesses and the documents are given hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Informant/Grandfather of the Victim
PW-2	Grandmother of the Victim
PW-3	Uncle of the Victim
PW-4	Victim
PW-5	Ashok Kumar
PW-6	Triveni Prasad Singh (I.O.)
PW-7	Dr. Renu Prabha (Medical Officer)



List of Exhibits on behalf of the Prosecution

Exhibit ‘1’	Signature of the Informant (PW-1) on the written application
Exhibit ‘2’	Endorsement along with signature of Ram Kumar Singh, the then S.H.O. of Saharghat P.S. regarding registering the police case number of written application.
Exhibit ‘3’	Signature of Ram Kumar Singh, the then S.H.O. of Saharghat P.S. on the FIR
Exhibit ‘4’	The Seizure List
Exhibit ‘5’	The chargesheet bearing No. 28 of 2019 dated 20.03.2019
Exhibit ‘6’	The R.F.S.L. Report bearing No. 239 of 2019 dated 18.04.2019
Exhibit ‘7’	The Medical Examination Report of the Victim dated 29.01.2019
Exhibit ‘7/1’	The signature of Dr. Renu Prabha (PW-7) on the Medical Report dated 29.01.2019
Exhibit ‘7/2’	The signature of Dr. Rajeev Ranjan on the Medical Report dated 29.01.2019
Exhibit ‘7/3’	The signature of Dr. A.N. Prasad on the Medical Report dated 29.01.2019
Exhibit ‘8’	The statement of the victim recorded under Section 164 CrPC

6. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. The appellant took a plea that he is innocent and has falsely been implicated in this case.

Findings of the Learned Trial Court

7. The learned trial court examined the evidences available on the record. The learned trial court found that the evidence of the victim (PW-4) is reliable and can be acted upon.



It has been held that the testimony of the victim (PW-4) inspires confidence and corroborated by the medical report.

8. The learned trial court rejected the contention of the defence counsel that the victim being a minor one, there is every possibility of being tutored. The proposition of law that evidence of child witness is required to be considered with care and caution so that possibility of being tutored is ruled out has been taken care of by the learned trial court. It has been held that in the case at hand, in the evidence of victim (PW-4) this fact was not raised while she was being cross-examined by the defence, not even a single suggestion was given to PW-4 that she had been tutored. Her evidence has been found spontaneous and trustworthy without inviting any suspicion of being tutored.

9. The learned trial court has examined the evidence of Dr. Renu Prabha (PW-7) who has stated that the Medical Board found injury on private part and Medical Board found the hymen of victim was ruptured, lacerated inflamed and her fourchette is also lacerated. PW-7 has stated in her evidence that the Medical Board opined that the aforesaid injury to the private part of the victim may be due to sexual assault (Exhibit '7').

10. The learned trial court has found that in this case the presumption under Section 29 of the POCSO Act can be



drawn because the prosecution has been able to establish the facts which would form foundation for presumption under Section 29 of the POCSO Act to operate. As regards the presumption under Section 30 of the POCSO Act about the culpable mental state of the accused, the trial court held that the accused had to prove that he had no such mental state with respect to the charged offence by the prosecution. It has been held that the prosecution has been able to prove the guilt beyond all reasonable doubts and the defence could not rebut the evidence of the prosecution.

11. The trial court held that the prosecutrix/victim does not have a strong motive to falsely implicate the person charged and the court should not have any hesitation in accepting her evidence.

Submissions on behalf of the Appellant

12. Learned counsel for the appellant has assailed the impugned judgment and order on the ground that the learned trial court has indulged in sermises and conjectures only. It is contended that the prosecution has not been able to examine any independent witness in this case. The FIR was lodged with much delay on 29.01.2019 in respect of the alleged occurrence which took place on 28.01.2019.



13. Learned counsel for the appellant submits that according to the deposition of all the prosecution witnesses, there was a long standing enmity between the appellant and the informant over their respective shares in the residential house and the same has been even supported by the victim girl (PW-4).

14. Learned counsel submits that the learned trial court has not at all considered that the prosecution has not been able to examine any of the reliable witnesses and the prosecution witnesses examined in this case made completely contradictory statements to each other. The victim girl has deposed that she was not taken away by anyone at the place of occurrence rather she herself went there without disclosing this fact to anyone and nobody was present there.

