

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1251 of 2024**

Arising Out of PS. Case No.-1247 Year-2022 Thana- KHAGARIA District- Khagaria

Bablu Singh @ Babloo Chaudhary @ Randhir Kumar Chaudhary @ Randhir Kumar, Son of Late Rameshwar Singh @ Rameshwar Chaudhary @ Baudhu Singh, Resident of Village-Hajipur Dhobi Tola, Patel Nagar, Ward No.19, Police Station-Khagaria, District-Khagaria.

... .. Appellant

Versus

1. The State of Bihar
2. X/1 C/o Sri Vikky Kumar, R/O Vill.- Hajpur Dhobi Tola, Patel Nagar, Ward no. 19, P.S.- Khagaria, Dist.- Khagaria

... .. Respondents

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Advocate Mr. Md. Imteyaz Ahmad, Advocate Mr. Ritwik Thakur, Advocate Mr. Rituraj Raman, Advocate Mr. Mohit Meet, Advocate
For the State	:	Mr. Abhimanyu Sharma, Addl.PP
For the Informant	:	Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 25-06-2025

This appeal has been preferred for setting aside the judgment of conviction dated 17.08.2024 (hereinafter referred to as the ‘impugned judgment’) and the order of sentence dated 03.09.2024 (hereinafter referred to as the ‘impugned order’) passed by learned Additional Sessions Judge-VI-cum-Exclusive Special Judge, POCSO Act, Khagaria (hereinafter referred to as the ‘learned trial court’) in Special POCSO Case No. 08 of 2023,



GR Case No. 33 of 2022 arising out of Khagaria P.S. Case No. 1247 of 2022.

2. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376AB of the Indian Penal Code (in short 'IPC') and under Section 5(m)/6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, the appellant has been ordered to undergo rigorous imprisonment for twenty years with a fine of Rs.50,000/- under Section 6 of the POCSO Act and in default of payment of fine, he has to further undergo simple imprisonment for six months.

Prosecution Case

3. The prosecution case is based on the written application of the mother of the victim (PW-2). In her written application, she has alleged that on 22.11.2022 at about 07:00 PM her daughter aged three years went to purchase biscuit from neighbourhood shop. She has alleged that the appellant allured her and with an intention to rape inserted finger in the private part of her daughter. She has alleged that her daughter came crying in injured condition and told about the incident. She has further alleged that on removing pant of her daughter, she saw bleeding.



When she went to confront him then the father and brothers of the appellant started abusing and assaulting them.

4. On the basis of this written application, Khagaria P.S. Case No. 1247 of 2022 dated 22.11.2022 was registered under Sections 376, 323, 506/34 IPC and Section 4 of the POCSO Act. After investigation, police submitted chargesheet bearing No. 01 of 2023 dated 19.01.2023 against this appellant under Section 376 IPC and Section 6 of the POCSO Act. On the basis of this chargesheet, learned trial court, vide his order dated 04.02.2023 took cognizance of the offences under Section 376 IPC and Section 4 of the POCSO Act. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried. Accordingly, vide order dated 13.02.2023, charges were framed under Section 376 IPC and Section 4 of the POCSO Act.

5. In course of trial, the prosecution examined as many as ten witnesses and exhibited several documents to prove the prosecution case. The Defence also examined five witnesses and produced two exhibits. The names of the prosecution witnesses, Defence witnesses and the exhibits produced on behalf of the prosecution and the defence are being shown hereunder in tabular form:-



List of Prosecution Witnesses

PW-1	X/2 (victim’s father)
PW-2	X/1 (victim’s mother)
PW-3	Dr. Shashibala
PW-4	Sudha Kumari
PW-5	Ms. Uma Kumari
PW-6	Rajesh Kumar @ Fantus
PW-7	Jitendra Kumar Chaudhary
PW-8	X (victim)
PW-9	Dr. Balban Kumar
PW-10	Dr. Vidyanand Singh

List of Defence Witnesses

DW-1	Mukesh Kumar Mohit
DW-2	Rajesh Kumar
DW-3	Kumar Rajan
DW-4	Manish Kumar
DW-5	Dhirendra Kumar Chaudhary

List of Exhibits (Prosecution)

Exhibit-1	Identification of signature of informant-cum-PW-2 on written application
Exhibit-2	Identification of signature of informant-cum-PW-2 on Section 164 CrPC statement
Exhibit-3, 3/1	Identification of Dr. Shashibala’s handwriting and signature on original and supplementary investigation report
Exhibit-3/2	Identification of Dr. Shashibala’s handwriting and signature on age verification report of victim
Exhibit-4	Identification of handwriting and signature of I.O. on charge-sheet



