

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.200 of 2023

Arising Out of PS. Case No.-298 Year-2020 Thana- MADHAURAH District- Saran

Manu Kumar @ Monu Kumar @ Mannu Kumar, S/o Surendra Raut, R/o
village- Bikrampur, P.S.- Marhowrah, Distt- Saran.

... .. Appellant

Versus

1. The State of Bihar

2. Ms. X [REDACTED] O Vill.- Karnpura, P.S.- Madhaurah, Dist.- Saran.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Rajendra Narain, Sr. Advocate Dr. Rajesh Kumar Singh, Advocate Mr. Kanaya Kumar, Advocate
For the State	:	Mr. Binod Bihari Singh, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 10-02-2026

Heard learned Senior Counsel for the appellant and
learned Additional Public Prosecutor for the State.

2. Notice has been issued to respondent no.2 but in spite
of valid service of notice, respondent no. 2 has chosen not to
appear in this case.

3. This appeal has been preferred for setting aside the
judgment of conviction dated 05.09.2022 (hereinafter referred to
as the ‘impugned judgment’) and the order of sentence dated
12.09.2022 (hereinafter referred to as the ‘impugned order’)
passed by learned Additional Sessions Judge-VI-cum-Exclusive



Special Judge, POCSO Act, Saran at Chapra (hereinafter referred to as the 'learned trial court') in ST POCSO No. 21 of 2021 arising out of Marhowrah P.S. Case No. 298 of 2020. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376 D of the Indian Penal Code (in short 'IPC') and Section 4 and 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and has been sentenced to undergo ten years rigorous imprisonment with a fine of Rs.10,000/- under Section 4 of the POCSO Act and in default of payment of fine, he has to further undergo six months simple imprisonment. He has also been ordered to undergo twenty years rigorous imprisonment with a fine of Rs.10,000/- under Section 6 of the POCSO Act and in default of payment of fine, he has to further undergo six months simple imprisonment. Both the sentences are to run concurrently.

Prosecution Case

4. The prosecution case is based on the *fardbeyan* of the informant/victim (PW-4). In her *fardbeyan*, she has alleged that on 12.04.2020 at about 07:00 PM, when she had gone out to attend the nature's call in the field then Dhuman Kumar, Manu Kumar (the appellant) and Pankaj Kumar caught hold of her, tied her mouth with *dupatta*, thereafte, Manu and Pankaj tore her clothes



and raped her one by one. She has alleged that she somehow managed to escape and went home. She did not tell about this occurrence to anyone due to social stigma and fear of the accused persons. It is further alleged that on 13.04.2020 Manu and Pankaj had beaten her by a *danda* near a mango orchard in front of Karnpura School and asked her not to tell about this to anyone. The villagers were also present there. On 14.04.2020 at about 10:00 AM her neighbour Javed Bhai told her elder sister that a video of her sister (victim) is viral on the net. Thereafter, the victim told her sister about the incident. She stated that all the accused persons were from Vikrampur village adjacent to her village.

5. On the basis of this *fardbeyan*, FIR being Marhowrah P.S. Case No. 298 of 2020 dated 15.04.2020 was registered under Section 376D IPC and Section 67(A)(C) of the Information Technology Act, 2008 (in short 'IT Act') against (1) Dhuman Kumar, (2) Manu Kumar (this appellant) and (3) Pankaj Kumar. After investigation, police submitted chargesheet bearing Chargesheet No. 378 of 2020 dated 02.07.2020 under Section 376D and Sections 4/6 of the POCSO Act against three FIR named accused. Learned trial court vide order dated 08.12.2020 took



cognizance of the offences punishable under above-mentioned Sections against three FIR named accused.

6. Charges were read over and explained to the accused persons to which they denied and claimed to be tried, accordingly, vide order dated 16.12.2020, charges were framed under Section 376D IPC and Sections 4/6 of the POCSO Act against three accused, namely, Dhuman Kumar @ Praduman, (2) Manu Kumar @ Monu Kumar (appellant) and (3) Pankaj Kumar. On the plea of juvenility taken by the accused, namely, Dhuman Kumar @ Praduman and Pankaj, learned trial court sent the records of Dhuman Kumar @ Praduman and Pankaj to Juvenile Justice Board, Saran vide order dated 25.01.2021 and 10.03.2021 respectively for age assessment.

