

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1096 of 2024**

Arising Out of PS. Case No.-306 Year-2022 Thana- KUDHNI District- Muzaffarpur

Sanni Kumar @ Sanny Kumar Son of Rajesh Paswan R/o Village-
Bhagwanpur, P.S.- Kudhani (Fakuli O.P.), District- Muzaffarur

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. X D/o Ramji Sah R/o Village- Bhagwanpur, P.S.- Kudhani (Fakuli O.P.),
District- Muzaffarpur

... .. Respondent/s

Appearance :

For the Appellant/s : Ms.Vaishnavi Singh, Advocate
For the Respondent/s : Mr.Abhimanyu Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-01-2025

We have heard Ms. Vaishnavi Singh, the
learned Advocate for the appellant and Mr. Abhimanyu
Sharma, the learned APP for the State.

2. The sole appellant stands convicted under
Section 4(2) of the POCSO Act, 2012 and Section
376(3) of the Indian Penal Code vide judgment dated
27.06.2024 passed by learned ADJ-7-cum-Special
Judge, POCSO(II), Muzaffarpur in GR No. 80 of 2022



arising out of Kudhani P.S. Case No. 306 of 2022. By order dated 02.07.2024, he has been sentenced to undergo RI for 20 years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer SI for two months.

3. A 16 years old girl is said to have been raped by the appellant. The occurrence had taken place on 09.06.2022. However, the victim (PW-2) got a written report lodged on 28.06.2022. The reason ascribed for such delayed lodging of the report is that she chose to file the case only after the appellant elected to make the video which he had captured of the act, viral. It was only then that the FIR was lodged.

4. The Investigator, except for recording the statement of the victim; making some efforts at finding out her age; and seizing her clothes and dispatching it to the forensic laboratory, has done nothing else to justify charge-sheeting the appellant.

5. The Trial Court has examined seven



witnesses on behalf of the prosecution including the victim, her parents, her grandfather, the Doctor and the Investigator and one witness on behalf of the defence who has denied that any occurrence of the kind reported by the victim had ever taken place.

6. The Trial Court was made to see a pen-drive but rightly the same was not treated as any evidence as the pen-drive was offered after about five months of the occurrence to the Investigator by the father of the victim without any associated certification for it to be admissible under Section 65B of the Evidence Act.

7. The conviction and sentence of the appellant has been assailed as unwarranted and untenable for various reasons.

8. It has been urged on behalf of the appellant that even the jurisdiction of the Special Court to try him is in doubt. However, no serious objection was raised with respect to the minority of the victim.

9. The other major strand of argument is that



there had been an unusual delay in reporting the incident and the explanation offered is in itself doubtful.

10. The medical report and the forensic laboratory reports, though in this case is not very important because of the delay in reporting the matter, also do not even remotely suggest that the allegations are true.

11. The entire prosecution hinges on the victim reporting the matter to the police after she realised that the video of the sexual act between the appellant and her was made viral. If this were the case, then perhaps the first responsibility of the Investigator was to find out the device through which the photo was captured and video was made and was spread through which mobile number.

12. From the evidence on record, we have found that on 09.06.2022, while the parents of the victim were away, attending to some religious ceremony and while the victim was tending to the she-goats of the



family, she was raped on the point of dagger. She was also threatened that if she ever spoke about the occurrence to anybody, she and her family would be harmed.

13. It is really doubtful as to how when nobody was around, the perpetrator of the crime himself prepared the video.

14. This could be done only if there was static camera.

15. That apart, what attracts our attention is that the act was committed in seclusion and the appellant was careful in threatening the victim not to report about the matter. What must have been the situation then when the appellant chose to send such video to the father of the victim. It was only then that the family of the victim learnt about a video having been made of the victim. If this had propelled the victim to file the case, the first evidence to be offered on behalf of the victim or her father would have been the mobile



telephone on which the video was sent. This is the content of the written report and, therefore, the Investigator ought to have asked for the mobile telephone at least, on which such video was sent.

16. It appears that all the witnesses without understanding have used the expression that the video was made "viral". It was only after five months that the father of the victim, we repeat, gave a pen-drive of such video which was promptly brought on record but without any certification.

17. Who had made the pen-drive? From where the video was downloaded? When was it done? Which device was used?

18. Not addressing such issues make the very effort of the prosecution to bring home the charge of rape against the appellant meaningless.