Exhibit-5	Identification of signature of the then SHO on Formal FIR
Exhibit-5/1	Registration and endorsement on the written application. Identification of the handwriting and signature of the then SHO.
Exhibit-6	Identification of statement under section 164 CrPC recorded in the handwriting and signature of Judicial Magistrate
Exhibit-7, 7/1, 7/2	Identification of signature of doctors on the Medical Board’s investigation report
Exhibit-8	Identification of signature of Medical Officer Vidyanand Singh as witness on the investigation report
Exhibit-9	FSL report of Patna Forensic Science Laboratory (in total one fard)
Exhibit-9/1	FSL report of Bhagalpur Forensic Science Laboratory (in total four fard)
Exhibit-10, 10/1	Production-cum-seizure list dated 22.11.2022 in the handwriting and signature of I.O.

List of Defence Exhibits

Exhibit-A	Original copy of notice issued in M. No. 503/11 by SDM, Khagaria to Dhirendra Kumar Chaudhary
Exhibit-B	Original copy of original kevala document no. 8050

Findings of the Learned Trial Court

6. Learned trial court after analysing the evidence available on record firstly proceeded to consider as to whether the victim is in the category of “child” or not? Learned trial court found that according to definition provided in section 2(d) of POCSO Act, “child” means any person below the age of eighteen



years. In this case no documentary evidence has been produced regarding the age of the victim. According to learned trial court on the basis of appearance she seems to be child of being tender age, in other words she is in category of innocent child. During trial the mother of the victim also stated about the age of the victim and the evidence of PW-3 Dr. Shashibala, who was the member of Medical board which has reported that the age of victim is between 3-5 years. Therefore, learned trial court declared the victim is “child” under the definitions given under POCSO Act.

7. On the point of identification of accused learned trial court found that the accused has been also identified in open court by the victim herself.

8. Regarding delay in lodgement of FIR learned trial court found that the date of occurrence is 22.11.2022 at 07:00PM, and it has been reported to police station on 22.11.2022 at 08:20PM, hence, learned trial court found that the delay of one hour in reporting of offence under POCSO Act is general and normal.

9. Regarding the place of occurrence, date and manner of offence learned trial court took the evidence of the informant who deposed that the victim ‘X’ on 22.11.2022 at 07:00 PM went to the shop of accused for purchasing biscuit, where the accused



has committed sexual offence with victim. Learned trial court on the evaluation of evidence found that the place of occurrence is the Kirana shop of the accused which was found to be proved by the facts and map of place of occurrence.

10. Regarding presumption and *mens rea* learned trial court opined that the offences under the POCSO act are to be presumed under section 29 of the act and the learned courts have to presume about the commission of offence and the burden shifts to accused to disprove it once the facts of the case are established. Learned trial court found that in this case under trial the accused is charged for offence of penetrative sexual offence with 3 years innocent girl child by inserting his finger into the private part of victim due to which blood came out, on the basis of the materials on records and evidence presented during the trial court has to presume. To prove this charge learned trial court has found that the prosecution has produced three important witnesses, PW-1 father of victim, PW-2 mother of victim, and PW-8 who is victim herself. There is no major contradiction in the statements of informant (PW-2) recorded under Section 164 CrPC and statement recorded on oath in trial court, she has reiterated her statement. The PW-1, father also puts the same impression, he has also mentioned that the accused had committed wrong 2-3 times earlier with his



daughter, which he ignored, in his cross examination the defence has asked questions regarding the land dispute, which was partly accepted and partly ignored, however, he withstood on her statement regarding the commission by accused. On evaluation of evidences of PW-1, 2 and 8, learned trial court found that the victim went to shop of the accused and in that course the accused has committed the offence.

11. Learned trial court went to examine us to what extent the Victim X, who is in the category of child witness, has supported this case. She has been examined as PW-8 on 03.06.2023. Before recording her examination she was subjected to *vior-dire* test by learned trial court. During examination-in-chief she stated that the accused has inserted his hand, his finger, on asking where it was done, she answers in shop, on asking why she went she answered, for taking biscuit, on asking about the crowd in shop she replied that there was no crowd. She was unable to answer few questions. Factually, its clear that the accused has committed this offence with ill intention.

