

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5238 of 2024

Arising Out of PS. Case No.-194 Year-2023 Thana- SAKRI District- Madhubani

Satnam Kumar Sahu @ Satnam Kumar @ Satnam Kumar Sah @ Saptnam
Kumar S/o Santosh Kumar Sah R/o vill - Bhawanipur, ward no. 7, P.S. -
Sakri, Distt.- Madhubani

... .. Appellant/s

Versus

1. The State of Bihar
2. Kishori Das S/o Late Mahgu Das R/o vill - Bhawanipur, ward no. 7, P.S.-
Sakri, Distt.- Madhubani

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Subhash Kumar Jha, Advocate
For the Respondent/s	:	Mrs. Usha Kumari 1, APP
For the Informant	:	Mr. Vimal Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 27-01-2025 Heard Mr. Subhash Kumar Jha, learned counsel for

the appellant and Mrs. Usha Kumari 1, learned APP
representing the State as also Mr. Vimal Kumar Jha,
representing the informant.

2. Mr. Suresh Chaudhary, the Investigating Officer of
the case is present in the Court pursuant to the order dated
09.01.2025 of the coordinate Bench.

3. The present appeal has been preferred to set aside
the order dated-19.08.2024, passed in Sakri P.S. Case No. 194 of
2023, (G.R. No. 147 of 2023), corresponding to T.R. No. 1562
of 2023, by Learned Additional Sessions Judge-1-cum Special
Judge, Madhubani, by which he has pleased to take cognizance



against the appellant for offence under Section 366(A), 376, 504/34 of Indian Penal Code and Section 3(i)(r)(s)/3(2)(va) of the SC & ST Act and Section 04/06 of POCSO Act and Section 9 of Child Marriage Act.

4. As per the prosecution story, when the two daughters of the informant went to attend the nature's call, this appellant kidnapped the younger daughter for the purpose of marriage and later also abused/misbehaved with the family, this led to the F.I.R.

5. The Police after investigation submitted charge-sheet under section 366(A), 376, 504/34 of the Indian Penal Code and section 3(i)(r)(5)/3(2) (va) of the SC & ST Act as also section 04/06 of the POCSO Act and section 9 of the Child Marriage Act.

6. It is the case of the sole appellant that he is a young boy, there is nothing on record to show that caste name was taken. As such, the SC/ST Act could not have been invoked. The further submission is that in absence of girl, appearing for the medical examination, even the POCSO Act should not have been incorporated in the charge-sheet. He submits that the informant belongs to 'Tatwa' caste which has now been removed from the SC/ST category on 15.07.2024 and in that



background, the cognizance taken on 19.08.2024 suffers from infirmity.

7. Learned Special PP, Mrs. Usha Kumari Singh on the other hand opposes the prayer submitting that so far as section **3(2)(va) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth for short 'the 1989 Act')** is concerned if the crime is committed against a person or property belonging to SC/ST, the Act shall be applicable and in that background, he has rightly been charge-sheeted.

8. Section **3(2)(va) of 'the 1989 Act'** read as follows:-

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;

9. It is her next submission that earlier though 'Tatwa' was under SC/ST Act, the crime took place on 19.02.2023,



admittedly, Hon'ble the Supreme Court removed the 'tatwa' caste from SC/ST category on 15.07.2024. As such, the date of crime is important when 'Tatwa' was under SC/ST category. Thus, only because the cognizance was taken on 19.08.2024, that cannot be ground for deleting the section of the SC/ST Act. It is her next submission that as per the Aadhar Card, the girl is minor.

10. At this stage, learned counsel for the appellant submits that the girl refused the medical examination and as such, it cannot be ascertained whether she was a minor only on the basis of Aadhar Card. Upon query, from the Investigating Officer, Mr. Suresh Chaudhary whether any further step was taken to ascertain her age, the answer is that the 'Mukhiya' gave certificate.

11. This court is surprised. Whether the certificate of the 'Mukhiya' will be considered by the Police to decide whether the victim is minor or major.

12. Learned counsel for the appellant submits that to ascertain whether the girl is minor/major, he is ready to pay the amount for the constitution of Medical Board, Madhubani so that a clear report comes before the Court.

13. Having gone through the facts of the case and the



materials on record beside the submissions of the parties, so far as the charge-sheet under 'the 1989 Act' is concerned, learned Special PP has justified the said incorporation and this Court is satisfied that section **3(2)(va) of 'the 1989 Act'** clearly show when a crime is committed against SC/ST, the same will be applicable. Hence the said point of the appellant is rejected.

14. So far as the other point that he has wrongly been charge-sheeted and cognizance taken under different sections, that claim has to be checked as he is ready to pay the amount for the constitution of Medical Board.

15. In that background, the Court directs that if the appellant submits a Demand Draft of Rs.10,000/- in favour of the **Civil Surgeon-cum-Chief Medical Officer, Madhubani**, the court concerned shall take up the appropriate petition and pass an order directing the Civil Surgeon-cum-Chief Medical Officer, Madhubani to constitute a Medical Board after fixing a date and time so that the victim girl appear herself for medical examination to determine her age. This order is being passed in the presence of learned counsel appearing for the informant and he has also given consent to the constitution of Medical Board for ascertaining the age to ascertain whether the POCSO Act shall rightly been included in the charge-sheet against the



appellant.

16. The personal appearance of the Investigating Officer Mr. Suresh Chaudhary is dispensed with. He is further cautioned to be careful in future and take recourse to scientific reason to come to conclusion to ascertain the age of the victim instead of accepting the certificates of Mukhiya/Sarpanch/Pramukh of the same area to charge-sheet any accused.

17. The petition stands disposed of with the aforesaid observation.

(Rajiv Roy, J)

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