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

List of Prosecution witnesses

PW-1	Elder sister of the victim
PW-2	Ajay Tiwary
PW-3	Anil Kumar Tiwary
PW-4	X (Victim/Informant)
PW-5	Meera Devi
PW-6	Lakshman Kumar Yadav
PW-7	Sunil Kumar Singh



PW-8	Dr. Kiran Ojha
PW-9	Hemlata Kumari

List of Exhibits on behalf of Prosecution

Exhibit ‘P-1/PW4’	Signature of PW-4 on fardbeyan.
Exhibit ‘P-2/PW-4’	Signature of PW-1 on fardbeyan.
Exhibit ‘P-3/PW-4’	Signature of PW-1 on seizure list.
Exhibit ‘P-4/PW-4’	Signature of PW-4 on the statement recorded under Section 164 CrP.C.
Exhibit P-5/PW-8	Medical Report
Exhibit P-6/PW-9	Signature of SHO on Formal FIR
Exhibit P-7/PW-9	Signature of SHO on Fardbeyan
Exhibit P-8/PW-9	FSL Report
Exhibit P-9/Prosecution	Contents of the statement under section 164 CrPC

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

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

Findings of the Learned Trial Court

9. Learned trial court after analysing the evidences available on the record found that the victim’s testimony is clear, cogent and unwavering insofar as it concerns with the allegation against the appellant. Learned trial court found that the victim is consistent in her evidence right from the very beginning and even



in her cross-examination, she has supported the case of the prosecution and there is nothing in cross-examination of the victim to discard her evidence or brand it as unbelievable or untrustworthy.

10. Learned trial court observed that the argument of the defence as to the fact that all the independent witnesses turned hostile and have not supported the prosecution case do not deserve attention for the reason that the law is well settled that the deposition of the victim alone is sufficient for holding the guilt of the accused.

11. Learned trial court after considering all the facts and circumstances of the case and placing reliance on the evidence of victim (PW-4), her 164 CrPC statement, medical evidence (Exhibit '5') and FSL Report (Exhibit 'P/8') held the appellant guilty of the offences punishable under Section 376D IPC and Sections 4/6 of the POCSO Act.

Submissions on behalf of the Appellant

12. Learned senior counsel for the appellant submits that the victim herself has declared her age 18 years in her *fardbeyan* and has not brought on record any date of birth certificate of the school or the matriculation certificate. It is also submitted that the doctor has in her opinion stated the age of the victim 16-17 years.



13. Learned senior counsel submits that the victim in her 164 CrPC statement has alleged that all the three accused persons had committed rape on her, however, she did not make statement before the Juvenile Justice Board about the commission of rape and when she came to depose in course of trial, she made a statement that she had entered into a compromise with Pankaj Kumar and Dhuman Kumar. Hence, the victim cannot be put in the category of a sterling witness.

14. Learned senior counsel submits that though the Doctor found that sexual act has been committed with the victim and the FSL report shows finding of presence of blood on the panty (Exhibit '1/A') and white *dupatta* (Exhibit '1/B') of the victim but neither the blood samples of the victim were taken nor that of the accused. Learned senior counsel further submits that the semen of the three accused were taken but no semen has been found at Exhibits marked '1/A' and '1/B'. It is submitted that Exhibit '1/C' is the pink purple colour salwar of the victim on which no blood or semen could be found.

Submissions on behalf of the State

15. Learned Additional Public Prosecutor for the State has defended the impugned judgment and order 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 the defence has not raised any ground for false accusation. It is submitted that in the present case, the deposition of the victim alone is sufficient for holding the guilt of the appellant.

Consideration

16. Having heard learned Senior Counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the records, this Court finds that the whole prosecution case rests upon the testimony of the victim/prosecutrix. In her fardbeyan recorded on 15.04.2020 at 11:00 AM at Madhawra P.S., Saran, the victim has declared her age as 18 years. She claimed that on 12.04.2020 at about 07:00 PM when she had gone outside her house to ease out/ defecate then three accused, namely, (1) Dhuman Kumar aged 19 years, (2) Manu Kumar aged 19 years son of late Mahesh Shah and (3) Pankaj Kumar aged 19 years tied her mouth by *dupatta* and then Manu Kumar and Pankaj Kumar tore her *sameej* and thereafter, Dhuman Kumar committed rape on her. Thereafter, Manu Kumar and Pankaj Kumar took their turn one after another and committed rape upon her. She somehow got herself set at free and reached her house covering her face with *dupatta*. She has stated that on the



next day i.e. 13.04.2020, Manu Kumar and Pankaj Kumar had beaten her by a *danda* near a mango orchard in front of Karnpura School and told her that she would not disclose the occurrence to anyone. She has stated that at the said place, villagers were also present. On 14.04.2020 at 10:00 AM, her neighbour Javed *bhai* had told the occurrence to her elder sister that her sister's (X) video has been made viral on the net whereafter, the informant disclosed the occurrence to her sister. She made her *fardbeyan* on 15.04.2020.