12. Regarding the ocular evidence supported by medical evidence, learned trial court has found that the informant in written application for lodgement of FIR mentioned about oozing of blood from private part of her daughter, she was taken to hospital by



Police officials where her treatment has been done, PW-3 Medical officer in her examination in chief has deposed that she found “vulva, libia majora and libia minora –red, tenderness and abraded. Clitoris-red swollen and tenderness. Hymen- intact but reddish and tender. Bleeding from vagina- present” which was restated by her in statement in court.

13. On point of corroboration of testimonies of witnesses, learned trial court has mentioned that, it is the judicial opinion that in the case of rape, contradiction is not a matter of law but a guideline of prudence. The statement of victim is very important as long as there is no essential reason for doubting it. In this case child witness was able to report it clearly to her mother in first instance and she deposed in court the same as she reported earlier as being of the tender age of 3 years, so there is no requirement of corroboration by any independent witness or evidence. Learned trial court opined that the defence has raised argument on medical report about “Hymen-intact” but not supported it by any strong argument. The principle of *falsus in uno- falsus in omnibus* is not applicable in India so will not apply to this case.

14. As regards the F.S.L Report, learned trial court has found that the seized cloth of victim boars grayish stains which



points about the physical connection between victim and accused, and with the perusal of other material and evidences on record it becomes evident from the medical evidence also.

15. On the basis of the materials on the record and evaluation of evidences learned trial court found that the accused on date of occurrence and place of occurrence has inserted his finger in the private part of the victim 'X' due to which there was penetration in the private part of victim.

16. Learned trial court on Defence evidence found that the statement of accused was recorded under section 313 of CrPC, on which he replied that he had listened all the statement of witnesses to which he replied affirmatively and on commission of alleged offence he denied specifically that, he had not committed, he further replied that he has been falsely implicated due to land dispute. Learned trial court examined the witnesses examined on behalf of defence who are DW-1 to DW-5 who were not able to support their statement, and they are under influence as being friend, neighbour, tenant and own brother, they presented the facts by twisting them, they are not able to prove any relevance with the case and can't be relied as credible witnesses. In other words defence was not able to disprove any charges and failed. Accordingly, the learned trial court held the appellant guilty for the



offences under Section 376A, B of the IPC and Section 5d/6 of the POCSO Act.

Submissions on behalf of the appellant

17. Mr. Ajay Kumar Thakur, learned counsel for the appellant, has assailed the impugned judgment on various grounds. It is submitted that the learned trial court could not appreciate the evidences available on the record, particularly the sale deed (Exhibit 'B') brought on record by the defence which would show that two brothers namely Rajendra Ram and Upendra Ram of the husband of the informant had executed a sale deed on 28.12.2010 with respect to six *dhur* and thirteen *dhurki* of land of Plot No. 183/184 under Khata No. 45 in favour of Shri Dhirendra Kumar Chaudhary, son of Shri Rameshwar Chaudhary who is the brother of the accused-appellant. This gave rise to a dispute between the family of the informant and that of the family of the appellant. The another document is a notice issued by the Sub-Divisional Magistrate, Khagaria in the matter of a proceeding under section 107 of the CrPC vide Miscellaneous No. 503/2011 in which Shri Dhirendra Kumar Chaudhary is the first party and the informant is the second party in the matter of a proceeding under section 107 CrPC vide Miscellaneous Case No. 503(M)/2011. This notice was also proved on behalf of the defence and the same has been



marked Exhibit 'A'. According to learned counsel for the appellant, it is a case of false implication of the appellant because of the said land dispute between the two families.

18. The another argument of learned counsel for the appellant is that in this case, the definite prosecution case is that after penetration of finger by the appellant in the private part of the victim girl, she came in injured condition and weeping to her mother and told the occurrence. At this stage, her mother claimed to have opened the pant of the victim girl and found that blood was oozing out. It is submitted that although Dr. Shashibala (PW-3), the Medical Officer in Sadar Hospital, Khagaria has stated in the injury report (Exhibit '3') that vulva, labia majora and labia minora, were found red, tenderness and abraded, clitoris – red, swollen and tenderness and bleeding from vagina – present but PW-3 found that the hymen of the victim girl was intact but reddish and tender. Referring to paragraph '4' to '6' of her cross-examination, learned counsel for the appellant submits that PW-3 has stated that the kind of injuries present may be caused due to fall and she has further stated that if a finger is inserted in the vagina of a girl aged between 3-5 years, her hymen would not remain intact. It is, thus a submission that the case of the defence as set out that the victim girl had sustained injury because of her



fall in course of urination, her mother has said that victim had fallen in course of urination, hence the defence gets support from paragraph '4' to '6' of cross-examination of the doctor (PW-3).

