

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.10 of 2023

Arising Out of PS. Case No.-44 Year-2020 Thana- ISHUPUR BARAHAT District- Bhagalpur

Vikash @ Vikki Kumar Goswami, Son of Girdhari Goswami, Resident of
Village- Ishipur Barahat, P.S.- Ishipur Barahat, District- Bhagalpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Anupa Nand Jha, Advocate
		Mr. Anil kumar Tiwary, Advocate
For the Respondent/s	:	Ms. Usha Kumari 1, Spl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-08-2025

Heard learned counsel for the petitioner and learned
Special Public Prosecutor for the State.

2. Vide order dated 24.07.2025, we have directed the learned
Special Public Prosecutor for the State to instruct the officer in-charge
of Ishipur Barahat Police Station in the District of Bhagalpur to serve a
written notice upon the informant of this case with regard to the present
case being heard in the High Court. The officer in-charge of Ishipur
Barahat Police Station has, vide letter dated 02.08.2025, informed that
the informant was served with notice. Despite service of notice, the
informant has chosen not to appear in this case.

3. This appeal has been preferred for setting aside the
judgment of conviction dated 24.08.2022 (hereinafter referred to as
the 'impugned judgment') and the order of sentence dated



29.08.2022 (hereinafter referred to as the 'impugned order') passed by learned Exclusive Special Judge (POCSO Act)-cum-7th Additional Sessions Judge, Bhagalpur (hereinafter referred to as the 'learned trial court') in POCSO Case No. 72 of 2020 arising out of Ishipur Barahat P.S. Case No. 44 of 2020. By the impugned judgment, the appellant has been convicted for the offences under Sections 376, 323 of the Indian Penal Code (in short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, he has been sentenced rigorous imprisonment for 20 years with a fine of Rs.20,000/- under Section 4 of the POCSO Act and in default of payment of fine, he has to further undergo six months imprisonment. He has also been sentenced simple imprisonment for one year with a fine of Rs.1,000/- under Section 323 IPC and in default of payment of fine, he has to further undergo simple imprisonment for one month. Both the sentences are to run concurrently.

Prosecution Case

4. The prosecution case is based on the written application given by the informant (PW-1). In her written application, she has stated that on 25.06.2020 at about 05:00 PM, her daughter had gone to attend nature's call in the maize field, in the meantime, her co-villager Vikash @ Vikki Kumar Goswami (appellant) committed rape upon her and caused injuries on various part of her body by biting,



the appellant with an intention to kill her daughter, pressed her neck by his leg many times as a result of which she became unconscious and the appellant fled away assuming her dead. When her daughter regained her consciousness, she somehow reached home covered in blood whereafter the informant panicked and due to social stigma, she brought her daughter for treatment outside the village and after treatment, she disclosed about the occurrence to the police. The informant further alleged that she belongs to *Harijan* Community and her family is very poor.

5. On the basis of this written application, Ishipur Barahat P.S. Case No. 44 of 2020 dated 02.07.2020 was registered under Sections 376, 324, 307, 506 IPC and Section 4/8 of the POCSO Act and Section 3(i)(r)(w) of the SC/ST Act against this appellant. After investigation police submitted chargesheet being Chargesheet No. 60 of 2020 dated 31.08.2020 under Sections 376, 324, 307, 506 IPC and Section 4/8 of the POCSO Act and Section 3(i)(r)(w) of the SC/ST Act. Learned trial court vide order dated 04.09.2020 took cognizance of the offences under above mentioned Sections. 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 12.03.2021, charges were framed under Sections 376, 324, 307, 506 IPC, Section 4/8 of the POCSO Act and Section 3(i)(r)(w) of the SC/ST Act.



6. In course of trial, the prosecution has examined altogether six witnesses and exhibited some documentary evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Mother of the victim
PW-2	Neelam Devi
PW-3	Victim
PW-4	Mala Devi
PW-5	Dr. Neelam
PW-6	Bhagirath Das

List of Exhibits on behalf of the Prosecution

Exhibit ‘1’	Statement of the Victim u/s 164 CrPC
Exhibit ‘2’ & ‘2/1’	Medical Report of the victim
Exhibit ‘3’	Formal FIR
Exhibit ‘4’	Chargesheet

7. Thereafter, the statement of the appellant was recorded under Section 313 of the CrPC. The appellant denied all the allegations and took a plea that he is innocent and has falsely been implicated.

