

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.324 of 2023

Arising Out of PS. Case No.-284 Year-2018 Thana- BEGUSARAI MUFFASIL District-
Begusarai

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Ranjay Singh, S/O Late Bogo Singh, Resident of Jagdishpur Tarbana, P.S.-
Muffasil (Lakho) O.P., Distt.- Begusarai (Bihar).

... .. Appellant

Versus

1. The State of Bihar
2. Father of Victim, S/O Yugal Rai, Resident of Jagdishpur, P.S.- Muffasil
(Lakho) O.P, Distt.- Begusarai (Bihar).

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Mayank Mani, Advocate Mr. Jai Prakash Singh, Advocate
For the State	:	Mr. Abhimanyu Sharma, Addl.PP
For the Resp No. 2	:	None

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

Date : 01-07-2026

Heard learned counsel for the appellant and learned
Additional Public Prosecutor for the State.

2. Despite valid service of notice on Respondent No. 2,
no one has entered appearance on his behalf to oppose the appeal.

3. The present appeal has been preferred for setting
aside the judgment of conviction dated 02.02.2023 (hereinafter
referred to as the ‘impugned judgment’) and the order of sentence
dated 06.02.2023 (hereinafter referred to as the ‘impugned order’)
passed by learned Exclusive Special Court (POCSO Act)-cum-6th



Additional Sessions Judge, Begusarai (hereinafter referred to as the 'learned trial court') in POCSO Case No. 73 of 2018 arising out of Muffasil (Lakho O.P.) P.S. Case No. 284 of 2018. 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 Section 5(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, he has been sentenced to undergo rigorous imprisonment for twenty years with a fine of Rs.50,000/- under Section 5(j)(ii)/6 of the POCSO Act and in default of payment of fine, he shall further undergo simple imprisonment for six months.

Prosecution Case

4. The prosecution case is based on the written application of the father of the victim (PW-2) wherein he has stated that on 25.05.2018 at around 08:00 A.M., his daughter told him that her stomach is aching. Then for treatment, he brought his daughter to the nearby private hospital, where the doctor told him that his daughter is pregnant. Thereafter, when the informant repeatedly asked his daughter then she told him that about 5-6 months ago, when she was coming from school alone, then (1) Ranjay Singh (appellant) and (2) Gaurav Kumar caught hold of her



and took her inside the maize field and committed rape upon her one after another. The victim also alleged that they threatened her not to disclose this to anyone otherwise they will kill her and her father.

5. On the basis of the aforesaid written information of the informant, FIR being Muffasil (Lakho O.P.) P.S. Case No. 284 of 2018 dated 25.05.2018 was registered under Section 376 IPC and Sections 8 and 12 of the POCSO Act against (1) Ranjay Singh and (2) Gaurav Kumar. After investigation, Police submitted first chargesheet bearing Chargesheet No. 435 of 2018 dated 20.07.2018 against Gaurav Kumar keeping investigation pending against Ranjay Kumar. Learned trial court vide order dated 06.08.2018 took cognizance of the offence punishable under Sections 376 of the IPC as well as under Sections 8 and 12 of the POCSO Act against accused Gaurav Kumar and after finding him juvenile in conflict with law, learned trial court sent his records to the Juvenile Justice Board, Begusarai vide order dated 06.08.2018 and ordered for opening of supplementary records against Ranjay Singh (appellant herein).

6. Later on, supplementary Chargesheet No. 497 of 2018 dated 31.08.2018 was submitted against Ranjay Singh (this appellant) under Sections 376(D), 313, 506/34 IPC and Section



5(8) of the POCSO Act. Vide order dated 06.03.2019, learned trial court found that the cognizance of the offence in this case has already been taken, accordingly, fixed the case for supply of police papers. After supply of police papers, charges were explained to the appellant in Hindi which he denied and claimed to be tried, accordingly, the charges were framed vide order dated 08.04.2019 under Section 376 IPC and Sections 8 and 12 of the POCSO Act.

