

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1152 of 2024**

Arising Out of PS. Case No.-47 Year-2022 Thana- BUDHUCHAK District- Bhagalpur

Tripti Devi Wife of Prakash Paswan R/O Vill.- Goughatta, P.S.- Budhuchak,
Dist.- Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. Amarjeet Verma @ Mannu Verma Son of Yogesh Verma R/O Vill.-
Goughatta, P.S.- Budhuchak, Dist.- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Dr. Manoj Kumar, Advocate
For the State	:	Mr. Binay Krishna, Spl PP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 19-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 10.07.2024 passed by the learned Exclusive Special Court (POCSO Act)-cum-7th Additional District and Sessions Judge, Bhagalpur in POCSO Case No. 152 of 2022 arising out of Budhhuchak P.S. Case No. 47 of 2022, whereby Respondent No. 2 has been acquitted by the learned Trial Court from the charge of Sections 376 and 448 of the Indian Penal Code, Section 4 of the POCSO Act and Sections 3(i)(r)(s), 3(2)(v) of the SC/ST Act.



2. The prosecution case, in brief, is that the daughter of the informant aged about 17 years and 6 months, was sleeping in her room and all of a sudden, informant heard the cry of her daughter, so she went in her room and saw that Amarjeet Verma @ Mannu Verma (Respondent No. 2) was committing rape with her daughter. The informant raised *hulla*, then, nearby people came and caught the accused. She has also alleged that Amarjeet Verma had been establishing physical relations with her daughter for the past several years under the false promise of marriage. It is further alleged that younger brother of the accused Prabhat Verma along with Vikky Verma, Mahesh Verma, Yogesh Verma, all armed with *lathi* and rod came to her house and started abusing by using derogatory language related to her caste. Yogesh Verma and Vikky Verma tore her saree and blouse and Prabhat Verma took silver chain from her neck and threatened the informant that her family members would be eliminated, if she files a case against them.

3. On the basis of written complaint of the informant, Budhhuchak P.S. Case No. 47 of 2022 was instituted under Sections 376, 448, 341, 323, 354(B), 504, 506/34 of Indian Penal Code and Section 4 of the POCSO Act and Section 3(i)(r) (s), 3(2)(v) of the SC/ST Act and investigation was taken up by



the police. The police after investigation submitted charge sheet under Section 376, 448 of Indian Penal Code Section 4 of POCSO Act and Sections 3(i)(r)(s) and 3(2)(v) of SC/ST Act, against Respondent No. 2 and, accordingly, cognizance was taken. Thereafter the case was committed to the Court of Sessions. Charges were framed against the accused persons to which they pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution examined 8 witnesses i.e. PW1- Matto Paswan, PW2- Victim, PW3- Tripti Devi, PW4- Ram Bilash Paswan, PW5- Rajan Kumar Jha @ Lalu Jha, PW6- Prakash Paswan, PW7- Ajit Oraon, PW8- Ajay Kumar and CW1- Niranjan Kumar Mandal. The prosecution has also produced certain documents, which were marked as Exhibits: Exhibit P-1: signature of victim on the statement recorded under Section 161 Cr.P.C., Exhibit P-2: signature of victim on the statement recorded under Section 164 Cr.P.C., Exhibit P-3: entire written application, Exhibit P-4: entire first information report, Exhibit P-5: entire seizure list, Exhibit P-6: entire presentation-cum-seizure lists, Exhibit P-7: entire charge sheet, Exhibit P-8: signature of Assistant Director R.F.S.L report, Exhibit P-9: serological analysis of Assistant Director R.F.S.L. The defence has also examined seven witnesses viz.



DW1- Guddu Yadav, DW2- Bikesh Kumar, DW3- Madho Singh, DW4- Vijay Mandal, DW5- Gurudev Mandal, DW6- Suresh Yadav, DW7- Ramakant Sah. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned trial Court has acquitted the accused persons.

5. Learned counsel for the appellant has submitted that the learned Trial Court has failed to appreciate the evidence of PW5, who fully supported the prosecution case. The learned Trial Court has also ignored the fact that there is no contradiction in the evidence of the witnesses. Further, it was submitted that learned Trial Court has failed to appreciate the evidence of PW3 who is the eye witness, also the evidence recorded as statement of the victim under Section 161 and 164 of Cr.P.C.

6. We have heard learned counsel for the appellant and have also gone through the records of the case.

7. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

8. Upon careful scrutiny of the evidence on record, this Court finds that the testimony of the victim (PW2) is



consistent to the effect that on 31.07.2022, while she was sleeping in her room situated on the first floor, accused Amarjeet Verma entered therein and committed rape upon her. PW3 has also supported this version of the victim. However, when the evidence of defence witnesses and the Investigating Officer is examined, material contradictions were found in the prosecution case. The Investigating Officer has not collected any material evidence showing forcible entry of the accused into the room of the victim. No signs of scaling, breaking, or entry have been discovered. Rather, the defence witnesses have consistently deposed that the accused was confined in another room by the family members and, thereafter handed over to police.