19. Learned counsel submits that another doctor namely Dr. Vidyanand Singh (PW-10) has deposed that he had examined the victim girl (X) at 11:05 AM. He had removed the foreign body button from left nostril. Foreign body was sealed in vial and was given to the I.O. of this case. He has proved the injury report issued by him (Exhibit 'P-8'/PW-10). It is submitted that in Exhibit 'P-8', PW-10 has stated in course of his cross-examination that he had not found any injury on the body of the victim girl. Learned counsel, therefore, submits that the informant has taken advantage of the injury caused to the victim girl in concocting a story of finger penetration in the private part of the victim girl and this has been done in order to falsely implicate the appellant because of the land dispute.

20. Learned counsel has further submitted that in this case, the learned trial court has relied upon the evidence of the victim girl (PW-8), however, in his submission PW-8 is a child witness aged between 3-5 years, therefore, the learned Magistrate should have examined the competence of the child witness to speak the truth and the consequences of not speaking the truth. It is



submitted that while recording the deposition of PW-8, the learned Magistrate has stated in tentative words that she was understanding few things. The learned Magistrate has not been examined in this case. The victim girl while answering the questions put to her by the defence through the learned Magistrate was looking towards her mother and the fact that she was in the custody of her mother since the lodgement of the case and till her statement was being recorded in the trial court, she was tutored to speak few things only. It is submitted that the I.O. (PW-4) has stated that she had taken the victim girl and her mother to the court for recording of their 164 CrPC statement, order dated 23.11.2022 passed by the learned Special Judge, POCSO Act, Khagaria would show that the victim girl and her mother were sent for recording of their statement to Ms. Uma Kumari, Judicial Magistrate, 1st Class but it appears that 164 CrPC statement of the victim girl was either not recorded or has been suppressed by the prosecution.

21. Learned counsel submits that the white leggings which the victim girl was wearing at the time of occurrence was produced before the I.O. (PW-4) by the mother of the victim girl on 22.11.2022 at 22:40 hours. The I.O. (PW-4) has deposed that she had sealed the cloth of the victim in a packet, sealed the same and the sealed cloth were marked 'C'. It was sent to the Forensic



Science Laboratory for medical examination, however, the FSL report (Exhibit '8') did not find any blood mark on the underwear and the leggings of the victim girl. It is submitted that the definite prosecution case that the victim girl was bleeding becomes suspicious, on the face of the FSL report which did not find any blood mark present on the undergarments and leggings of the victim girl.

22. Learned counsel submits that the another FSL report (Exhibit '9') is with regard to the DNA test. The FSL report exhibit marked 'A' (Source-Blood stained gauze swab cuttings), taken from left hand of accused, blood sample of the accused in EDTA vial (mark 'D'), blood sample of the victim girl (X) in EDTA vial (mark 'E') and blood sample of the victim girl (X) on filter paper (mark 'F'). The FSL report found that contribution in the source of exhibit marked 'A' could not be established as the DNA yield found refractory to amplification. Male DNA have been obtained from the source of exhibit marked 'D' (Blood source – accused) is a female DNA have been obtained from source of exhibit marked 'E' and 'F' (Blood source - victim girl). It is therefore submitted that both the FSL reports falsifies the prosecution case.



Submissions on behalf of the informant and the State

23. On the other hand, learned counsel for the informant and learned Additional Public Prosecutor for the State have jointly opposed the appeal. It is their common contention that the defence documents which are Exhibit 'A' and Exhibit 'B' respectively are of the year 2010-2011. The sale deed was obtained from the co-sharers of the informant by one Dhirendra Kumar Chaudhary who is brother of the accused – appellant. The appellant has no beneficial interest in the said land and he is not party to either the suit or to the proceeding under Section 107 CrPC. It is further evident from the boundary of the disputed land that in the northern side of the disputed land the name of husband of the informant has been shown. In the southern boundary it is the name of Rameshwar Chaudhary who is father of the purchaser Dhirendra Kumar Chaudhary, in east there is one Nandan Chaudhary and in west there is a road. The appellant is not in the boundary of the disputed land. It is submitted that the place of occurrence is the house-cum-shop of the appellant. I.O. (PW-4) has deposed with regard to the boundary of the place of occurrence and it would be evident from her deposition that in the north there is house of the brother of the accused, in south there is a three storey house of Sunil Chaudhary, in east there is *parti* land and in west there is



PCC road whereafter there is *parti* land of Mahesh Chaudhary. This appellant is the resident of Hajipur Dhobi Tola, Patel Nagar, Ward No. 19 whereas Shri Dhirendra Kumar Chaudhary (purchaser of land) is a resident of Ward No. 20. The submission is that under these circumstances where the accused-appellant has no beneficial interest in the disputed property and when he is not a party to any of the proceedings with respect to the disputed land, the plea of the defence that it is a false implication of the appellant on account of land dispute cannot be believed. The defence has not come out with any circumstance or immediate reason to show as to why after 14-15 years of the alleged land dispute between the brother of the accused and the informant, a false case would be registered against this appellant.