7. In course of trial, the prosecution examined as many as ten witnesses and exhibited several documents. The list of prosecution witnesses and the documents are given hereunder in tabular form:-

List of Prosecution witnesses

Prosecution Witness No.	Name of Witness	Description of the Witness
P.W-1	Dr. Kamini Ray	Medical Officer
P.W-2	Informant	Father of the Victim
P.W-3	Mother of the victim	
P.W-4	Uncle of the victim	
P.W-5	X	Victim
P.W-6	Dr. Aasha Kumari	Member of Medical Board
P.W-7	Dr. Shashi Prabha	Member of Medical Board
P.W-8	Dr. Rampravesh Prasad	Member of Medical Board
P.W-9	Dr. Arun Kumar	Member of Medical Board
P.W-10	Parsuram Sharma	Investigating Officer

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
Ext.- P1	Signature of PW-3 on the Statement of the Victim	PW-3
Ext.- P1/1	Signature of the Victim	PW-5
Ext. - P2	Signature of PW-6 on Medical Report	PW-6



Ext. - P2/1	Signature of PW-1 on Medical Report	PW-1
Ext. - P2/2	Signature of PW-7 on Medical Report	PW-7
Ext. - P2/3	Signature of PW-8 on Medical Report	PW-8
Ext. - P2/4	Signature of PW-9 on Medical Report	PW-9
Ext. - P3	Formal FIR	PW-10
Ext. - P4	Suppl. Chargesheet	PW-10

8. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’). The appellant in his 313 CrPC statement denied the allegations and stated that to usurp his land, *Mukhiya* of the village has falsely been implicated him in this case and also stated that victim was about to get married with co-accused Gaurav.

9. The Defence has also produced three witnesses and some documentary evidence which are being mentioned hereunder in tabular form:-

List of Defence witnesses

Prosecution Witness No.	Name of Witness	Description of the Witness
D.W-1	Malti Devi	Neighbour
D.W-2	Shivanand Sah	
D.W-3	Mahendra Sah	

List of Exhibits on behalf of Defence

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
Ext.- D1	Postal Receipt	
Ext. - D2	Report of Block Cooperative Extension Officer, Begusarai	
Ext. - D3	Signature of Ranjeet Kumar	DW-3



	Singh on petition dated 26.11.2016.	
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Finding of the Learned Trial Court

10. Learned trial court, having gone through the evidences brought on record by the prosecution, found that the prosecution has been able to prove the charges under Section 376(3) IPC and under Section 5(j)(ii) read with Section 6 of the POCSO Act.

11. The learned trial court found that the defence has not disputed the age of the victim and the defence has not even evasively denied the age of the victim and learned trial court came to the conclusion that the victim was “child” as per definition under Section 2(d) of the POCSO Act on the date of alleged occurrence.

12. Taking note of the medical evidences together with the evidences of the doctors (PW-6, PW-7, PW-8 and PW-9) who were the members of the Medical Board, the learned trial court opined that there is sufficient believable evidence on the record that the minor victim was sexually assaulted resulting in pregnancy and when the parents of the victim came to know this fact, she was taken to doctor who examined the victim and carried out a miscarriage of the pregnancy.

13. On the point of involvement of the accused in the alleged offence, the learned trial court took the evidence of the



victim and came to a finding that there is evidence on record that the accused (appellant herein) along with co-accused Gaurav committed penetrative sexual assault on the person of the victim resulting in pregnancy later on miscarriage.

14. On the point of defence of the accused, the learned trial court found that three defence witnesses were examined out of whom DW-1 has admitted that the victim was carrying pregnancy and has not stated anything with regard to land dispute of the present accused with the *mukhiya* in the village. Regarding DW-2 and DW-3, the learned trial court opined that evidence of these witnesses regarding land dispute cannot be believed without any corroboration. The learned trial court found the defence evidence to be trembling.

15. Taking note of the evidences of the prosecution, the learned trial court found reason to believe that the prosecution has established a strong foundation of the allegation made against the accused and in view of the provisions of Sections 29 and 30 of the POCSO Act, the defence has not been able to prove his innocence and has also not been able to prove that he did not have any culpable mental state in commission of the offence and accordingly, the learned trial court found that the prosecution has been able to prove the charges against the appellant.



