

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.309 of 2023

Arising Out of PS. Case No.-540 Year-2018 Thana- BIHAR District- Nalanda

Abhishek Kumar, Son of Sahdeo Prasad Singh @ Sahdeo Prasad, R/O Village
- Gauragarh, P.S.- Bihar, District- Nalanda

... .. Appellant/s

Versus

1. The State of Bihar

2. [REDACTED] 1 – Gafur Bigha, P.S.- Ashthawan,
Dist.- Nalanda, Pin Code - 803107

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Asv. Mrs. Vaishnavi Singh, Adv. Mr. Shivam, Adv. Mr. Mudit Meet, Adv. Ms. Sushmita Mishra, Adv.
For the State	:	Mr. Dilip Kumar Sinha, APP
For the Resp. No. 2	:	None.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 08-01-2026

Mr. Ajay Kumar Thakur, assisted by Mrs. Vaishnavi Singh, learned counsel for the appellant, and Mr. Dilip Kumar Sinha, learned APP for the State, are present and have been heard.

2. No one has appeared on behalf of Respondent No. 2 (informant) to oppose the appeal, despite valid service of notice as per order dated 17.12.2025.



3. The instant criminal appeal has been preferred against the judgment of conviction dated 08.02.2023 and the order of sentence dated 16.02.2023 & 17.02.2023, passed by the learned Additional Sessions Judge-VI cum Special Judge, POCSO Court, at Biharsharif, Nalanda, in POCSO/G.R. Case No. 5318 of 2018, arising out of Bihar P.S. Case No. 540 of 2018. By the said judgment and order, the learned trial court convicted the appellant for offences punishable under Sections 366 and 376AB of the Indian Penal Code, 1860 (in short, 'IPC'), offences under Section 3(a) punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'POCSO Act'), and the offence under Section 5(1)(m) punishable under Section 6 of the POCSO Act. The appellant was sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs. 5,000/- (Rupees Five Thousand) for the offence under Section 376AB of IPC, and to undergo rigorous imprisonment for 5 years with a fine of Rs. 5,000/-, and in default of payment of fine, to further undergo six months simple imprisonment for each sentence. All sentences are directed to run concurrently.

Prosecution Story :-

4. The case of the prosecution, in a nutshell, is that the



informant, father of the victim, alleged that on 24.11.2018, while he was outside his house performing his duty and his wife was at her shop, the appellant came to his house and kidnapped his minor daughter, aged about ten years. Thereafter, the appellant took his daughter to a secluded place and established a physical relationship with her ten to fifteen times. After becoming aware of the incident, when he (informant) contacted the appellant on his mobile number 9135808814, the appellant assured him that he would return the victim. Relying on this assurance, he (informant) waited for the victim until 25.11.2018; however, she did not return. Consequently, he (informant) lodged the case on 26.11.2018 at Bihar Police Station. The informant further alleged that the appellant is his landlord's son and that the appellant's family members assisted him in taking away the victim. Moreover, when he and his wife went to the house of the accused persons to lodge a protest, they were abused and assaulted by the appellant's family members.

5. The informant filed his written application (Exhibit P-6) to lodge the FIR. On that basis, a formal FIR was registered for offences under Sections 363 and 365 read with Section 34 of IPC against the appellant and others vide Bihar P.S. Case No. 540/2018 dated 26.11.2018, and investigation commenced. After



completion of the investigation, the appellant and others were chargesheeted for offences under Sections 363, 365, and 376 of IPC, and Section 4 of the POCSO Act. The appellant was charged for offences under Sections 363, 366A, and 376 of IPC, as well as offence under Section 4 read with Section 3 of the POCSO Act, and offence under Section 6 read with Section 5 of the POCSO Act.

6. During the trial, the prosecution produced and examined the following witnesses :-

Rank	Name	Nature of Evidence
PW-1	Father of the victim-cum-informant of the case	Chargesheet Witnesss
PW-2	Victim ‘X’	Eye Witness
PW-3	Mother of the victim	Chargesheet Witness
PW-4	Dr. Kumkum Kumari	Medical Witness
PW-5	Dr. Ram Kumar Prasad	Medical Witness
PW-6	Sultan Nadaf	Investigating officer
PW-7	Mukesh Kumar	Formal Witness
PW-8	Dipti Singh	Investigating officer
PW-9	Lal Babu Mishra	Investigating officer

7. In documentary evidence, the prosecution exhibited and proved the following documents:-

Sr. No.	Exhibit Number	Description
1.	Ext. P-1/PW 1	Entire written report
2.	Ext. P-2/PW 2	Signature of the victim on the medico-legal report
3.	Ext. P-2/1/PW 2	Signature of the victim on the statement recorded u/s 164 of the Cr.P.C.
4.	Ext. P-3/PW 5	Medico legal report
5.	Ext. P-4	State of the victim u/s 164 Cr.P.C.
6.	Ext. P-5/PW 6	Endorsement on the written report
7.	Ext. P-6/PW 6	Formal F.I.R.



