

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No.52 of 2023**

Arising Out of PS. Case No.-44 Year-2020 Thana- MATIYARIA District- West Champaran

Sanjay Giri, S/o Sri Subhash Giri, Resident of Village- Itawa, P.S.- Matiyaria,  
Distt- West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. [REDACTED] Resident of village- Itawa, P.S.-  
Matiyaria, Distt- West Champaran.

... .. Respondents

**Appearance :**

|                   |   |                                                                  |
|-------------------|---|------------------------------------------------------------------|
| For the Appellant | : | Mr. M.N. Parbat, Sr. Advocate<br>Mr. Praveen Prabhakar, Advocate |
| For the State     | : | Mr. Binod Bihari Singh, Addl.PP                                  |
| For the Informant | : | Mr. Zainul Abedin, Advocate<br>Mr. Sanobar Shahnaz, Advocate     |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and**

**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 09-02-2026**

Heard Mr. M.N. Parbat, learned Senior counsel assisted by Mr. Praveen Prabhakar, learned counsel for the appellant, Mr. Zainul Abedin, learned counsel for the informant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State as also perused the trial court's records.

2. This appeal has been preferred for setting aside the judgment of conviction dated 12.12.2022 (hereinafter referred to as the 'impugned judgment') and order of sentence dated 14.12.2022 (hereinafter referred to as the 'impugned order')



passed by learned Additional District and Sessions Judge-VII-cum-Special Judge, POCSO Act, West Champaran at Bettiah (hereinafter referred to as the 'learned trial court') in Matiyaria P.S. Case No. 44 of 2020, S.G.R. No. 111 of 2020. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376(3) of the Indian Penal Code (in short 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences (in short 'POCSO') Act and has been sentenced to undergo twenty years rigorous imprisonment under Section 376(3) IPC and Sections 4 and 6 of the POCSO Act each with a fine of Rs.20,000/- and in default of payment of fine, he has to further under three months imprisonment. All the sentences are to run concurrently.

### **Prosecution Case**

3. The prosecution case is based on the written application of the informant (PW-2). In her written application, the informant has stated that on 31.07.2020 when she asked her daughter/victim about her last menstrual date, her daughter replied that she had her last period 5-6 months ago. Thereafter, the informant got her daughter checked by a lady who told her that her daughter is carrying pregnancy. When the informant inquired, the victim disclosed that this appellant forcibly established physical



relation with her when the informant and other family members had gone to the house of her maternal grandmother at her funeral. It is alleged that when the informant went to the house of this appellant then the news of pregnancy spread like fire in the village. Thereafter the informant, her husband and her daughter/victim gave written application. The informant also told that the age of her daughter is 14 years.

4. On the basis of this written application, FIR being Matiyaria P.S. Case No. 44 of 2020 dated 31.07.2020 was registered under Section 376 IPC and Sections 4/6 of the POCSO Act against this appellant. After investigation, police submitted chargesheet bearing Chargesheet No. 13 of 2020 dated 28.09.2020 under Section 376 IPC and Sections 4/6 of the POCSO Act against this appellant. Learned trial court vide order dated 07.11.2020 took cognizance of the offences punishable under abovementioned Sections.

5. 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 23.02.2021, charges were framed under Section 376 IPC and Sections 4/6 of the POCSO Act.

6. In course of trial, the prosecution has examined altogether nine witnesses and exhibited several documentary



evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

|      |                                |
|------|--------------------------------|
| PW-1 | Victim (X)                     |
| PW-2 | Informant/Mother of the victim |
| PW-3 | Father of the victim           |
| PW-4 | Brother of the victim          |
| PW-5 | Kiraman Mahto                  |
| PW-6 | Parvati Devi                   |
| PW-7 | Uamesh Kumar Yadav             |
| PW-8 | Dr. Rubi Kumari                |
| PW-9 | Dr. Srikant Dubey              |

List of Exhibits on behalf of Prosecution

|                 |                                                                                       |
|-----------------|---------------------------------------------------------------------------------------|
| Exhibit ‘P-1’   | Handwriting on written application of FIR                                             |
| Exhibit ‘P-1/1’ | Pagination of formal FIR                                                              |
| Exhibit ‘P-1/2’ | Initial of Sanjay Kumar on pagination of formal FIR                                   |
| Exhibit P-1/3   | Signature of Sanjay Kumar on pagination of formal FIR                                 |
| Exhibit P-2     | Signature of Dr. Rubi on medical report                                               |
| Exhibit P-3     | Signature of members of FMT Dept + GMC Bettiah on the five members medical board team |
| Exhibit P-3/1   | Signature of medical board member Radialist GMC Bettiah                               |
| Exhibit P-3/2   | Signature of Member Gyane and OBS, GMC Bettiah on the five members medical board team |
| Exhibit P-3/3   | Signature of Member Dentidt GMC, Bettiah on Medical Board                             |
| Exhibit P-3/4   | Signature of Dr. Shrikant Dubey on medical board                                      |
| Exhibit P-4     | Signature of Dr. K.M. Piparvey on medical board report                                |



7. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’) in which he took a plea that he is innocent.

