

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3149 of 2025

Arising Out of PS. Case No.-305 Year-2024 Thana- MUSAHARI District- Muzaffarpur

Md Sadre Alam Son of Md. Kalam @ Md Kalamuddin R/O Vill - Bhatoliya,
P.S. - Mushari, District- Muzaffarpur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Shashank Shekhar, Adv.

For the Respondent : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 30-10-2025

Heard learned counsel for the appellant and learned
APP for the State.

2. At the very outset, learned counsel for the appellant seeks permission to make necessary correction in memo of appeal regarding P.S. Case number during course of the day.

3. Permission, as prayed for, is granted.

4. The present appeal has been directed against the judgment of conviction dated 18.06.2025 and order of sentence dated 23.06.2025 passed by learned District and Additional



Sessions Judge-VI cum Special Judge, POCSO (I), Muzaffarpur in connection with POCSO G.R. No. 36 of 2025, arising out of Mushahari P.S. Case No. 305 of 2024 whereby the appellant has been convicted for the offence punishable under Section 137(2) of B.N.S. and has been sentenced to undergo rigorous imprisonment for four years alongwith fine of Rs. 5,000/- (five thousand) for the said offence and in default of payment of fine, appellant has to suffer six months rigorous imprisonment.

5. The name of victim has not been disclosed in the present judgment to protect her prestige and dignity.

6. A written report submitted to S.H.O., Musahri Police Station in the district of Muzaffarpur under the signature of informant is the basis for registration of First Information Report (hereinafter referred to as FIR).

7. According to written report of informant (PW-1), the occurrence is of 21.11.2024 for which information was given on 09.12.2024 and immediately whereafter FIR was registered. The prosecution case, in brief, is that on 21.11.2024, the appellant is said to have called the victim and induced her and took away the victim. It is further alleged that when informant proceeded to ask about the victim, co-accused Md. Kalam and Md. Islam became aggressive and raised question as



to why the informant came here and they also made an attempt to assault the informant by means of lathi and danda but she anyhow escape from there.

8. On the basis of written report of informant, Mushahari P.S. Case No. 305 of 2024 dated 09.12.2024 was registered under Sections 137(2), 96, 3(5) of B.N.S. Routine investigation followed. Statement of witnesses came to be recorded and on completion of investigation, charge sheet has been submitted against the appellant under Section 137(2), 96 of BNS and Section 8/10 of POCSO Act and cognizance was taken accordingly under the aforesaid sections. The learned trial court framed charges under Sections 137(2), 96 of BNS and Section 8, 10 of POCSO Act. The charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

9. In order to bring home guilt of the accused (appellant/convict), prosecution has examined altogether four witnesses. PW-1 is informant, PW-2 is victim, PW-3 is father of the victim and PW-4/ Deepak Kumar is Investigating Officer of the case. Following documentary evidence came to be exhibited on behalf of the prosecution:-

Exhibit-P/1- Signature of the informant on fardbeyan.



*Exhibit-P/2- Signature of victim
on her statement under Section 183 BNSS.*

*Exhibit-P/3- Signature of SHO
on fardbeyan.*

*Exhibit-P/4- Signature of SHO
on formal FIR.*

*Exhibit-P/5- Signature of I.O. on
charge sheet.*

10. Defence has neither produced any witness nor any documentary evidence in support of his case. Defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from statement under Section 313 of the Cr.P.C. is that offence has not been committed by the appellant and claimed to be innocence.

11. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the opening paragraph of this judgment.

12. Heard Mr. Shashank Shekhar, learned counsel for the appellant at sufficient length of time and following submissions were made on behalf of learned counsel for the appellant:-

Learned counsel for the appellant submitted that the prosecution has failed to prove the case under Section 137(2) of BNS. He has submitted that prosecution could not be able to establish charges under Section 96 of BNS and Section 8, 10 of



the POCSO Act. Learned counsel has raised pertinent question of law that in cases of POCSO Act, the prosecution has to prove the case regarding the determination of age but in the present case, the prosecution has failed to prove the age of the victim and only copy of school leaving certificate has been produced with regard to age of the victim and such copy suffers from several infirmities and copy of said school leaving certificate is not authenticated piece of document and on touch stone of mandate of law, school leaving certificate has no place. Learned counsel further submits that the victim has neither been induced nor forcibly taken away by the appellant which is evident from the statement of victim recorded under Section 183 of BNSS as well as evidence adduced by the victim/PW-2 during trial. He further submits that while adducing evidence before the court in both places victim has admitted that she has neither been forced to leave the parental house nor has been induced by the appellant rather victim has pressurized the appellant to take away her. Victim has also admitted that no wrong has been committed by the appellant against her rather appellant has assisted the victim to reach at Thana where she has given statement under Section 180 of BNSS. Victim has also given statement under Section 183 of BNSS before the court. In both