Submissions on behalf of the Appellant

16. Learned counsel for the appellant while assailing the impugned judgment and order of the learned trial court submits that the learned trial court has committed grave error in convicting the appellant.

17. Learned counsel for the appellant submits that informant has not disclosed the name of the doctor to whom the victim was first taken. Learned counsel submits that the first doctor who disclosed to the informant that the victim (PW-5) was carrying a pregnancy has not been examined in course of investigation and trial.

18. Learned counsel for the appellant while referring to 164 CrPC statement submits that the victim (PW-5) has made further statements that about 1-2 months ago, while she was going to attend nature's call, then Gaurav Kumar (stand acquitted) gagged her by her mouth and made her to take a tablet, whereafter she suffered abdomen pain. The victim thereafter stated that her mother brought her to a compounder in the village who did not give her any medicine, thereafter, on asking of her mother she disclosed the entire occurrence. The victim's mother went to police station with the victim where she suffered pain and a dead child was delivered. She has further disclosed that her mother took her to her house where she



was given medicines. Learned counsel submits that it shows that within three days of lodging of the FIR, the victim came out with added story which were not disclosed at the time of lodging the FIR.

19. Learned counsel for the appellant submits that mother (PW-3) of the victim in her deposition deposed that she took the victim to a doctor for abortion and then she has stated that the victim had suffered abortion in the police station itself and police had seen the child who was delivered dead for which no paper was prepared. It is stated that Police asked her to throw away the child. Name of the doctor to whom the victim was taken for abortion has not been disclosed by PW-3. Learned counsel submits that at every stage, the name of the doctor has not been disclosed.

20. Learned counsel for the appellant submits that there is a delay in lodging of the FIR and no cogent explanation has been given for the delay.

21. Learned counsel for the appellant further submits that the victim claimed that she was studying in Class-V in a school but she could not produce the proof of her age. Learned counsel submits that the I.O. also has not procured any proof of the age of the victim.

22. Learned counsel for the appellant submits that for taking undue advantage from the appellant, false case had been registered against him and no such occurrence had taken place and



the learned trial court has erroneously held the appellant guilty shifting the burden upon the defence to prove his innocence without any material to prove the foundational facts.

Submission of the State

23. Learned Additional Public Prosecutor for the State has opposed the appeal by submitting that the testimonies of the victim and other witnesses are consistent throughout the trial. There are no material contradictions or discrepancies affecting the core of the prosecution case. Learned Additional Prosecutor for the State submits that the medical examination report of the victim corroborates the prosecution case. Therefore, the learned trial court has rightly convicted the appellant by carefully considering the evidence available on the record.

Consideration

24. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State as also on perusal of the records, this Court finds that on the basis of a written information submitted on 25.05.2018 at 8:00 AM by the father (PW-2) of the victim girl (PW-5), a First Information Report has been registered, giving rise to Muffasil (Lakho) P.S. Case No. 284 of 2018, dated 25.05.2018 under Section 376 IPC and Section 8/12 of the POCSO Act. From the formal FIR (Exhibit 'P/3'), it is evident that



the information is said to have been received in the police station on 25.05.2018 at 22:30 Hrs. The FIR was received in the court of learned Special Judge, POCSO Act on 27.05.2018, i.e. after one day from the date of registration of the FIR.

25. In the written information, it is stated that the daughter of the informant felt abdomen pain on 25.05.2018 at 8:00 AM. She was taken to a private doctor for treatment but the informant has not disclosed the name of the doctor to whom the victim was first taken. Neither in the written information nor in course of her deposition in course of trial, she has disclosed the name of the doctor, therefore, the first doctor who disclosed to the informant that the victim (PW-5) was carrying a pregnancy has not been examined in course of investigation and trial.

26. It is further found that on asking of the informant, the victim girl is said to have disclosed that two named persons, one of whom is this appellant, had committed rape on her about 5-6 months back when the victim was returning from her middle school. In the written information, the name of the middle school where the victim was studying and from where she is said to be returning has not been disclosed. To explain the delay in lodging of the FIR, the written information states that the accused persons had threatened to kill her father, therefore, the victim had not disclosed the occurrence.