8. The defence has adduced oral and documentary evidence which are being reproduced hereunder in tabular form:-

List of Defence witnesses

|      |               |
|------|---------------|
| DW-1 | Ranjit Giri   |
| DW-2 | Khenhar Yadav |

List of Exhibits on behalf of Defence

|               |                                                      |
|---------------|------------------------------------------------------|
| Exhibit P-A   | Handwriting on Labour Card and signature of Dinanath |
| Exhibit P-A/1 | Handwriting on Labour Card and signature of Dinanath |

**Findings of the Learned Trial Court**

9. Learned trial court after analysing the evidences available on the record found that prosecution case has been fully supported by the victim (PW-1) and her mother (PW-2). Learned trial court found that the occurrence had taken place 5-6 months ago and since then the victim was pregnant and she gave birth to a child who died after twenty days.

10. Learned trial court after considering all the facts and circumstances of the case held that the prosecution has been able to prove it’s case beyond all shadow of reasonable doubts. Accordingly, the appellant has been convicted for the offences



punishable under Section 376(3) IPC and Sections 4/6 of the POCSO Act.

**Submissions on behalf of the appellant**

**11.** Learned Senior counsel for the appellant submits that there is an unexplained delay in lodging of the First Information Report, even the date of occurrence has been not mentioned which creates doubt regarding the veracity of the prosecution case. The victim's statement under Section 164 CrPC is also incomplete and doesn't disclose the time and place of occurrence, thereby vitiating its credibility.

**12.** It is further submitted that the medical report fails to corroborate the alleged occurrence, further weakening the prosecution's case. No effort was made to match the DNA of the fetus with the appellant to corroborate the alleged occurrence. The submissions is that not a single independent witness has been produced by the prosecution.

**13.** Learned Senior counsel for the appellant submits that PW-1 (victim) in her examination-in-chief has omitted to state any particulars of date, time or manner of the alleged occurrence. The manner of occurrence as narrated by PW-1 stands in stark variance with the allegations in the FIR as well as the informant's version under Section 164 CrPC. In her examination-in-chief, the victim



has stated that she had not seen the appellant earlier, which vitiates the prosecution evidence in its entirety and such glaring omissions and inconsistencies fundamentally erode the credibility and trustworthiness of her testimony, warranting its outright rejection as she cannot be kept in category of a sterling witness.

14. Learned counsel for the appellant submits that the I.O. who has been examined as PW-7 states about different places of occurrence, he has been cross-examined by the defence to corroborate the evidences collected during investigation. He further submits that on basis of age, the victim cannot be kept in the category of minor.

15. Lastly, it is submitted that the case is fit for acquittal as the time and place of occurrence are highly doubtful, the manner of occurrence has been not proved, nor the alleged occurrence is supported by the medical evidence, the infant was not medico- legally examined to match with the DNA of the appellant.

**Submissions on behalf of the State and the Informant**

16. Learned Additional Public Prosecutor for the State as well as the learned counsel for the informant have defended the impugned judgment of the learned trial court. It is submitted that the victim's statement fully corroborates the prosecution case and



further the defence has failed to bring any contradiction. It is submitted that defence has not raised any ground for false accusation. The victim in this case is a sterling witness and her statement is sufficient to prove the case.

**Consideration**

17. In this case, the informant is the mother of the victim, who filed a written application addressed to the Station House Officer, Matyariya Police Station in the district of West Champaran on 31.07.2020, wherein she alleged that when she asked her daughter (X) as to when was her last menstruation period, she informed that it was about 5-6 months back. On asking in some hard tone, the victim disclosed to her mother that when her mother (the informant) had gone to attend the *shraadh* ceremony of the maternal grandmother of the victim, during that period, the appellant had forcibly established physical relationship with her and had made her pregnant. On hearing this from the victim, the informant went to the house of the appellant, this matter became known to the villagers and they started whispering about this then the informant came with her daughter and husband and submitted the written application. She disclosed the age of her daughter (X) as 14 years.



**18.** We further find that in her 164 CrPC statement recorded on 04.08.2020 by learned Magistrate at Bettiah, West Champaran, the victim disclosed that when she had gone to graze the she-goat, then this appellant tied her mouth by a towel and robbed her decency and told her that if she would disclose it to anyone, then she would be killed. She further stated that due to the said threat, she had not disclosed the occurrence to her parents but after a few days, her mother got her checked, then she was found pregnant.