15. Learned counsel submits that in the present case the chances of false implication of the appellant and tutoring of the prosecutrix cannot be ruled out.

Submissions on behalf of the State

16. On the other hand, learned Additional Public Prosecutor for the State would submit that in the present case, the prosecutrix has remained consistent in her statement before the I.O., in her statement under Section 164 CrPC and also in course of trial. The learned trial court has found that the



statement of the victim (PW-4) is consistent, natural and her deposition may be safely relied upon. In such circumstance, where the victim has been found in the category of a sterling witness, there would be no need of corroboration. The FIR has been lodged at the earliest possible time.

17. Learned Additional Public Prosecutor submits that the testimony of PW-4 finds full support/corroboration from the medical examination report (Exhibit '7') and the Forensic Science Laboratory (in short 'FSL') report (Exhibit '6').

18. It is submitted that the defence suggested to the prosecution witnesses that there was a land dispute with the family of the victim and due to this, the present case was lodged by the grandfather of the victim but the defence miserably failed to discharge its onus by producing any cogent evidence to indicate that there was a land dispute in between victim's father and the accused. In such circumstance, the learned trial court has rightly held that it was not possible to believe that the victim would be used to falsely implicate the accused in a serious offence of sexual assault for land dispute of his family. It is submitted that no fault may be found with the judgment of the learned trial court.



Consideration

19. We have heard learned counsel for the parties and have perused the trial courts records. The victim in this case is a child below twelve years of age. There is no dispute over the age of the victim child. The victim was subjected to a penetrative sexual assault is evident from the deposition of the victim (PW-4) and also from the deposition of her natural grandfather (PW-1), grandmother (PW-2) and uncle (PW-3) of the victim. The medical examination report of the victim has been proved by the prosecution as Exhibit '7' through Dr. Renu Prabha (PW-7) who happened to be the Medical Officer and one of the members of the Medical Board which was constituted for the examination of the victim in this case. On the point of the age of the victim girl, the Medical Board at the time of her examination found her aged about five years as per physical and radiological findings. We find that learned trial court has taken a correct view of the matter and held that applying margin of error principle, of two years on either side, the age could be between 3 to 7 years. Even if the margin of error is taken only on the higher side, the upper limit of the age estimated by the ossification test would be seven years. We agree with the finding of the learned trial court that the defence has not disputed the evidence of the prosecution



evidence regarding the age of the victim girl. Thus, the victim has been rightly held aged below twelve years at the time of the alleged occurrence.

20. In the present case, the victim (PW-4) has deposed in her examination-in-chief that on the pretext of giving her Kurkure, the appellant had taken her towards the bamboo grove where he had committed wrong act with her. She has stated about the blood stained trouser/salwar and has also stated that she had made statement before police and she was taken to the court before the learned Magistrate. In her deposition, she has identified the appellant in the court. In her cross-examination, the victim has stated that the appellant is grandfather in relationship who lives in the same courtyard and was regularly giving her Kurkure. In paragraph '5' of her deposition, no doubt, the victim has stated that there were regular quarrel between her grandfather and this appellant, still she has maintained saying that this appellant had committed wrong act with her. She has stated that she had come outside her house at 07:00 PM without telling anyone and has also stated that she had gone to '*basbitti*' on her own and nobody had called her there, in the opinion of this Court, the minor deviation of the victim girl in her cross-examination that she had gone to '*basbitti*' on her own would



not prevail upon the consistent statement of the victim that this appellant had committed wrong act with her.

21. This Court has gone through the evidence of the I.O. (PW-6) who had taken charge of the investigation of this case on 29.01.2019. He has stated that the accused was brought to the police station by the informant and the co-villagers. He had received the blue/red colour check frock having blood stains and blue colour jeans pant of the victim girl in which also blood was present. He had prepared the seizure list of the clothes of the victim. PW-6 has proved the seizure list (Exhibit '4').