9. Further, it emerges from the record that though PW8, Assistant Director, FSL, has found blood and semen stains on the undergarments of the victim, the Investigating Officer has failed to collect the blood and semen samples of the accused for scientific comparison. This lapse has created a serious doubt as to whether the stains recovered were attributable to the accused.

10. Further, on perusal of medical evidence, this Court finds that the victim had no external or internal injury on her body. However, the doctor has reported presence of spermatozoa



in the vaginal swab of the victim and has assessed her age between 17 to 19 years.

11. Upon due consideration of the deposition of CW1, Niranjana Kumar Mandal and the documentary evidence placed on record, it appears that the victim had taken her first admission in Goghatta Middle School. The admission register of the said school reflects the date of birth of the victim as 31.10.2003. It is further noticed that in the register, the year of birth has subsequently been cut and altered from 2003 to 2005. However, such interpolation is not supported by any contemporaneous record and, therefore, cannot be relied upon.

12. The father of the victim has also consistently stated the date of birth of the victim as 31.10.2003, which corroborates the original entry in the school register. In ***Rishipal Singh Solanki vs. State of U.P. & Others*** reported in (2022) 8 SCC 602, the Hon'ble Supreme Court has held that in determination of age, the first and foremost reliance should be placed upon the matriculation or equivalent certificate, and in absence thereof, the date of birth as recorded in the school first attended by the child is to be given primacy. It has further been observed that any manipulation or alteration in school records at a subsequent stage cannot override the contemporaneous entry



made at the time of first admission.

13. The Patna High Court in *Md. Islam v. The State of Bihar (Cr. App. (DB) No. 1031 of 2019)* decided on 10.10.2022, while considering the applicability of the POCSO Act, dealt with a similar situation where the prosecution had relied upon the medical and radiological assessment of age to bring the victim within the definition of a “child.” In that case, the doctor (PW-11), who prepared the radiological report, had opined the age of the victim as 17 years, but in cross-examination, he admitted that the age could be between 18–19 years. The Division Bench observed that the prosecution carries the initial burden to establish the minority of the victim. Unless such fact is conclusively proved, the stringent provisions of the POCSO Act cannot be invoked. The Court further noted that reliance solely on radiological evidence, which inherently carries a margin of error of two years, is insufficient to dislodge the benefit of doubt in favour of the accused when the age bracket crosses the threshold of majority. It was held in Paragraph No. 19 as under:-

“19....We are thus of the view that the prosecution failed to establish conclusively its case at the trial that the victim AB was a child/minor as on the date of occurrence. In such view of the matter, the conviction of the appellant under Sections 4 and 6 of the



POCSO Act cannot be upheld.”

14. The Bench also emphasised that conviction under Sections 4 and 6 of the POCSO Act cannot be sustained where the evidence itself admits the possibility of the victim being a major, for the benefit of doubt must invariably go to the accused.

15. Applying the said ratio to the facts of the present case, this Court finds that while the medical opinion suggested that the victim's age was between 17 to 19 years, the contemporaneous documentary record in the form of the first school admission register and the oral testimony of the victim's father firmly establishes her date of birth as 31.10.2003. Thus, on the date of occurrence i.e., 31.07.2022, she had already attained the age of 18 years and 9 months. Consequently, in the light of the principle laid down in *Md. Islam (supra)*, the prosecution has failed to establish that the victim was a child, and therefore, the provisions of the POCSO Act, including Section 4, are inapplicable to the present case.

16. We find that the findings recorded by the learned Trial Court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond the shadow of a reasonable doubt.



Wherever, any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

17. In criminal appeal against acquittal what the Appellate Court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the Appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court in the case of ***Mrinal Das vs. State of Tripura*** reported in ***(2011) 9 SCC 479***, Paragraph Nos. 13 & 14 of which read as under:-

"13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the



accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference....."

18. In the case of ***H.D. Sundara and Others vs. State of Karnataka*** reported in ***(2023) 9 SCC 581*** in Paragraph No. 8, the Hon'ble Supreme Court, has held as under:

"8.In this appeal, we are called upon to consider the legality and validity of the impugned judgment rendered by High Court while deciding an appeal against acquittal under Section 378 of Code of Criminal Procedure, 1973 (for short "Cr.PC"). The principles which govern the exercise of appellate jurisdiction while dealing with an



appeal against acquittal under Section 378 Cr.P.C can be summarized as follows:

“8.1.The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

19. Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the Appellate Court must not take a different view only because another view is possible. It is because the learned Trial Court has the privilege of seeing the demeanour of witnesses and, therefore, its decision must not



be upset in absence of strong and compelling grounds.

20. In view of the above, we do not find any illegality and perversity in the findings recorded by the Trial Court.

21. Accordingly, the present appeal is dismissed.

(Sudhir Singh, J)

(Rajesh Kumar Verma, J)

Anushka/-

AFR/NAFR	
CAV DATE	
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