**19.** We further find that the statement of the mother of the victim, who is the informant of this case, was also recorded under Section 164 CrPC, in which she supported the prosecution case.

**20.** In course of trial, the victim (PW-1) has stated that she was subjected to rape and her mother asked her about it sometimes 6-7 months back, then she disclosed that she was not having menstruation period and also disclosed to her mother that when she had gone to graze the she-goat, then the appellant had tied her mouth and committed rape on her. Her mother took her to a doctor who found that she was pregnant. Her mother also went to ask the appellant but he started assaulting, thereafter, the case was lodged in the police station. She was taken to a doctor for



medical examination and police got her statement recorded in the court. She identified the appellant in the court. Although, learned Senior counsel for the appellant submits that there are some material contradictions in the evidence of PW-1, as she is not consistent with regard to the period/time when her mother came to know about the occurrence and her pregnancy, we do not agree with the submissions of learned Senior counsel in this regard as we have noticed that the victim (PW-1) has remained consistent in her statement and during cross-examination, she has stated that she knew the meaning of rape, however, she did not remember as to when and in which month her mother had asked about the menstruation period. She has stated that she did not remember it. We find no reason to take an adverse view only because the victim (PW-1) did not remember the month in which her mother had asked her about her menstruation period.

**21.** We have found that the victim has stated in her cross-examination that because of the threat, she had not disclosed the occurrence to anyone in her house and after three months of the rape, her mother had asked her about her menstruation and had taken her to Nathuni Mahato and Hiranman in the village. She did not know the name of the doctor to whom she was taken. She has stated that when the doctor first examined her, she had been



carrying pregnancy of five months. With respect to this period, the learned Senior counsel for the appellant has tried to impress upon this Court that the mother of the victim had come to know about the occurrence only three months after the occurrence but thereafter, even as the victim had been taken to the doctor and she had been found pregnant, no case was lodged. In this regard, we have noticed from the evidence of the mother (PW-2) that her daughter had said that menstruation had come about 5-6 months back and when she got her examined, then it was found that she was pregnant. She had disclosed it to the neighbours and had also told the occurrence to the mother of the accused. She has stated that the day on which her daughter was going after giving her statement in the court, she was being threatened to kill. In her cross-examination, PW-2 has stated that regarding the occurrence, no Panchayati had taken place in the village but she has stated that her husband had gone to the house of the appellant to enquire but no quarrel had taken place that day. We do not find any material discrepancy, much less any contradiction in the evidence of PW-2.

**22.** We have further examined the evidence of the father of the victim who has been examined as PW-3. In his examination-in-chief, PW-3 has stated that he had come to know about the occurrence from his wife, then he had asked the mother



of the appellant that what will be the future, whereafter the occurrence became known in the village. In his examination-in-chief, PW-3 has stated that Sanjay Giri (the appellant) refused to marry and keep her daughter and told that she would be made to cut the grasses. From the evidence of PW-3, it appears that after the occurrence came to the knowledge of the parents of the victim, some attempts were taken to persuade the appellant to marry the victim and keep her with him but it appears that the appellant was not ready for that, thereafter the present case was lodged. Be that as it may, the evidence of PW-1, PW-2 and PW-3, so far as the commission of rape is concerned, remain consistent.

**23.** We have further found from the evidence of the doctor, namely Rubi Kumari (PW-8) that she was posted at GMC Bettiah, Department of OBS and Gynae as a Senior Resident on 01.08.2020. She had examined the victim girl and had made the following observations:-

“Secondary sexual character - developed.

P/V examination- Hymen ruptured, old tag present

There is no injury on external part as well as on private parts of the body

According to pathologist, GMC, Bettiah

No spermatozoa found in vaginal swab

Mark of Identification:-

(1) A mole on right index finger

(2) A mole on lateral side of right lower leg below knee joint



USG Abdomen – single alive fetus in unstable lie of 23 weeks maturity seen inside the uterine cavity.

Opinion – According to above finding and other physical examination, there is no any recent sign of sexual assault.

Age determination opinion should be taken from Medical Board, GMCH, Bettiah

She is pregnant, 23 week alive fetus”

**24.** Further, we have noticed that Dr. Shrikant Dubey (PW-9), who was the Chairman of the Medical Board constituted to examine the victim, has stated that a team of five doctors had come to an opinion that the victim was between 16 to 17 years. He has proved the signatures of all the Board members which have been marked Exhibit ‘3’, ‘3/1’, ‘3/2’, ‘3/3’ and ‘3/4’. The medical report written by the radiologist K.M. Piperve has been marked Exhibit ‘4’. From the evidence of the doctor (PW-9), it further appears that in Bettiah, there is no DNA test facility in the Government Medical College.