24. Learned counsel further submits that the victim girl in this case has been found competent by the learned Magistrate and her testimony cannot be discarded only because she is a child witness. The learned trial court has tested her understanding and found her competent. Her looking towards her mother in course of deposition is a natural conduct of the child. It is submitted that only because her 164 CrPC statement is not on the record, the evidence adduced by the victim girl would not lose its sanctity and evidentiary value.



25. Learned counsel further submits that so far as the evidence of Dr. Shashibala (PW-3) is concerned, no contradiction may be found between her examination-in-chief and the cross-examination. PW-3 had examined the victim girl in Sadar Hospital, Khagaria and she had found that the vulva, labia majora and labia minora of the victim girl were red, tendered and abraded. The plea that the hymen remained intact is liable to be rejected because many a times hymen may remain intact depending upon its structure. In this connection, learned counsel relies upon the texts of “Modi A Textbook of Medical Jurisprudence and Toxicology” (Twenty Seventh Edition) published by LexisNexis wherein in Chapter 32 it is stated that the status of hymen is irrelevant because the hymen can be torn out due to several reasons but an intact hymen does not rule out sexual violence.

26. Learned counsel submits that the occurrence took place on 22.11.2022 at around 7:00 PM, the FIR was lodged immediately thereafter and the victim girl was examined in the Sadar Hospital, Khagaria by doctor (PW-3). All this happened within a reasonable time-frame, therefore, there would be no chance of concoction of the prosecution story. According to him, non-finding of blood on the leggings and the undergarments of the



victim girl may not prove fatal to the prosecution and the learned trial court has rightly held that the principle of Falsus in uno, falsus in omnibus would not be applicable in India. The court has a duty to separate the chaffs from the grain. In the present case, the learned trial court has, therefore, rightly concluded that the appellant is guilty of commission of the offence.

Consideration

27. Having heard learned counsel for the appellant, learned counsel for the informant and learned Additional Public Prosecutor for the State as also on perusal of the trial court records, this Court finds that the prosecution has been able to lay down the foundational facts to attract the presumption as envisaged under Section 29 of the POCSO Act, 2012 (as amended up to date). Section 29 reads as under:-

29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.”

28. By judicial pronouncements, it has been held that to attract the presumption under Section 29, the prosecution has to prove the primary facts. In this case, the defence has not questioned the age of the victim girl (X). The Medical Board constituted by the Civil Surgeon, Khagaria examined the victim



girl on 23.11.2022. The Medical Board found that she was between 3-5 years. The report of the Medical Board has been marked Exhibit 'P/7' through Dr. Balban Kumar (PW-9) who was posted at Sadar Hospital, Khagaria as a Dental Surgeon and was a member of the Medical Board. PW-9 has proved the signature of Dr. Ravi Shankar and Dr. Shashibala (PW-3) is Exhibit '7/1' and Exhibit '7/2' on the report.

29. The victim girl has been examined as PW-8. In course of her deposition, she identified the appellant and affirmed that he had penetrated his finger in her private part. The defence put her certain questions through the learned trial court. She was not suggested that she had not gone to the shop of the appellant rather, defence asked certain questions such as – what was the day on which she had gone to the shop of Bablu Chacha and how many persons were present at the shop. There is no whisper at all by the defence that the victim girl had not visited the shop of the accused on 22.11.2022 during evening hour.

30. This Court further finds from the evidence on the record that the victim girl came weeping to her mother and told her about the occurrence whereafter her mother went to lodge the FIR. FIR was lodged and the I.O. (PW-4) recorded her statement under Section 161 CrPC in which she once again told about the



occurrence. The I.O. (PW-4) has stated in her deposition that the victim had supported the prosecution case that the occurrence was committed in the shop of the accused Bablu Singh @ Bablu Chaudhary.

In the opinion of this Court, the prosecution has well established the primary facts so as to attract the presumption under Section 29 of the POCSO Act.