8.	Ext. P-7/PW 7	Admission Register of victim
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8. After the completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Cr.P.C., wherein all incriminating evidences were put to him. He denied the same and claimed himself to be innocent. Although the appellant did not raise any specific defence in his statement.

8.1. The appellant examined the following four witnesses in support of his defence:

DW 1	Pramod Ravidas
DW 2	Sanjay Ravidas
DW 3	Mantoo Kumar
DW 4	Nagina Ravidas

9. In documentary evidence, the appellant proved and exhibited one document, marked as D-1, which is a notary affidavit claimed to have been executed by the appellant and the informant’s daughter.

Submissions on behalf of the appellant :-

10. Learned counsel for the appellant has argued that the informant’s daughter, the victim, is not a sterling witness of the prosecution, as she has not remained consistent with the prosecution’s allegations. Further, the place of her recovery as shown by the prosecution is completely doubtful in view of the



contradictions. There is a delay of two days in lodging the FIR without any plausible explanation by the informant. The victim was medically examined immediately after her recovery, but the medical expert found no evidence on her person suggesting sexual assault. In fact, there was a love affair between the appellant and the informant's daughter, and admittedly, the informant was a tenant of the appellant's father, living in the same building in which the appellant's family were also living. There was a dispute over the payment of rent between the informant and the appellant's father. The trial court erred in convicting the appellant for the offence punishable under Section 376AB of the IPC, as the appellant had not been charged for the said offence, and without altering the charges, the conviction under Section 376AB of IPC was recorded by the trial court, which is wholly illegal.

11. Learned counsel further submits that, on account of the adolescent love affair between the informant's daughter and the appellant, the victim voluntarily went with the appellant, and they solemnized their marriage in a temple at Mani Baba Akhara on 19.11.2018. Thereafter, on 12.05.2019, both sworn in a joint affidavit before a Notary public showing their love as well as matrimonial relationship, which was proved by the



appellant during the course of trial by adducing it as documentary evidence (Exhibit D-1) and through the oral testimony of material witnesses.

12. Learned counsel for the appellant has further argued that the second part of the prosecution story described in the FIR was disbelieved by the trial court and consequently other co-accused persons were acquitted, which also casts a serious doubt on the first part of the prosecution's story. The prosecution remained unsuccessful in establishing even the foundational facts of the alleged occurrence.

Submissions on behalf of the State :-

13. Learned APP for the State has argued that the victim's own evidence is sufficient to prove the alleged charged offences against the appellant. The victim remained consistent in her allegations before the trial court as well as before the Judicial Magistrate while recording her statement. The victim was only 10 years old when the alleged occurrence of kidnapping and rape was committed by the appellant. The appellant's defence is not believable, rather, it supports the prosecution case if it is accepted, as the appellant admitted the physical relationship between him and the victim by claiming that they had entered into a matrimonial relationship. The



appellant cannot justify and legalise his actions even by entering into a matrimonial relationship with the victim, as the victim's consent had no legal significance due to her minority.

Consideration, analysis and conclusion :-

14. We have heard both the sides, perused the judgment impugned and the evidences adduced by both the sides before the trial court and the statement of the appellant. As per the prosecution story, the alleged act of the appellant as to taking the informant's daughter with him had come in the knowledge of the informant on 24.11.2018 but the FIR was lodged by the informant on 26.11.2018 by filing a written application. The said delay of two days on the part of the informant goes against him. Though, in the FIR the informant revealed that he was waiting whole day for returning back of his daughter on 24.11.2018 upon believing the appellant's assurance but the appellant came back to his house in the evening at 7 P.M. without his daughter and the appellant repeatedly did not fulfill his assurance, and only then the informant went to the police station to lodge the FIR. The said explanation does not seem to be believable as when the appellant failed to produce the informant's daughter (victim) despite giving assurance on 24.11.2018 then an immediate step for lodging the FIR ought to



have been taken by the informant but he remained silent till 26.11.2018.