27. The statement of the victim recorded under Section 164 CrPC on 28th May, 2018 (Exhibit '01/01') is on the record. In this statement, besides stating about the occurrence, the victim has made further statements that about 1-2 months back, when she was going to defecate, then Gaurav Kumar (stand acquitted) gagged her by her mouth and made her to take a tablet, whereafter she had abdomen pain. The victim (PW-5) stated that her mother took her to a compounder in the village who did not give her any medicine, thereafter, her mother asked her and she disclosed the entire occurrence. Her mother took her to police station where she had pain and the dead child was delivered. She has further stated that her mother took her to her house where she was given medicines. It is evident that within three days of lodging of the FIR, the victim came out with some very material information which were not disclosed at the time of lodging the FIR.

28. It is important to note that during her 164 CrPC statement, the victim disclosed to the learned Special Judge, POCSO Act, Begusarai that she was a student of Class-V but again she did not disclose the name of her school.

29. PW-1, PW-6, PW-7, PW-8, and PW-9 are the doctors who had occasion to examine the victim. Dr. Kamini Rai (PW-1) had examined the victim, and her signature on the medical report has



been marked Exhibit '1'. PW-1 has stated in her cross-examination that she had not stated in her report the reasons for abortion.

30. Dr. Asha Kumari (PW-6) has stated that "history of 4 months amenorrhea and aborted female fetus on 25th May, 2018". The internal findings showed blood mixed watery discharge present, hymen torn and vaginal swab taken and sent to pathologist. The vaginal swab for examination of spermatozoa showed spermatozoa found and the USG of lower abdomen showed uterus is bulky, hypo echoic and shows plenty of hyper echoic debris in cavity. Ovaries are normal, postpartum uterus with lochia/RPOC. The doctor opined that bulky uterus and fresh lochia suggest recent termination of pregnancy. The medical report has been marked Exhibit '2'.

31. In her cross-examination, PW-6 has stated that she was told about abortion by the victim and the person who brought the victim to her. On external examination of the victim, the doctor found no injury on any part of the body including front and back. According to the report, abortion may take place within 1-4 days but she had not mentioned the date of abortion. Dr. Shashi Prabha (PW-7) is the another member of the Medical Board who has opined the same.

32. Dr. Rampravesh Prasad (PW-8) has assessed the age of the victim girl and on the basis of the dental details and dental radiological findings, the age of the victim has been assessed



between 14 to 15 years. The report issued by Dr. Rampravesh Prasad (PW-8) has been marked Exhibit '02/03'. In his cross-examination, PW-8 has stated that the victim had eight premolars and eight molars at the time of examination. Dr. Arun Kumar (PW-9) has stated that finding last molar teeth not erupted on both sides of mandible, hence on the basis of radiological and dental findings, the age of the victim lies between 14 to 15 years. The medical report issued by PW-9 has been marked Exhibit '02/04'.

33. Father of the victim (PW-2) has stated in his examination-in-chief that when the victim was taken to the doctor, the doctor disclosed that she was carrying a pregnancy of seven months, thereafter, the victim disclosed about the occurrence. In his examination-in-chief, PW-2 has not stated anything about the abortion at the police station. He has also not stated that the victim was administered a tablet by Gaurav about 1-2 months back. He disclosed that her daughter was studying in Bhagwanpur School, other 2-4 girls from the village were studying with her and all the girls were coming and going together.

34. In his cross-examination, PW-2 has disclosed that Ranjay Singh (the appellant) resides besides his house, he carries several litigations but the witness has stated that he cannot produce any paper. He has stated that he had no case with Ranjay Singh. He



has stated that his family is on visiting term with Ranjay Singh because he happened to be neighbour. In his cross-examination, PW-2 has stated that the victim had delivered the child at the police station and the child died at the police station itself.

