

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.79 of 2024

Arising Out of PS. Case No.-4 Year-2018 Thana- HIRAMMA P.S. District- Sheohar

Parikshan Sahni @ Prachhan Sahni Son of Sukeshwar Sahni R/o vill -
Rewasi, P.S. - Hiramma, Distt. - Sheohar

... .. Appellant/s

Versus

1. The State of Bihar
2. Amit Kumar Son of Deeplal Sahni R/o vill - Revasi, P.S. - Hiramma, Distt. - Sheohar
3. Deeplal Sahni son of Rajdeo Sahni R/o vill - Revasi, P.S. - Hiramma, Distt. - Sheohar
4. Ruplal Sahni Son of Rajdeo Sahni R/o vill - Revasi, P.S. - Hiramma, Distt. - Sheohar
5. Anil Sahni son of Deeplal Sahni R/o vill - Revasi, P.S. - Hiramma, Distt. - Sheohar
6. Neelam Devi W/o Ruplal Sahni R/o vill - Revasi, P.S. - Hiramma, Distt. - Sheohar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Devendra Kumar, Advocate
For the Respondent/s : Mr.Syed Ashfaque Ahmad

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

7 11-02-2025 Learned counsel for the appellant undertakes to
remove the defect(s) pointed out by the office.

2.Heard the parties.

3. The present memo of appeal has been preferred
against the Judgment and order dated 21.06.2023, passed in
POCSO Case No-04/2018 arising out of Hiramma P.S Case No-



04/2018 dated 31.01.2018, passed by learned 1st Additional Session Judge-cum-Special Judge, Sheohar, whereby and where under the opposite party No-02 to 06 having acquitted of the charges u/s 363, 366-A, 34, 376 (2)(i) of I.P.C. and u/s 4 POCSO Act and u/s 9/10/11(1) of the Child Marriage Prohibition Act.

4. Earlier the coordinate bench had issued notice to the respondent nos. 2 to 6 on 01.05.2024 but there is no appearance on their behalf.

5. As per the prosecution story, the allegation is that the minor daughter went missing and later came to know that the respondent no.2 herein had given a mobile phone to her from which she used to talk to him. He alongwith his family members (respondent nos. 3 to 6) ensured that the girl is taken away for the marriage. When they went to the house of respondent no.2, despite assurance, the girl did not return. This followed, the FIR.

6. In this case, the charge-sheet was submitted on 06.02.2019 under sections 363, 366-A and 34 of the Indian Penal Code, section 4 of the POCSO Act and section 9, 10, 11(1) of the Prohibition of the Child Marriage Act.

7. The cognizance was taken on 22.02.2019 and the



charges framed on 16.02.2019, as they pleaded not guilty, the trial took place.

8. Post trial, the Court vide a comprehensive order dated 21.06.2023 came to the conclusion that the prosecution has failed to prove the charges under section 366A, 376(2)(i)/34 of the IPC and section 4 of the POCSO Act besides section 9, 10 11(1) of the Prohibition of the Child Marriage Act against any of the accused. In that background, they were acquitted of the charges.

9. Aggrieved, the present appeal.

10. Learned counsel for the appellant submits that the Court while passing the order failed to go through the statement of the witnesses which has supported the prosecution story. Even the girl followed the line of the prosecution story but ignoring all that, the order of acquittal was passed. The submission is that the girl was found to be 17 years of age though she was 15-16 years as per the School Certificate issued by the Headmaster but the Court came to the conclusion that the date of birth has not been established which was primary reason for the acquittal of the accused in different sections of the Indian Penal Code, the POCSO Act as also the Child Marriage Prohibition Act and as such it needs interference.



11. Learned APP on the other hand has taken this Court to different paragraphs of the Trial Court's judgment where he has given the reason for the acquittal. It is the submission of the learned APP that the incident took place on 25.01.2018, the allegation is that the P.W.-4 saw the victim being taken away by the accused. Despite that, there is no reasonable explanation why they took six days in lodging the FIR.

12. It is the further submission of the learned APP that while the Medical Board established her age to be between 17 to 19 years, the prosecution harped on a document issued by the Headmaster of a school showing her age between 15 to 16 years. The Court concerned recorded that the prosecution has not examined the Headmaster who had issued the date of birth certificate to the victim.

13. He further recorded that the admission register of the school has not been produced nor it has been mentioned in Exhibit-4 in which class, the victim was admitted and was studying when the the certificate was issued.

14. He submits that in the said background, he gave the benefit of doubt in favour of the accused recording that the prosecution has failed to prove beyond reasonable doubts that



the victim was minor at the time of occurrence.

15. This Court has heard the parties and perused the record/Trial Court's judgment, finds force in the submission of the learned APP that in absence of either the examination of the Headmaster and/or the production of the admission register coupled with the fact that the certificate does not disclose when and in which class she was admitted and at the time of issuance of certificate, in which she was studying, the age of the victim recorded by the Medical Board has to be taken into account.

16. Further, this Court has also gone through para-18 of the judgment which has recorded the testimony of the victim. Under section 161 of the Cr.P.C., she narrated that the respondent no.2 Amit Kumar had given her mobile with which she used to talk to him. Later, on the same day, her statement was recorded under section 164 of the Cr.P.C. where she identified her signature to show that on 25.01.2018, she had gone to Muzaffarpur and both performed Court Marriage and started residing together as husband and wife. She further wanted to go to her in-laws house and reside with her husband.

17. In that background, the learned Court recorded that in both the statements under sections 161 and 164 of the Cr.P.C., the victim has not made any allegation of kidnapping or



rape. However, two years later, on 07.02.2020, when the victim examined again as P.W.-7 before the Court, she completely changed her version stated that he brought her to Muzaffarpur kept her at his maternal uncle's residence and raped her. The Court in that background, recorded that the girl has changed her goal post every time she made a statement and as such she cannot be considered a reliable witness.

18. Further, in paragraph-21, the learned Trial Court recorded that the different versions of the victim at different places make her unreliable witness rather she is untrustworthy. The respondent no.2 Amit Kumar was not medically examined after his arrest and in that background, the prosecution has failed to prove the above foundational facts against the accused.

19. The facts have been recorded in details above, the reason assigned by the learned Trial Court to come to the conclusion leading to the acquittal of the accused cannot be faulted upon. The prosecution has completely failed to prove either the fact that she was minor at the time of incident and/or she was raped.

20. In that background, the Court rightly acquitted the accused of the charges under sections 366A, 376(2)(i)/34 of the IPC and section 4 of the POCSO Act besides section 9, 10



11(1) of the Prohibition of the Child Marriage Act.

21. The present petition against the said acquittal is nothing but an abuse of the process of law which needs dismissal.

22. The appeal stands dismissed.

(Rajiv Roy, J)

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