15. So far as the credibility of the evidence of the victim with regard to the commission of the alleged offence is concerned, there are three circumstances which go against the prosecution. The victim, who was examined as PW-2, deposed before the trial court in the paragraph No. 7 of her cross-examination that she was taken by the appellant on a motorcycle but she did not raise any alarm at that time. She further stated that during the course of travelling for one hour on the said motorcycle, she cried several times but no one could hear her cry on account of fast speed of the appellant's motorcycle. Before the Judicial Magistrate, during the course of investigation while recording the statement under section 164 of Cr.P.C., the victim did not say anything about her said resistance of raising an alarm while she was being taken by the appellant on a motorcycle. She simply stated that she was enticed away by the appellant and taken by him to a secluded place on a motorcycle.

15.1. Secondly, the victim deposed that when her mother revealed her intention to lodge the FIR then the appellant brought her to Bihar railway station and left her there and fled



away. She further deposed that from the railway station, she informed her father about her location by using mobile phone of a woman, then her father came to the railway station and then the incident was narrated by her to her parents. Thereafter, the police came to her house, and before that her father had already lodged the case and the police came to her house and took her to the police station. But the investigating officer, who was examined as PW-8, deposed in his examination-in-chief that upon a secret information, he went to Bihar Sharif railway station and found the victim roaming alone and upon asking, she revealed her name as daughter of the informant. While as per the victim's own evidence, she herself informed her father about her location, after which her father brought her from the railway station to his residence, from where she was taken to the police station. The said contradictory statements regarding the place of recovery of the victim goes against the prosecution and makes the victim's evidence less credible. Her mother (PW-3) has stated that on 26.11.2018 her husband lodged a case in Bihar police station then Chunnu Kumar told her that the victim has been brought and left at Railway Station, Bihar Sharif. Her daughter gave her a call from mobile of a passerby, then she went to bring her. After return of the victim



she informed police. It is, therefore evident that PW-1, PW-3 and PW-8 have given three different version which are contradicting each other. It is also evident that prior to making her statement to the investigating officer (PW-8), she was in company of her parents at her home. In his evidence, the investigating officer (PW-8) has admitted that he had not mentioned at what time he had got secret information and that at what time he had recovered the victim. He had not recorded statement of any independent witness at the place of recovery.

15.2. Thirdly, as per the evidence of the victim, the appellant raped her 10 to 15 times during her captivity period. But on the person of the victim, no sign of physical violence suggesting such sexual assault with her for 10 to 15 times was found by the medical expert despite the victim having been examined on the same day of her recovery. This circumstance also goes against the prosecution.

16. In view of above discussed circumstances, the informant's daughter, the victim, does not appear to be a sterling witness and her evidence is not credible and not inspiring the confidence of this Court.

17. On the other hand, for substantiating the aforesaid defence of the appellant, three witnesses were



examined by the appellant in his defence who are independent persons and all of them deposed that there was love affair between the appellant and the informant's daughter and the same was in the knowledge of the victim's parents and both solemnized their marriage on 19.11.2018 at a temple in Mani Baba Akhara. The DW-3 (Mantoo Kumar) stated that before him the appellant and informant's daughter made a document showing and proving their matrimonial relationship and at that time the victim revealed her age as 19 years. He further submitted that an affidavit was sworn by the victim and the appellant jointly with their photographs and he made his own signature as a witness on the said affidavit. The witness proved his signature upon the said affidavit, which was marked as Ext.- D-1.

17.1. Though in view of informant's daughter's minority, the appellant's above discussed defence cannot be made a ground for exonerating him from entering into sexual relationship with the victim in the name of marriage but with regard to the alleged offences pertaining to the prosecution story, the prosecution is bound to prove the prosecution story at least its foundational facts. The prosecution has measurably failed to establish its prosecution story as to the victim being forcibly taken by the



appellant on a motorcycle and establishing sexual relationship with her by the appellant several times and further, the trial court erred in convicting the appellant for the offence under section 376AB of IPC without altering the charges upon him. Accordingly, we are of the considered view that the impugned judgment and order convicting and sentencing the appellant for the alleged offences are not sustainable in the eye of law, so, both are hereby set aside and the instant appeal stands allowed. The appellant is acquitted of the charges giving him benefit of doubt.

18. The appellant is in jail, so, he is directed to be released at once in the present matter if his custody is not required in any other matter.

19. Let the trial court’s records be sent back to the trial court concerned forthwith.

20. Let the judgment's copy be sent to the trial court as well as jail authority concerned for needful.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.01.2026
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