8. The defence has not adduced any oral or documentary evidence.

Findings of the Learned Trial Court

9. Learned trial court after examining all the evidences available on the record found from the evidences of the informant (PW-1), victim (PW-3) and Doctor (PW-5) that the accused has committed rape on the victim and caused injuries on her body when



she went to attend nature's call in the maize field. Learned trial court found that the Doctor (PW-5) has deposed that the victim is aged between 14-16 years, he has found multiple injuries (bite mark) all over the face of the victim and hymen was found ruptured. Learned trial court observed that there is no reason to disbelieve the statement of the victim (PW-3) which has been corroborated by the Doctor (PW-5), PW-1 and PW-4.

10. Learned trial court further found that the delay in lodging of the FIR has been explained in paragraph '4' of the cross-examination of the informant (PW-1) that treatment has taken time. Learned trial court found that the prosecution has proved the foundational facts that the victim is aged below 16 years and accused has committed rape upon her.

11. Learned trial court after appreciation of the evidences available on the record found that the prosecution has been able to prove charges under Sections 323 and 376 IPC and Section 4 of the POCSO Act, accordingly, the appellant has been convicted for the offences under sections 323, 376 IPC and Section 4 of the POCSO Act.

Consideration

12. We have heard learned counsel for the appellant and learned Special Public Prosecutor for the State as also perused the trial court records.



13. On going through the entire materials, we find that in the present case the occurrence is said to have taken place on 25.06.2020 at 5.00 PM. The F.I.R. (Exhibit-P-3) has been lodged by mother of the victim on 02.07.2020. In her written information, she has disclosed that when her daughter reached home, she was in pool of blood. The informant with a sense of her prestige took her outside for her treatment. It is important to note that she does not disclose the place where she had gone with the victim. Further in the written information, the informant (PW-1) has stated that when her daughter got well then she disclosed the occurrence which took place with her whereupon the informant came to lodge the F.I.R. on 02.07.2020. Thus, from this part of the statement in F.I.R. it would appear that since 25.06.2020 the victim did not disclose to her mother about the occurrence until the date of lodging of the F.I.R. In course of trial, the informant (PW-1) has identified her thumb impression on the written information (Exhibit-P-3) submitted before police. She has stated that when she had been in search of the victim she found that victim was coming and when she asked as to what had happened with her then she disclosed the occurrence. Therefore, in trial PW-1 has deviated from her case in the F.I.R. She had come to know about the occurrence on 25.06.2020 itself. PW-1 has disclosed for the first time in trial that she had taken the victim for her treatment to her Samadhi's place namely 'Gangti Bihari' in



Jharkhand. We, however, find that no paper showing treatment of the victim at Gangti Bihari, Jharkhand has been brought in evidence.

14. In her cross-examination, she has stated that for treatment she had gone to Gangti Bihari and had returned within one day, she was not treated anywhere else. It is evident from the deposition of PW-3 that she has not stated about any injury on her private parts. In cross-examination only she has stated to have gone to Gangti Bihari for treatment but returned within one day. Whereas, her mother has in order to explain the delay in lodging the F.I.R. stated that it took 7-8 days in the treatment.

15. P.W.1 has neither disclosed the name of the doctor who treated the victim in the state of Jharkhand nor named her Samadhi. In her cross-examination, P.W.1 has stated that she had not seen the occurrence and her daughter was telling her about the occurrence only she was there with her daughter. She has stated that she had lodged the case after 7-8 days because it took time in treatment by doctor. This court finds that prosecution has not brought any reliable piece of evidence to prove the fact that the informant had taken her daughter (victim) to Gangti Bihari in Jharkhand and she was treated there by a doctor.

16. P.W. 2 is related to P.W.1 She is Bhabhi of P.W.1. She has stated that the victim had told her about the occurrence. She has



stated there were bleeding from the vagina of the victim and the victim had mark of teeth bites on her cheek. This witness has, however not stated that the P.W. 1 had taken the victim to Gangti Bihari Jharkhand for treatment. She is completely silent about the place where victim was treated. She is not an eye witness and has made statements as told by the victim.