35. This Court finds from the deposition of PW-2 that he claims visiting relationship with family of Ranjay Singh, but when this Court examines the evidence of the mother of the victim (PW-3) it is noticed that in paragraph '7' of her deposition, she has stated that they were not on talking terms. She has also stated that when she found changes in the physical features of her daughter, she took her to a doctor. She has clearly stated that she had gone to the doctor for abortion. Then she has stated that the victim had suffered abortion in the police station itself and police had seen the child who was delivered dead but no paper was prepared. Police told her to throw away the child. PW-3 is not disclosing the name of the doctor to whom the victim was taken for abortion. It is evident that at every stage, the name of the doctor has been withheld.

36. It further appears that in her examination-in-chief, PW-3 has stated that her daughter had a pregnancy of 7-8 months and she was taken to a government hospital for treatment where doctor said about her pregnancy. In her examination-in-chief, she has not stated that her daughter had given birth to a child in the police station. The



name of the government hospital has not been disclosed. There is no reason to explain why the name of the government hospital or the private doctor to whom the victim was taken could not be disclosed by the mother of the victim (PW-3). The prosecution witnesses were suggested that for taking undue advantage from the appellant, false case had been registered against him and no such occurrence had taken place.

37. On perusal of the evidence of PW-4, who is uncle of the victim, it would appear that the victim girl had not disclosed the occurrence to him. PW-4 was cross-examined on the age of the victim and he has stated that the victim was eleven years old, which he was saying on estimation basis. He denied the suggestion that the victim was sixteen years old at the time of occurrence. He has stated that there was no rumour about rape in the village. It spread after 7-8 months. PW-4 has disclosed that Gaurav has already been acquitted in this case. This witness has further stated that there is no visiting term between the family of the appellant and the family of the witness. This witness is brother of the informant, therefore, the defence has suggested that he was falsely deposing in favor of the victim.

38. This Court finds that the victim has been examined as PW-5. In her examination-in-chief, she has stated about the



occurrence and has stated that she had become pregnant because of the rape committed on her by Gaurav Kumar and Ranjay Singh. She has stated that after 6-7 months when she was going home after studying, then on way there was a *gaachhi* (orchard) where she was given a tablet which caused abdomen pain, which she disclosed to her mother and then she was taken to Sadar Hospital where government doctor had examined her and told that the child has already died, thereafter they went to police station. In her examination-in-chief, the victim has not stated that she had delivered a dead child at the police station. The medical papers/documents of the Sadar Hospital where she was taken by her mother has not been brought on record by the prosecution.

39. This Court further finds that in course of her cross-examination, the defence questioned the victim about the proof of her age but she clearly said that she cannot produce any document relating to her age. In paragraph '10' of her cross examination, PW-5 has stated that she had no complaint against Ranjay Singh.

40. The I.O. of this case has been examined as PW-10. In his examination-in-chief, the I.O. has not stated about delivery of dead child by the victim at the police station. He had taken charge of the investigation on the same day from the Officer-in-charge Lal Mohan Singh. He has proved the formal FIR (Exhibit 'P/3') which



has been drawn in the handwriting and under signature of Lal Mohan Singh (not examined).

41. Contrary to the statement of the father of the victim that the appellant had several cases on his head, the I.O. (PW-10) has stated that the appellant had no criminal antecedent. In his cross-examination, PW-10 has stated that he used to visit the village in which the place of occurrence is situated and he had gone several times in the village but he had not heard anything about the occurrence. He had not submitted any proof of age of the victim and he had not investigated on the point as to whether the victim had attended the school. PW-10 has stated that the victim had told that she had delivered the dead child at the police station. PW-10 had not seized the delivered child. This Court finds that the I.O. (PW-10) has not stated or corroborated the statement of the victim that she had delivered a dead child at the police station.

42. On a complete reading of the evidences available on the record, this Court finds that in this case, the age of the victim has been questioned by the defence. The victim was studying in Class-V in a school but she has clearly stated that she cannot produce the proof of her age. The I.O. did not submit any proof of the age of the victim. Apparently, the prosecution has withheld the age of the victim as per her school admission register. Proof of age of the victim is an



essential requirement to bring a case under the scope and ambit of POCSO Act.

43. It, however appears that the learned trial court has not at all considered this aspect of the matter and the age of the victim (PW-5) has not been duly determined. Section 34 of the POCSO Act provides for the procedure in case of commission of offence by child and determination of age by the Special Court. Sub-section (2) of Section 34 of the POCSO Act states as under:-

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.”