19. There would be no use of referring to the deposition of the parents and the grandfather of the victim who have only repeated what the victim had to



narrate in her written report.

20. However, we do realize that the sole testimony of the victim could be enough to uphold the conviction but then it has to be taken care that such evidence is of sterling quality. The victim may not be speaking lies but there are certain crevasses in the prosecution story which make us disbelieve the prosecution version.

21. The victim was found sleeping by her parents when they came back from the religious congregation. She was administered some medicines under the advise of the local doctor. There is no evidence on record as to what medicines were administered to her. Even when the victim had not been feeling well for some time, she never disclosed about the occurrence to anybody, not even to her parents.

22. There was no continuing threat.

23. There is no evidence on record that the appellant resided nearby and there could be a possibility



of the appellant crossing roads with the victim or her family members.

24. Why is it that the victim waited for the video of the act to be sent to her father's telephone? Would it not then give an impression that when there was an encounter between the appellant and the victim, the victim had consented to it or knew the consequences of such close association.

25. We are not imagining any other situation which could give rise to a doubt about false implication. There is no enmity on record. The only defence brought is a vague statement by the defence witness that there is groupism in the village because of pending elections and the families of the parties are in opposing camps.

26. This means nothing especially when the case is tested on the issue of the reason for the victim to raise an accusing finger towards the appellant only.

27. Why was the appellant chosen to be a target, if the act was not done by him. But then the



other part of the requirement in judging a case of this kind also has to be taken into account.

28. Without concrete evidence and the prosecution proving the case beyond all reasonable doubts, the presumption under Sections 29 and 30 of the POCSO Act, 2012 would not get triggered.

29. The real culprit in this case appears to be the Investigator who has completely abandoned her job.

30. The Supreme Court has, in clear terms, laid down that a defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such design or negligent investigation or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice system would be eroded. Where there has been negligence on the part of the I.O. or omissions etc. which has resulted in defective investigation, then also there is a legal obligation of the Court to examine the prosecution evidence *de hors* such lapses, carefully, to find out



whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth.

31. True it is that the investigation is not the solitary area for judicial scrutiny in criminal trial. The conclusion of trial in a case cannot be allowed to depend solely on the probity of investigation. (Refer to **C. Muniappan & Ors. vs. State of Tamil Nadu (2010) 9 SCC 567; Krishnegowda and Ors. vs. State of Karnataka (2017)13 SCC 98** and **Indra Mani Thapliyal vs. State of Uttarakhand 2013 Criminal Law Journal 3027**).

32. In obedience to the aforementioned principles, we have examined the evidence on record.

33. Neither the victim nor her parents appear to be wholly reliable or else some efforts would have been made by them to surrender the mobile telephone on which the video was sent.

34. Though the Trial Court has conclusively



held that the victim was a minor and therefore it had the jurisdiction to try the appellant but then, we have not referred to such aspect of the matter in this case for the reason that there has not been any specific objection to the document marked as an evidence regarding the minority of the victim.

35. In this context, we find that the delay of 26 days in reporting the matter is fatal.

36. The other aspect of the matter which the Trial Court lost sight of, is the total non-compliance of Section 53A of the Cr.P.C. Even though the appellant was arrested, it does not appear that he was ever subjected to any medical examination.

37. The Trial Court has rightly taken into account that the effort of the I.O. to have the victim medically examined and send her clothes/ wearing apparels for forensic examination, to be of no use. After 26 days of the occurrence, there is no expectation of any visible injury suggesting rape.



38. The victim was on the cusp of adulthood. Thus, merely stating in the medical report that the rupture in the hymen was found to be old, would not lead to any inference.

39. The clothes, of whatever worth it was, were found to be not containing any semen or blood stains.

40. In such a situation, convicting the appellant on the sole testimony of the victim would amount to paying only lip-service to the principles of law and appreciation of evidence.

41. The prosecution has not been able to prove the case beyond all reasonable doubts.

42. Taking into account the aforementioned aspects, we find the conviction of the appellant to be unsustainable in the eyes of law.

43. We, therefore, set aside the conviction giving the benefit of doubt to the appellant.

44. The appeal is allowed.

45. The appellant is in jail. He is directed to be



released forthwith from jail, if not required or detained in any other case.

46. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

47. The records of this case shall also be transmitted to the Trial Court forthwith.

48. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

Rajesh/Neha

AFR/NAFR	NAFR
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