17. P.W. 3 is the victim of this case. In her examination-in-chief she has stated that this appellant committed rape on her and gave her teeth bites on her cheek and lip. He had pressed her neck by his legs whereafter she became unconscious. When she regained consciousness then she reached her home. This witness has not stated that she had disclosed the occurrence to her mother (P.W.1) or to her Buaa (P.W.2). She has also not stated that P.W.1 took her to Gangti Bihari Jharkhand for treatment and that she had received any treatment there.

18. PW-4 is also Bhabhi of PW-1. She has deposed on the line of PW-2 as a hearsay witness.

19. PW-5 is Dr. Neelam, the Medical Officer at Pirpainti Referral Hospital who examined the victim (PW-3) on 30.07.2020. she has deposed as under:-

“ 1. I examined the Victim of Ishipur Barahatt P.S Case no 44/2020 and found the following :-
I. Weight 35 KG
Height 150 CM
Teeth Upper 13 lower 14



Found multiple injury over the face lacerated (Bite of teeth)

II. Axillary - Not present

Breast - mild developed

pubic hair scanty

Vagina - No external injury

Hymen was ruptured

III. Two vaginal swab taken sealed and sent to pathology department of J.L.N.M.C.H., Bhagalpur for detection of spermatozoa.

IV. Sent to x-ray department J.L.N.M.C.H, Bhagalpur for x-ray of wrist, elbow and pelvis joints for age determination.

2. I received report on 13-08-2020

3. According to pathology department report memo no 173 dated 04-07-2020 spermatozoa not found.

4. According to X-Ray No. 227 dated 03-07-2020 age on radiological ground appears to be between 14-16 years.

MI- Black mole on the tip of the nose.

OPINION:- She is under minor.

Epiphysis of eliac crust and digital part of radial ulna are not fused.

5. Both reports have been prepared by me in my pen and bears my signatures.

1 identify the same. The injury reports are marked as **Exhibit No.2, & Exhibit 2/1.**

Cross examination on behalf of accused person:-

6. It is is not true that i have not prepared my report properly”

20. The age of the victim has been found between 14-16 years as per Exhibit-2 and Exhibit-2/1.

21. As regards the submissions of learned counsel for the appellant that in this case since the victim has been found aged between 14 to 16 years as per Exhibit ‘2’ and Exhibit ‘2/1’ respectively, considering the judgments of the Hon’ble Supreme Court in the case of **Rajak Mohammad Vs. State of Himachal Pradesh** reported in **(2018) 9 SCC 248** and the judgment of the



Hon'ble Division Bench of Delhi High Court in the case of **Court on its own Motion Vs. State of NCT of Delhi (Crl. Ref.2/2024 judgment dated 02.07.2024)** reported in **2024 SC OnLine Delhi 4484**, a margin of plus/minus two years in the age is required to be considered. In the case of **Rajak Mohammad** (*supra*), the Hon'ble Supreme Court has observed in paragraph '8', '9' and '10' as under:-

“8. On the other hand, we have on record the evidence of Dr Neelam Gupta (PW 8), a Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.

9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

10. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.”



22. By relying upon the judgment of the Hon'ble Supreme Court in the case of **Rajak Mohammad** (*supra*), a Division Bench of Delhi High Court while considering a reference held in paragraph '46' of its judgment as under:-

“46. As an upshot of our foregoing discussion, the Reference is answered as under:-

(i) Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?

Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on 'bone age ossification report', the upper age given in 'reference range' be considered as age of the victim.

(ii) Whether the principle of 'margin of error' is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.

Ans: Yes. The margin of error of two years is further required to be applied.”