44. The scheme for determination of age of a child is provided under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as ‘the Act of 2015’). Section 94 of the Act of 2015 is being extracted hereunder for a ready reference:-

“94. Presumption and determination of age.

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as



may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

45. In view of the aforesaid scheme, the prosecution was obliged to bring before the learned trial court the date of birth certificate from the school and only in absence of the same, the age of the victim may be determined by an ossification test or any other latest medical age determination test conducted on the orders of the



committee or the Board. In this case, the fact is that the learned trial court has not determined the age of the victim girl and the medical age shown in the medical reports, on which Doctors PW-1, PW-6, PW-7, PW-8, PW-9 have identified their signatures as Exhibits 'P2/1', 'P2', 'P2/2', 'P2/3', 'P2/4' respectively, are not on the orders of the Board or the Committee within the meaning of Clause 10 of Section 2 and Clause 22 of Section 2 of the Act of 2015 respectively. In absence of the determination of age of the victim, the basic foundation as envisaged under Section 29 of the POCSO Act cannot be said to be laid down by the prosecution.

46. The learned trial court has convicted the appellant under sub-section (3) of Section 376 IPC, however, on the date of occurrence, sub-section (3) was not in existence. Sub-section (3) has been inserted by Act 22 of 2018 with retrospective effect from 21.04.2018. The Criminal Law Amendment Act, 2018 was published on 11th August, 2018 but it has been made effective from 21st April, 2018. By Section 4 of the Amendment Act, 2018 after sub-section (2), sub-section (3) was inserted. By the same amendment under sub-section (1) after the words "shall not be less than 7 years but which may extend to imprisonment for life and shall also be liable to fine" the words "shall not be less than 10 years, but which may extend to



imprisonment for life, and shall also be liable to fine" has been substituted.

47. From the analysis of evidences present on the record, this Court finds that while the informant has stated that the victim was taken to a private doctor for treatment where the victim had disclosed to the informant about the occurrence, the mother of the victim (PW-3) has stated that her daughter had a pregnancy of 7-8 months and she was taken to a government hospital for treatment. She has not named the government hospital but the victim (PW-5) has stated that she was taken to Sadar Hospital where government doctor had examined her and told her that the child had already died, thereafter they went to the police station. It is evident on analysing these statements of the prosecution witnesses that the prosecution is not disclosing the name of the private doctor or the government hospital or that of the doctor who treated the victim in the Sadar Hospital. No document showing treatment of the victim girl by any doctor during her pregnancy has been brought on record. The I.O. had not conducted any investigation and had not examined any doctor who had treated the victim prior to her visiting to the police station. The statement of the victim that the doctor told her that the child had already died, then she went to the police station with her mother and returned to her home from the police station substantially



differs with the deposition of her father (PW-2) who has stated in his cross-examination that the victim had given birth to the child in the police station and the child died in the police station itself. The mother of the victim (PW-3) has stated in her examination-in-chief that her daughter had given birth to the child but that child was dead. In her examination-in-chief, she does not say that her daughter had aborted in the police station but in the cross-examination PW-3 says that she had gone to the doctor for abortion and then she says that the abortion had taken place in the police station and that child was seen by the police but no paper was prepared. These statements of PW-2 and PW-3 are in conflict with the statement of the victim (PW-5) who has stated that the doctor told her that the child had already died and only thereafter she had gone to the police station. The victim has not stated that she had given birth to a child in the police station and the child was dead. Surprisingly, she has stated in paragraph '10' of her deposition that she had no complaint against Ranjay Singh (the appellant).

48. From these evidences on the record, it is not well proved that the victim girl had been carrying pregnancy caused by rape committed on her by the appellant. Gaurav Kumar, who was the co-accused with the appellant, has already been acquitted by the learned trial court. In his 313 CrPC statement, the appellant has taken



a plea that to usurp his land, *Mukhiyaji* got him falsely implicated. Her marriage was to be performed with Gaurav Kumar.