statements victim has not expressed any averment against the appellant and the statement of victim is supported by the investigating officer/PW-4. In this way, offence under Section 137(2) of BNS is not made out against the appellant. Learned counsel further submits that even though the statement of other witnesses have supported the case of the prosecution but the victim has totally shattered the story of prosecution. There is nothing on record which entails that victim is minor. Though victim has put signature on the statement recorded under Section 183 BNSS, meaning thereby she is a literate girl then question arises as to why the age of the victim has not been determined by documentary proof which is mandatory requirement of Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as J.J. Act). He further submits that age of the victim has not been determined by the medical board which is also mandatory requirement under the aforesaid section. He further submits that copy of school leaving certificate is not an authenticated document as the authority, who has issued the said document, has also not been called to prove the document. In absence of such requirement of law, the court has miserably failed to determine the age of the victim. In this way, the prosecution has failed to prove the case beyond



reasonable doubt and judgment of conviction and order of sentence are fit to be set aside.

13. Mrs. Anita Kumari Singh, learned Additional Public Prosecutor appearing for the State submitted that prosecution has produced four witnesses to support its case. PW-1 is informant of the case and PW-3 is father of the victim and they have supported the prosecution case. In this way, prosecution has proved the case beyond reasonable doubt. Learned APP further submits that PW-4 is Investigating Officer of the case who has produced copy of school leaving certificate of the victim and same has not been denied by the defence side. In the light of aforesaid facts and circumstances of the case, judgment of conviction and order of sentence passed by the concerned court is justified and legal and hence, no interference is required.

14. After hearing both the parties, I have perused the impugned judgment, order of trial court and trial court records.

15. Based on the scrutiny of evidence adduced at the trial, I find substance in submission made on behalf of the appellant that the prosecution failed to prove, beyond all reasonable doubts, the fact that the victim was minor as on the



date of occurrence. The Hon'ble Supreme Court has held in case of *Jarnail Singh v. State of Haryana* reported in (2013) 7 SCC 263 that "though Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 have been framed under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as Act 2000) is applicable to determine the age of child in conflict with law, the aforesaid provision should be the basis for determination of age even of a child who is a victim of crime. The Court remarked that there was hardly any difference insofar as the issue of minority was concerned, between a child in conflict with law, and a child who is a victim of crime. Paragraph 22 and 23 of the said decision in case of *Jarnail Singh (supra)* can be usefully referred to for clarity:-

"22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the 2007 Rules"). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

"12. Procedure to be followed in determination of age- (1) in every case



concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of



either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where,



further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, 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 VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid



provision, the age of a 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.”



16. The date of occurrence in the present case is 21.11.2024. It is pertinent to note that Act of 2007 has been repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, ('The Act of 2015' for short). Section 94 of the Act of 2015 lays down the procedure for determining juvenility. Relevant part of sub-section (2) of Section 94, which provides substantially similar procedure as was prescribed under 2007 Rules, reads as under:-

“(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.”

17. Apparently, no exercise was carried out by the prosecution to establish that the victim was minor as on the date of occurrence by following the procedure prescribed under the Act in the light of reasoning put forth by the Supreme Court in



case of *Jarnail Singh (Supra)*. In the case of *Sunil vs. the State of Haryana* reported in *AIR 2010 SC 392*, the Hon'ble Supreme Court observed that conviction cannot be based on an approximate age of the victim. In *State of Madhya Pradesh vs. Munna @ Shambhoo Nath* reported in *(2016) 1 SCC 696*, the Hon'ble Supreme Court held that the evidence of approximate age of the victim would not be sufficient to any conclusion about the exact age of the victim.

18. In the present case, the victim is a literate girl as she has signed her statement recorded under Section 183 BNSS. Therefore, she must have been getting education somewhere. It is not the prosecution case or evidence that victim did not attend any school. As a matter of fact, no effort was made by the prosecution to establish the age of the victim in accordance with statutory provision. In this way, the contention of learned counsel for the appellant as submitted in foregoing paragraphs is quite tenable and sustainable.

19. It is necessary to reproduce Section 137(2) of BNS which reads as under:-

137(2)- *Whoever kidnaps any person from India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*



20. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court in the light of offence punishable under Section 137(2) of BNS.