17. In her 164 CrPC statement recorded on 16th April, 2020, her age was assessed by the learned Magistrate as 17-18 years, however, she declared her age as 18 years which is recorded by the learned Magistrate. In her 164 CrPC statement, she alleged that all the three accused persons had committed rape on her, however, when she came to depose in course of trial, she made a statement that she had entered into a compromise with Pankaj Kumar and Dhuman Kumar. She has further stated that Praduman @ Dhuman Kumar had committed rape on her for one hour and thereafter, he had tied her *dupatta* on her eyes, therefore, who committed rape with her for how much time cannot be said. She has stated that she did not know that when was she admitted in a school but she remembered that in the year 2010, she was studying



in class V. We find that in this case, prosecutrix (PW-4) has admitted in paragraph '16' of her deposition that in the Juvenile Justice Board, she had not stated about commission of rape.

18. From the evidence of the prosecutrix itself it is crystal clear that she has always maintained her age being 18 years. The prosecutrix has not brought on record any date of birth certificate or the matriculation certificate.

19. Dr. Kiran Ojha (PW-8) who had examined the victim was posted as Medical Officer at Sadar Hospital on 15.04.2020 has stated in her opinion that the victim was between 16-17 years. In view of the aforesaid material on the record, when we apply the settled position in law keeping in view the judgment of the Hon'ble Supreme Court in the case of **Rajak Mohammad vs. State of H.P.** reported in **(2018) 9 SCC 248** and the judgment of 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** which this Court has followed in several cases, the upper extremity of the age of the victim by adding +2 years would be between 18-19 years. The learned trial court has clearly erred in the matter of determination of age of the victim. In our considered opinion the charges under Sections 4 and 6 of the POCSO Act would not sustain because the victim would



not come within the meaning of the word “child” under Sub-Section (12) of Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

20. The relevant paragraph nos. 8, 9 and 10 of the judgment of the Hon’ble Supreme Court in the case of **Rajak Mohammad** (supra) are quoted hereunder for a ready reference:-

“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.”



Similarly, we quote paragraph '46' of the judgment of the Hon'ble Delhi High Court in the case of **Court on its own Motion** (supra):-

"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."

21. We have further noticed that in this case, the solitary witness is the victim herself but she cannot be put in the category of a sterling witness. In course of trial, she has clearly stated that before the Juvenile Justice Board, she had not stated about the commission of rape. This Court finds that she had compromised the matter with the two accused persons one of whom had committed rape on her for one hour but before the Juvenile Justice Board, she did not speak about commission of rape on her.



Therefore, she is speaking one thing in one forum and another thing before another forum. Who will be called a sterling witness has been observed by the Hon'ble Supreme Court in the case of **Rai Sandeep @ Deepu vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**. Paragraph '22' of the said judgment is being quoted hereunder for a ready reference:-

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such



a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

22. We have also noticed from the medical examination report proved by the Doctor that though the Doctor found that sexual act has been committed with the victim and the FSL report shows finding of presence of blood on the panty (Exhibit ‘1/A’) and white *dupatta* (Exhibit ‘1/B’) of the victim but neither the blood samples of the victim were taken nor that of the accused. The semen of the three accused were taken but no semen has been found at Exhibits marked ‘1/A’ and ‘1/B’. Exhibit ‘1/C’ is the pink purple colour salwar of the victim on which no blood or semen could be found. There is no matching of blood or the semen. In the case of the present nature where the victim has compromised the matter with the two accused persons, did not make statement before the Juvenile Justice Board about the commission of rape and there is no medical evidence to connect the appellant with the occurrence of rape upon the victim (PW-4), we are of the considered opinion that it would not be safe to convict the appellant on the basis of the sole testimony of the victim, she would not fall in the category of a



‘sterling witness’. In our considered opinion, the charge under Section 376D IPC has not been duly proved by the prosecution.

23. The impugned judgment and order of the learned trial court are set aside. The appellant is acquitted of the charges giving him benefit of doubt. The appellant is in incarceration. He shall be released forthwith if not wanted in any other case.

24. The appeal is allowed.

25. Let the trial court records along with the judgment be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

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