49. This Court further finds that even as the appellant was arrested by police and produced in court on 04.08.2018, his medical examination was not conducted. The allegations against the appellant was serious in nature and it required compliance with Section 53A of the CrPC but no compliance has been made by the prosecution.

50. This Court finds that during medical examination the doctor (PW-6) has stated about a history of 4 months amenorrhea and aborted female fetus on 25th May, 2018. PW-6 has also stated about blood mixed watery discharge and spermatozoa found but there is no further information on this issue and neither any matching of blood nor matching of semen has been done. The dead child, if any has been made to disappear. Thus, no DNA test could be conducted to establish the biological father of the child. The evidence of the doctors would at best suggest that the victim had undergone abortion but where the said abortion took place, when the abortion took place and in whose presence she had aborted the female fetus on 25th May, 2018 is not known. The prosecution could not establish scientifically that the aborted child was that of this appellant or of Gaurav Kumar. A doubt arises as to whether it is a case of over-implication.



51. We have noticed from the defence evidences that the appellant is a member of the PACS. PW-1 has stated that he knows the appellant who is a driver and member of the PACS but there was no complaint against him in the village. He came to know from the rumour that the victim had a pregnancy of 7-8 months. Shivnandan Sah (DW-2) has stated that the informant and his brother were working with Mukhiyaji and wife of the informant was also working in his house. Mukhiyaji of Sahpur and Mukhiyaji had inimical relationship with Ranjay Singh for 7-8 years on account of some transactions in the PACS.

52. While this Court finds that there are some evidence that the victim girl had suffered abortion but save and except the statement of the victim that she was subjected to rape 6-7 months ago by this appellant and one Gaurav Kumar, there is no corroborating evidence to take a safe view of the matter that the appellant is guilty of commission of rape on the victim girl. Suppression of age of the victim has to be kept in mind and the fact that the prosecution witnesses are not wholly reliable would further create doubt in the mind of this Court in taking a clear view of the commission of offence by this appellant. The victim in this case is not a wholly reliable witness. She has stated that she had no complaint against this



appellant. This statement of the victim is significant. Why is she saying that she had no complaint with the appellant.

53. We have further noticed that the occurrence in this case is said to have taken place about 6-7 months prior to the date of lodgment of the case i.e. 25.05.2018. The date of occurrence would, therefore, relate back to 6-7 months prior to 25.05.2018. At the relevant time, Section 376(3) IPC was not in existence. It has been inserted vide Criminal Law Amendment Act, 2018 with retrospective effect from 21.04.2018. Section 376(3) IPC, Section 5(j)(ii) and Section 6 of the POCSO Act read as under:-

"376 ¹(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.]

5(j)(ii) of the POCSO Act

5(j) Whoever commits penetrative sexual assault on a child, which-

(i)

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

²[6. Punishment for aggravated penetrative sexual assault.--

(1) Whoever commits aggravated penetrative sexual assault 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 natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.] "

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

2. Substituted by Act 25 of 2019, S. 5 (w.e.f. 16-8-2019). Prior to its substitution, S.6. read as under:- "6. Punishment for aggravated penetrative sexual assault.- Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine."



54. On the date of occurrence, i.e. 6-7 months prior to amendment, the minimum punishment prescribed under these provisions were 7 years but the learned trial court seems to have proceeded to convict the appellant under these provisions and awarded him a sentence under the newly substituted/amended/inserted provisions. The learned trial court has awarded rigorous imprisonment of 20 years and fine of Rs.50,000/- for committing offence under Section 5(j)(ii)/6 of the POCSO Act. No separate sentence has been awarded for the offence under Section 376(3) IPC in view of the mandate under Section 42 of the POCSO Act.

55. In ultimate analysis, this Court is of the opinion that it would not be safe to sustain the conviction of the appellant on the basis of the sole testimony of the victim in this case which this Court has found as no wholly reliable piece of evidence. The impugned judgment and order are, therefore, set aside.

56. This appeal is allowed.

57. Let the appellant be released forthwith, if not wanted in any other case.

58. A copy of the judgment together with the trial court records be sent down to the learned trial court.

(Rajeev Ranjan Prasad, J)

(Ritesh Kumar, J)

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