21. PW-1 is informant of the case. She has improvised her earlier statement as she has not stated in her written statement that her son disclosed that her daughter was seen with the appellant. In this way, her earlier statement is quite inconsistent with the evidence adduced during trial. Hence, evidence of PW-1 does not inspire confidence.

22. PW-3 is father of the victim. He has also stated that his son has pointed out that his daughter was seen with the appellant but the said version finds no place in the written statement. During cross examination of PW-3, he has stated that he received information regarding the occurrence from the family members and at the time of occurrence he was at Muzaffarpur which was at the distance of 7-8 KM from his house and he has not seen the occurrence. The evidence of PW-3 is not reliable as he is a hearsay witness.

23. PW-4 is investigating officer of the case. He has stated that after taking charge of investigation, he visited the place of occurrence and recorded the restatement of informant. He has stated that he received information on 12.12.2024 that



victim and appellant was present at Thana. Thereafter, statement of victim under Section 180 of BNSS was recorded by a lady police officer but victim denied for medical examination. PW-4 stated that he brought school leaving certificate of 8th class of victim from her house where D.O.B. of victim was mentioned as 16.12.2010.

During cross examination, PW-4 has stated that victim has stated that no one has taken away her. PW-4 has also stated that victim has stated on 21.11.2024 that her parents assaulted her and on the said reason, she left her parental house and join the company of appellant and victim has also stated that if appellant does not accompany her, she would die. PW-4 has also stated that victim has stated that appellant has not committed any wrong against her. PW-4 has also stated that there was no evidence to take away the victim by the appellant rather appellant was being pressurized to accompany the victim and there was no injury on the upper part of body of victim. In this way, evidence of PW-4/investigating officer is quite clear that no wrong has been committed by the appellant against the victim.

24. PW-2 is victim of the present case. She has clearly stated during cross examination that she has left parental



house as her mother assaulted her and she voluntarily went to Kanhauli and she has pressurized the appellant to accompany her, otherwise she would die.

25. The statement of victim recorded under Section 183 of BNSS as well as evidence adduced by the victim before the court during trial is quite clear that no wrong has been committed by the appellant against the victim and she has voluntarily left her parental house and she pressurized the appellant to accompany her, otherwise she would die. In the light of aforesaid discussions, the case of *S. Varadarajan vs. State of Madras* reported in *AIR 1965, 942* is quite relevant and at paragraphs no. 7 and 9 of the said judgment it has been clarified which reads as under:-

7. *"When the victim willingly accompanied the appellant, law did not cast upon him duty of taking her back to her father's house or even of telling her not to accompany him as she was on the verge of attaining majority and she was capable of knowing what was good and what was bad for her."*

9. *"There is a distinction between taking and allowing a minor to accompany a person. In order to prove taking away from the keeping of lawful guardian something more has to be shown in a case of this kind and that is some*



kind of inducement held out by the accused person or an active participation by him in the formation of intention of the minor to leave the house of the guardian.”

26. From perusal of the record, it transpires that no documentary proof has been produced by the prosecution side with regard to age of the victim though copy of school leaving certificate has been produced which is neither a piece of authenticated document nor same has been exhibited. Even the person who has issued the said document has not been examined. In this way, this piece of document has no evidentiary value in the eye of law. Even the age of the victim has not been determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board which is also mandatory requirement under Section 94 of J.J. Act. It also came to fore that victim has put signature upon the statement of 183 BNSS which proves that victim is a literate girl and the said fact has been raised in the contention of learned counsel for the appellant. No documentary piece of paper has been adduced by the prosecution side to prove the age of the victim under the mandatory provision of law and the victim is the star witness of the present case who has stated during statement under Section 183 BNSS that appellant has not



committed any wrong against her and same is corroborated while adducing evidence before the court. Victim has joined the company of the appellant and forced him to take away her. Victim has also pointed out the reason to leave the parental house and she has further stated that she has pressurized the appellant to join her company and the appellant has neither induced nor has done anything to take away the victim, as discussed in foregoing paragraphs of the judgment. In the present case, age of the victim has not been determined and it has not been proved that she is minor. The victim/ PW-2 herself has stated that no wrong has been committed by the appellant against her and evidence of PW-4/Investigating Officer is quite consistent with the evidence of victim/ PW-2.

27. On all counts from the analysis of evidence adduced during trial, it is crystal clear that prosecution has failed to prove the charge under Section 137(2) of BNS beyond reasonable doubt.

28. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence.



Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellant is in custody. Let him be released forthwith, if he is not warranted in any other case.

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
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