22. On further perusal of the evidence of PW-6, it appears that he has proved the place of occurrence, he had also prepared the map of the place of occurrence and recorded the statement of the persons who were in the boundary. He had recorded the statement of Ashok Prasad whose '*parti*' land is in the southern side of the place of occurrence. PW-6 had sent the seized clothes to the FSL for examination with the permission of the court. He had submitted the chargesheet against the appellant which has been marked Exhibit '5'. PW-6 has further proved the FSL Report No. 239 of 2019 dated 18.04.2019 (Exhibit '6').



23. From the evidence of Dr. Renu Prabha (PW-7), it appears that she was posted as a Medical Officer at Sadar Hospital, Madhubani on 29.01.2019. On that day, a Medical Board was constituted under the Chairmanship of the Superintendent, Sadar Hospital, Madhubani. She was a member of the Medical Board. She has stated about the conclusion of the Medical Board. The Medical Report of the victim has been marked Exhibit '7' and the signature of the witness on this medical report has been marked Exhibit '7/1'. She also recognized the signature on medical report of Dr. Rajeev Ranjan and Dr. A.N. Prasad which were marked Exhibit '7/2' and Exhibit '7/3' respectively.

24. The findings of the Medical Board is recorded in paragraph '2' of the deposition of PW-7 which we reproduce hereunder for a ready reference:-

“2. Medical Board examined victim with her consent on dated 29-01-2019 at 04:38 PM and found the following:- Occurrence happened on 28.01.2019 at 07:00 PM Height 3ft 5inch, Weight 28 Kg, teeth 11/11, Secondary sexual character not developed. No external injury present over her body. Injury on private part. Hymen ruptured, lacerated inflamed. Pain on touch fourchette also lacerated. Victim undergarments are kept by police.”



25. The conclusion of the Medical Board recorded in the evidence of PW-7 is as under:-

“6. Conclusion of Medical Board – Injury
over private part may be due to sexual assault.
The age of victim is about 5 years.”

26. In her cross-examination also, she has stated that injuries were found on the private part of the victim.

27. The FSL Report (Exhibit ‘6’) reveals that blood was found on the victim’s frock and jeans pant and accused’s pant, thus, the FSL Report (Exhibit ‘6’) is corroborating the version of the prosecution witnesses and had confirmed that penetrative sexual assault has been committed upon the victim which in the opinion of this Court will come within the meaning of the offence ‘Rape’ as defined under Section 375 IPC.

28. On going through the entire evidence available on the record, we find no merit in the contention of learned counsel for the appellant that the conviction of the appellant would be bad for not having been supported by any independent witness. In a case of the present nature where the victim (PW-4) has proved herself in the category of a sterling witness, her deposition inspires confidence and the same is duly corroborated by the medical report (Exhibit ‘7’) and the FSL Report (Exhibit



‘6’), in the opinion of this Court, the learned trial court has not committed any error in appreciation of the evidence adduced by the prosecution.

29. The plea of the appellant that there was a delay in lodging of the FIR is liable to be rejected in view of the evidences available on the record. The occurrence took place on 28.01.2019 at 07:00 PM. The informant has categorically stated that he had taken the victim to the Madhwapur Hospital. Her vagina was covered with blood. The villagers had handed over the accused-appellant to the police. After getting the victim treated, the informant submitted his written information. So, FIR was registered on 29.01.2019 at 08:15 AM. The victim was examined on the same day under Section 161 CrPC and she was taken to the learned Magistrate on 30.01.2019 where her statement under Section 164 CrPC was recorded. She remained consistent in her both the statements. In a case of the present nature, it cannot be expected that instead of getting the victim treated immediately any priority could have been given to submit a written information in the police station which was at a distance of 12 kilometers from the place of occurrence. The delay is not such that it would cast any doubt over the prosecution story.



30. In our considered opinion, the learned trial court is correct in holding that the plea set up by the defence as regards the false implication of the appellant because of land dispute has not been proved and we find that the appellant has not discharged his burden even by way of preponderance of possibility so as to keep intact the presumption of innocence. The prosecution has proved the primary facts which constitute the foundation of the prosecution case beyond all reasonable doubts.

31. In the kind of evidence available on the record, we find no error in the impugned judgment and order.

32. This appeal has no merit. It is dismissed.

33. Let a copy of this judgment together with the trial court’s records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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CAV DATE	
Uploading Date	24.07.2025
Transmission Date	24.07.2025