31. Now coming to the defence case, at first instance it is submitted that the case has been lodged against the accused – appellant because of a land dispute in which family of the appellant is involved. In this regard, this Court has perused Exhibit ‘A’ and Exhibit ‘B’ which are the two documents pertaining to the land dispute brought by the defence. Exhibit ‘A’ is a notice issued by the court of Sub-Divisional Officer, Khagaria in which Dhirendra Kumar Chaudhary, son of Kameshwar Chaudhary is the first party and the informant is the second party. This notice was issued on 09.05.2011 and it speaks of a land dispute. Exhibit ‘B’ is the sale deed dated 28.12.2010. By this sale deed, Dhirendra Kumar Chaudhary had purchased six *dhurs* and thirteen *dhurki* of land from Rajendra Ram and Upendra Ram who are said to be the co-sharers of the informant. It is evident from the *najri naksha* enclosed with the sale deed (Exhibit ‘B’) that neither the appellant



nor his father is a witness on the sale deed and there is no mention of the name of the appellant or his father in the boundary of the purchased land. The purchaser of the land is a resident of Ward No. 20. The description of the land as mentioned in the sale deed is saying that the land is in Ward No. 20. The appellant is a resident of Ward No. 19 and the boundary of the place of occurrence as disclosed by the I.O. on the basis of the identification made by the informant and the victim would show that the place of occurrence is in Ward No. 19 which is residence-cum-shop of the appellant. It is evident that this dispute is going on between the parties for last fifteen years. There is no evidence on the record to show that this appellant had any enmity with the prosecution side on account of this land dispute. This Court, therefore, not find any cogent evidence on the record to accept this defence of the appellant.

32. The another defence taken by the appellant based on the medical evidence and the opinion of the two doctors namely Dr. Shashibala (PW-3) and Dr. Vidyanand Singh (PW-10). PW-3 had examined the victim girl in the same night at 1:45 AM on 23.11.2022 in the labour room – Emergency at Sadar Hospital, Khagaria. The injury report (Exhibit ‘3’) issued by PW-3 is as under.

“I Examined [REDACTED] C/o [REDACTED]
belong to [REDACTED] Dist.- Khagaria
brought by ladies constable Puja kumari (N. 335) &



Anjali Kumari (N.- 341) in front of ANM Kumari Anjana in labor Room emergency at Sadar Hospital Khagaria at 1:45 A.M. on 23/11/2022.

O/E Temp. - 97.4 F/ 1.40 A.M.

GPE. Inj. T.T. 5. ml I.M., given

G.C.-Fair

Child is irritable & crying * Child cloth I did not get handover to police

M.I. (i) Black mole present over lower lid of Lt. Eye.

(ii) Small cut mark present over outer canthus of Lt. Eye.

General Examination Face – Normal, not injured.

Both Arms- Normal no Injury. Chest – No injury.

Back of chest – No injury.

Local Pubic hair & Axillary hair not develop. No matted hair, no semen present around genitalia & vulva.

Perineum- Normal. No tear present. No bleeding /discharge present over perineum area.

Vulva, Labia Majora & Labia minora- Red, tenderness and abraded.

Clitoris - Red, swollen & tenderness.

Hymen- Intact but reddish & tenderness.

Bleeding from vagina ++

Vaginal swab taken & send to J.L.N.M.C.H. Bhagalpur for microscopy examination.”

[The identity of the victim has been masked by this Court.]

33. In her examination-in-chief, PW-3 has proved the injury report (Exhibit ‘3’) and supplementary report of microscopic examination of vaginal swab-spermatozoa not found as Exhibit ‘3/1’. She has also proved her signature on the report of the medical board and it has been marked Exhibit ‘3/2’ at her instance. It is evident from Exhibit ‘3’ that the doctor had found that vulva, labia majora and labia minora were red, there were tenderness and those were abraded. Clitoris was found red, there were tenderness and those were abraded. Clitoris was found red,



swollen and tenderness. Bleeding from vagina was present, the hymen was reported intact but reddish and tender. Learned counsel for the defence has heavily relied upon paragraph '4', '5' and '6' of the deposition of PW-3 to submit that according to the doctor, she had not found any injury on other part of body or the substance of any other person on the body of the victim. The doctor has also opined that if a finger is penetrated in the vagina of a girl child, her hymen would not remain intact. She has also stated that the kind of injuries suffered by the victim of this case may occur due to fall.