**25.** It is evident from the evidence of the doctor (PW-8) that the victim was found pregnant, carrying a pregnancy of 23 weeks on the date of her examination. PW-9 has proved the medical report showing that the victim was between 16-17 years of age. It has come in evidence that the victim was illiterate. We have found from the impugned judgment that the learned trial court framed a question as to whether on the date of occurrence



the victim was a minor or not. While examining this question, the learned trial court has noticed that the victim had not joined any educational institution and there is no proof of age issued by any government institution. Thereafter, the learned trial court has observed that on perusal of the evidence of all the witnesses, the victim appears to be a minor and on the date of the occurrence, she was below 14 years of age. The trial court has relied upon the medical report in which the age of the victim has been stated to be 16-17 years but having noticed the medical examination report, the trial court has taken the lower extremity of the age and determined the age of the victim as 16 years.

**26.** We are of the considered opinion that, at this stage, the learned trial court has committed an error in determination of the age of the victim. How to assess the age of a victim in a POCSO case has been considered by the Hon'ble Supreme Court in the case of **Rajak Mohammad vs. State of H.P.** reported in **(2018) 9 SCC 248** and the Hon'ble Delhi High Court in the case of **Court on its own Motion vs. State (NCT of Delhi) (Crl. Ref. 2/2024)** reported in **2024 SC OnLine Delhi 4484**. The views expressed by the Hon'ble Delhi High Court in the case of **Court on its own Motion** (*supra*) are 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."

27. Similarly, we quote hereinbelow the views expressed by the Hon'ble Supreme Court in paragraph '9' and '10' of the judgment in case of **Rajak Mohammad** (*supra*):-

"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."

28. In view of the aforementioned judgments, we are of the considered opinion that on giving +/- 2 years to the age



recorded by the doctor, the upper extremity of the age of the victim would come to 19 years. In such circumstance, the charges under section 4/6 of the POCSO Act would not be attracted. Thus, the conviction of the appellant for the charges under section 4/6 of the POCSO Act is liable to be set aside and we accordingly do so.

**29.** The learned trial court has convicted the appellant also for the offence under Section 376(3) IPC. We reproduce Section 376(3) IPC hereunder:-

“376. (1) ...

(2) ...

<sup>1</sup>(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.”

**30.** It is evident on a bare reading of the aforementioned provision that to bring the case within the ambit of the provision of sub-section (3) of Section 376 IPC, the victim must be under 16 years of age. Since in this case, the doctors have come to a conclusion that the victim was between 16-17 years of age and on giving a margin of two years, the upper extremity of age comes to

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1. Ins. by Act 22 of 2018, S. 4 (w.r.e.f 21-4-2018).



19 years, in our considered opinion, the charge under Section 376(3) IPC cannot be said to have been proved. We would, however, hasten to add that in this case, even though the charge was framed under sub-section (3) of Section 376 IPC but the prosecution has been able to prove a case under sub-section (1) of Section 376 IPC, which reads as under:-

“376. Punishment for rape.-(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which <sup>2</sup>[shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].”

**31.** Accordingly, we modify the conviction of the appellant from Section 376(3) IPC to one under Section 376(1) IPC. The minimum sentence prescribed under Section 376(1) IPC is 10 years, which may extend up to life imprisonment.

**On the point of sentence**

**32.** We have heard learned counsel for the parties on the point of sentence once again.

**33.** Taking into consideration that the appellant is said to be a married person having children and he is the only bread earner for his family, his age was only 45 years at the time of occurrence,

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2. Subs. by Act 22 of 2018, s. 4, for “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine” (w.r.e.f 21-4-2018).



we are of the considered opinion that an award of twelve years rigorous imprisonment with a fine of Rs. 20,000/- payable to the victim would be commensurate to the status of guilt. Accordingly, the appellant is directed to undergo rigorous imprisonment for twelve years and pay a fine of Rs. 20,000/-. In case of non-payment of the fine, the appellant would further undergo a period of three months imprisonment. The period already spent by the appellant in jail shall be allowed to be set off. The judgment of conviction and order of sentence are modified to the aforesaid extent. The District Legal Services Authority (‘DLSA’), West Champaran, Bettiah shall ensure payment of compensation to the victim as per direction of the learned trial court.

34. This appeal is partly allowed.

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

**(Rajeev Ranjan Prasad, J)**

**(Shailendra Singh, J)**

Rishi/-

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