23. We have also noticed from the Exhibit '2' prepared on 02.07.2020 that on the said date, the doctor had found multiple teeth bite over the face and the right cheek below the neck. The time of injury mentioned thereon is 72 hours whereas the prosecution case is that occurrence took place seven days ago. The



nature is mentioned as “only mark at neck”. The injury has been found simple. Exhibit ‘2’ is being reproduced hereunder:-

“I have examined and found the following injury:-

Multiple teeth bite over the face

Rt cheek

below the neck

Im Mole on the tip of the nose

Time of injury 72 hours

Nature only mark at neck

Nature simple”

24. Exhibit ‘2/1’ has been prepared on 13.08.2020. PW-5 has stated that both the reports have been prepared by her, she was suggested by the defence that she had not prepared the report properly. In Exhibit ‘2/1’, it is recorded besides other things that X-ray of both wrist joint for age determination was taken. The X-ray report from Jawaharlal Nehru Medical College and Hospital (JLNMCH) vide X-ray No. 227 dated 03.07.2020 has been mentioned. It appears that at two places there are overwriting in this report. At first, with regard to the number of upper teeth there is an overwriting and it appears that after first writing ‘14’ it has been overwritten as ‘13’. Similarly, in the lower part of the report, it is recorded “by radiologically and pathologically in my opinion age is in between 14-18 years all report was countersigned and attached with this report.” The figure ‘14’ seems to have been



overwritten for '16'. It is evident that the countersigned reports attached with Exhibit '2/1' have not been brought in evidence, therefore, this Court is of the considered opinion that the overwriting at two places in the report and suppression of the attached reports with Exhibit '2/1' would go against the prosecution.

25. We notice from the statement under section 164 CrPC that the victim disclosed before the learned Magistrate that she was a student of Girls Secondary School, Ishipur but the date of birth of the victim as per school admission register has not been brought on record. Based on the discussions hereinabove and the judicial pronouncements on the subject, by giving a margin of two years is the upper extremity of the age, we would hold that the victim in this case is major and she would not come within the meaning of the word 'child' as defined under Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short 'Act of 2015').

26. The learned trial court has relied upon Exhibit '2' but has not taken note of the fact that the doctor had noticed that the time of injury was 72 hours. Exhibit '2' nowhere mentions of any complaint of sexual violence against the victim girl. It is not known who produced the victim girl for examination before PW-5



on 02.07.2020. In this regard, the requisition of the I.O. has not been marked exhibit. In his deposition, the I.O. (PW-6) has stated that he had inspected the place of occurrence but nothing could be found. The prosecution case is that the appellant had committed rape on the victim in a maize field. The victim has stated that she had become unconscious there and when she regained consciousness then she came back to her house but the I.O. has not found anything at the place of occurrence. According to him, the place of occurrence is the maize field of Dr. Kamaldhari but Kamaldhari has not been examined by the I.O. In such circumstance, the submission of the defence that if the maize field would have been the place of occurrence then there would have been sign of some trampled and crushed maize plants gains importance. Non-examination of the owner of the land and there being nothing at the place of occurrence, the prosecution case with regard to the occurrence at the given place is not getting corroborated. It is well settled that the prosecution must stand on its own leg.

27. With regard to the injury on the body of the victim, the I.O. (PW-6) has stated that there was a sign of injury caused by quarrel (*marpeet*) on the left side cheek but no other injury apart from that was found. This statement of the I.O. (PW-6) is contrary



to Exhibit '2' wherein multiple teeth bite over face and right cheek below the neck have been recorded. The injuries being only 72 hours old, the prosecution is unable to prove that those were caused on 25.06.2020 during commission of rape.

28. It further appears from the deposition of the I.O. (PW-6) that in the boundary of the place of occurrence there is a farmhouse but the I.O. had not recorded the statement of Jeetu Ram or the workers who were working in the poultry farm. PW-6 had also not seized the clothes of the victim. We have noticed in the evidence of the informant that when the victim met her, she was in pool of blood, PW-2 has gone to the extent of saying that she was bleeding from her vagina but the doctor (PW-5) has not found any injury on the vagina and the I.O. (PW-6) had not seized the clothes of the victim, therefore, the case of the prosecution that the victim was in pool of blood is not getting corroborated. The immediate circumstance which would have been present at the place of occurrence has not been brought in evidence.