34. The defence has also relied upon the evidence of Dr. Vidyanand Singh (PW-10) to submit that he had removed foreign body button from left nostril of the victim on 23.11.2022 at 11:05 AM. He had not found any other injury on the body of the victim. This doctor had proved the injury report of the victim as P-8/PW-10. According to the defence, while lodging the case, the informant did not disclose that how the button entered into the nostril of the victim girl. It is pointed out that the informant while making her statement under Section 164 CrPC disclosed this fact that during examination in the hospital, in the morning one button was removed from the nostril of her daughter. It is submitted that PW-3 has noted in the injury report (Exhibit '3') that child is irritable & crying * child cloth I did not get cloth - hand over to



police. It is submitted that the doctor found the child in irritable and crying condition which may happen because of the foreign body like button in her nostril and in this connection, the statement of PW-10 is that if a child of three years would have button inside her nose then she would be in trouble. This Court is, however, not impressed with the defence on this point too. The victim is a three years old girl child. She was examined by PW-3 within a short period from the time of occurrence. She has deposed that vulva, labia majora and labia minora were found red, in tendered condition and abraded. The clitoris was also red, swollen and tendered. The plea of the defence that such injuries may be caused due to fall is not proved from the evidence available on the record in the present case. As regards the condition of hymen, Modi A Textbook of Medical Jurisprudence and Toxicology” (Twenty Seventh Edition) clearly provides in paragraph ‘18’ inter alia reads as under:-

“..... The status of hymen is irrelevant because the hymen can be torn due to several reasons such as cycling, riding or masturbation among other things. An intact hymen does not rule out sexual violence, and a torn hymen does not prove previous sexual intercourse. Hymen should therefore be treated like any other part of the genitals while documenting examination findings in cases of sexual violence. Only those that are relevant to the episode of assault (findings such as fresh tears, bleeding, oedema, etc.) are to be documented....”



In paragraph '32.15' in chapter 32 the textbook reads as under:

“... There is a distinction between vulval penetration and vaginal penetration; and vulval penetration, with or without violence, is as much rape as vaginal penetration. It is not necessary that hymen be ruptured in every case. More importantly, this examination has become increasingly irrelevant in the modern day approach to determination of sexual violence and the guidelines issued by the Ministry of Health and Family Welfare, which have suggested giving up medical reports on the status of hymen ruptures.”

35. It is well settled in law that insertion of any object or part of the body, even a finger or tongue into vagina, urethra or anus would come within the meaning of rape as defined under Section 375 IPC (now section 63 of Bharatiya Nyaya Sanhita, 2023). Vagina includes labia majora and mere a surface touch would be sufficient to bring it within the meaning of rape. It is evident that the local examination of the genitals part of the victim girl (PW-3) had examined the victim, inspected vulva, labia majora and labia minora for any sign of recent injury such as bleeding, tear, bruises, abrasions, swelling. PW-3 found redness, tenderness and swelling suggesting that the victim was subjected to penetration into her vagina. Even her hymen was found reddish and tendered though it was intact.

36. The injury report (Exhibit '3') and the evidence of doctor (PW-3) read together with the evidence of the victim girl (PW-3) would prove the prosecution case beyond all reasonable



doubts and the defence of the appellant that the victim girl had sustained injuries in her private parts because of fall in course of urination in her house is liable to be rejected.

37. The defence has taken a plea that the victim girl is a child witness and her competence to depose has not been duly examined by the learned trial court. We have gone through the evidence of PW-8. When she came to depose the learned Presiding Officer asked her few questions which she answered and the trial court being satisfied with her understanding found her fit to depose. In her examination-in-chief, she has clearly stated that the appellant had penetrated his finger. She has stated about the place of occurrence being the shop of the appellant. She has stated that the occurrence took place in the evening when she had gone to bring biscuit. She has stated that it was summer season and she was alone. When she was asked that whether the appellant had beaten her, she said 'No'. This Court is satisfied that the victim girl (PW-8) has rightly been held competent to depose by the learned trial court and no adverse opinion may be found on this issue. The learned trial court has rightly held that the evidence of the victim is very important and according to Section 134 of the Indian Evidence Act, it is the quality of evidence which is to be seen and not the quantity of evidence. The learned trial court has rightly



held that the principle of Falsus in uno, falsus in omnibus is not applicable in India. The view taken by the learned trial court that in order to settle the score on account of an old inimical relationship, the informant could have herself placed as the victim but it cannot be believed that she would make her innocent child girl a victim is a correct reasoning. In this connection, the learned trial court has relied upon the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. Chhoteylal** reported in **AIR 2011 SC 697**. The relevant part of the judgment are quoted hereunder for a ready reference:-

“..... it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites.”

38. At this stage, this Court would also rely upon the judgment of the Hon'ble Supreme Court in case of **O.M. Baby (Dead) by Legal Representative vs. State of Kerala** reported in **(2012) 11 SCC 362** for purpose of appreciation of evidence in case of rape of a minor. In paragraph '18' of the judgment, the Hon'ble Supreme Court has observed as under:-

“We would further like to observe that while appreciating the evidence of the prosecutrix, the court must keep in mind that in the context of the values prevailing in the country, particularly in rural India, it would be unusual for



a woman to come up with a false story of being a victim of sexual assault so as to implicate an innocent person. Such a view has been expressed by the judgment of this Court in State of Punjab vs. Gurmit Singh⁶ and has found reiteration in Rajinder vs. State of H.P.⁷”

39. The Hon’ble Supreme Court has further held that in the absence of corroboration, the testimony of the victim cannot be ignored, unless the inconsistency or contradictions are sufficiently serious to warrant such a course of action. It is well settled that the prosecutrix of a sex offence is a victim of the crime. She is undoubtedly a competent witness under section 118 of the Evidence Act and her evidence must receive the same weight as is attached to the injured in case of physical violence. In the kind of some evidences present on the record, this Court finds no reason to discard the evidence of the victim girl, her mother and the doctor.

40. The defence has examined five witnesses. Mukesh Kumar Mohit (DW-1) is a tenant in the house of the appellant who has stated that he was in the house on 22.11.2022 at 7:00 PM. He is not aware whether any quarrel had taken place at that time at the shop of the appellant. He had not heard about any wrong act committed by the appellant with the victim. He has stated that there was a land dispute between the brother of the appellant and Vicky. In paragraph ‘7’ of his cross-examination, he has stated that he is not aware that the appellant had put his finger in the private part of

6. (1996) 2 SCC 384 : 1996 SCC (Cri) 316

7. (2009) 16 SCC 69 : (2010) 2 SCC (Cri) 156



the victim and in that connection, the appellant was arrested. It is evident from his deposition that he is a tenant of the appellant and is not aware as to the facts and circumstances of the case.

41. Rajesh Kumar (DW-2) works as a Medical Representative and he has also shown his unawareness about the occurrence which took place on 22.11.2022 between 7-7:30 PM. Kumar Rajan (DW-3) has stated that he had not seen the victim girl between 7-7:30 PM at the shop of Bablu (the appellant). He has stated that there is a title suit going on between Bablu and Vicky but this Court finds that this statement of DW-3 is not correct inasmuch as this appellant is not a party to any title suit or any other proceeding.

42. DW-3 has also stated that he is not aware that in between 7-7:30 PM, the victim girl had gone to the shop of the appellant where the appellant had put his finger in her private part whereafter police had arrested him.

43. Manish Kumar (DW-4) has stated that he had not seen the appellant committing any wrong act with any girl child between 7-7:30 PM. He has also reiterated about his awareness that the appellant had committed wrong act with the victim girl by putting his finger in private part of the victim after which he was arrested by police.



44. At this stage, it is worth mentioning that the defence has not set up a plea in course of cross-examination of the prosecution witnesses that the victim girl had not visited the shop of the appellant in the evening of 22.11.2022. These defence witnesses have though stated that they had not seen the appellant committing any occurrence with the victim girl but at the same time they have shown their unawareness about the occurrence. Dhirendra Kumar Chaudhary (DW-5) is the full brother of the appellant who has proved Exhibit 'A' and Exhibit 'B'. He has stated that on 22.11.2022 he was outside Khagaria. He has stated that he had taken the sale deed from two uncles of Vicky and for that reason, the quarrel were taking place. This witness had not stated that either on 22.11.2022 or in recent time any quarrel had taken place between the appellant and the family of Vicky.

45. In the opinion of this Court, the testimony of defence witnesses do not inspire confidence.

46. In ultimate analysis, this Court finds that the defence has completely failed to rebut the prosecution case. On the other hand, the prosecution case has been proved beyond all reasonable doubts. This Court, therefore, finds no reason to interfere with the judgment of conviction of the appellant under section 6 of the POCSO Act.



47. So far as the sentence awarded to the appellant is concerned, this Court finds that section 6 of the POCSO Act provides a minimum punishment of rigorous imprisonment for a term of twenty years. The learned trial court has awarded the minimum sentence, therefore, on this point as well there would be no interference.

48. This appeal fails.

49. A copy of the judgment along with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	19.06.2025
Uploading Date	25.06.2025
Transmission Date	25.06.2025