29. At this stage, the victim has stated that her mother had taken her to Bihari, Jharkhand where she was treated by a private doctor. As has been found hereinabove, the victim (PW-3) has stated in course of trial that she had come back/returned from Bihari, Jharkhand within one day. No treatment paper showing her



treatment by a private doctor has been brought in evidence. Neither the victim nor her mother or any other witnesses of the prosecution has disclosed the name of the doctor. If these circumstances are taken into consideration together, the time of injury recorded in Exhibit '2' would be very important. The time of injury as recorded by PW-5 is 72 hours. It means no occurrence had taken place on 25.06.2020. In fact, the defence has in course of cross-examination of the victim (PW-3) has suggested to her that no such occurrence had taken place with her and she had lodged a false case against the appellant who is her co-villager.

30. In course of his statement under section 313 CrPC, the appellant has stated that he had enmity with his neighbour who has got this case lodged against him. This plea of the appellant must be considered keeping in view the entire surrounding facts and circumstances. The informant (PW-1), who is the mother of the victim, is an illiterate lady but she has submitted a written application dated 02.07.2020 which is the basis of the present FIR. Who has written this application has not come in the prosecution case. There is a thumb impression on the written application but nobody has identified the same. Thus, the writer of the written application does not want to identify himself and the fact that nobody has identified the thumb impression of PW-1 further



suggests that there was a conscious effort not to get identified with PW-1 or the victim in the police station.

31. We have found from the evidence of the I.O. that he examined the victim (PW-3) only on 20.07.2020 i.e. after about eighteen days of the submission of the written information. On the base of these materials on the record, we are of the considered opinion that the victim in this case would not come in the category of a sterling witness. There are material contradictions in the statement of the victim and her mother. While her mother has, in order to explain the delay in lodging of the FIR stated that she had taken the victim to her samdhi's place in Gangti Bihari, Jharkhand where time was taken in her treatment which caused delay in lodging of FIR, the victim has stated that she had returned from Bihari within one day. There is nothing on the record to show that the victim had suffered injuries on 25.06.2020.

32. On going through the statements recorded under Section 313 CrPC, we have noticed that the prosecution has not brought to the notice of the appellant the date and place of occurrence. The evidence of the doctor (PW-5) and the report (Exhibit '2') which have been taken into consideration for the purpose of conviction of the appellant were not brought to the notice of the accused-appellant. We, therefore, find that at the stage



of Section 313 CrPC, the appellant was not given appropriate opportunity to explain the evidences brought by the prosecution against him. As regards the importance of the statement under Section 313 CrPC, the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116 held in paragraph '143' and '144' as under.

“143. Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High Court viz. Circumstances 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under Section 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this Court as far back as 1953 where in the case of *Hate Singh Bhagat Singh v. State of Madhya Pradesh*¹⁴ this Court held that any circumstance in respect of which an accused was not examined under Section 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this Court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under Section 342 of the old Code (corresponding to Section 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In *Shamu Balu Chaugule v. State of Maharashtra*¹⁵ this Court held thus: [SCC para 5, p. 440: SCC (Cri) p. 58]

14. AIR 1953 SC 468 : 1953 Cri LJ 1933

15. (1976) 1 SCC 438 : 1976 SCC (Cri) 56



“The fact that the appellant was said to be absconding, not having been put to him under Section 342, Criminal Procedure Code, could not be used against him.”

144. To the same effect is another decision of this Court in *Harijan Megha Jesha v. State of Gujarat*¹⁶ where the following observations were made: [SCC (Cri) p. 653, para 3]

“In the first place, he stated that on the personal search of the appellant a *chedi* was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under Section 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant....”

33. In the totality of the materials which we have discussed hereinabove, it is recorded that the prosecution has not been able to prove the primary facts which may form foundation for bringing this case under the provisions of the POCSO Act. Further, this Court finds no plausible evidence to prove commission of ‘rape’ upon PW-3 on 25.06.2020. Thus, neither the charge under Section 376 IPC nor under Section 4 of the POCSO Act, 2012 is proved beyond all reasonable doubt. The defence on the other hand has been able to create enough doubt in the prosecution story for various reasons. We, therefore, set aside the impugned judgment and order of the learned trial court giving the benefit of doubt to the appellant.

16. AIR 1979 SC 1566 : 1979 SCC (Cri) 652 : 1979 Cri LJ 1137



34. The appellant is in incarceration in connection with this case, so he will be released forthwith if not wanted in any other case.

35. This appeal is allowed.

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

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.08.2025
Transmission Date	14.08.2025

