

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1450 of 2022

Arising Out of PS. Case No.-386 Year-2014 Thana- KALYANPUR District- East Champaran

DEEPAK KUMAR, SON OF SRICHANDRA PRASAD, R/O VILLAGE-
DEVPUR PARSA, P.S.- KALAYANPUR, DISTRICT- EAST CHAMPARAN
... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjeev Kumar Mr. Sitesh Kashyap Mr. Raushan Raj
For the Respondent/s	:	Mr. Zeyaul Hoda

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 12-05-2026

1. The present appeal has been preferred by the appellant against the judgement of conviction and the order of sentence, dated 16.03.2022, passed by the learned Additional Sessions Judge-VII -cum- Special Judge, POCSO, East Champaran, at Motihari, in Trial No. No. 32 of 2020, arising out of Kalyanpur Police Station Case No. 386 of 2014, whereby the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Though the appellant was convicted under Section 376 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act, 2012, the learned Trial



Court, considering the fact that the maximum punishment is under Section 6 of the Protection of Children from Sexual Offences Act, 2012, has awarded sentence only under Section Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. The appellant was sentenced to undergo rigorous imprisonment for a term of ten years and fine of Rs. 50,000/-, and in default of payment of fine, the appellant has been further directed to undergo simple imprisonment for six months.

4. The prosecution case, based on the written application submitted by the informant to Kalyanpur Police Station on 23.11.2014, unfolds with the allegation that the informant/victim had been residing in the house of her sister and brother-in-law in Village Devpur Parsa for the past eight years. One year prior to the lodging of the First Information Report, the sole appellant induced the informant and established physical relations with her. This relationship continued on the continuous assurance of the appellant that he would marry the informant/victim. In the meantime, when the informant-victim became pregnant, she began to pressurize the appellant to solemnize marriage with her; however, despite repeated assurances, the appellant ultimately refused to marry her. On the date of lodging of the First information Report, the informant-victim was carrying pregnancy of about 7–8 months.



5. On the basis of aforesaid written application, Kalyanpur Police Station Case No. 386 of 2024, dated 24.11.20214, was registered against the appellant for the offences punishable under Sections 376/493 of the Indian Penal.

6. After completion of investigation, charge-sheet was submitted on 20.02.2015 against the appellant under Sections 376 and 493 of the Indian penal Code, whereafter cognizance of the offences was taken on 08.01.2016 under the aforementioned provisions by the Special Court, POCSO.

7. Thereafter, on 03.03.2016, the learned Trial Court framed charges against the appellant under Sections 376 and 493 of the Indian penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. The charges were read over and explained to the appellant in Hindi, to which he pleaded not guilty and claimed to be tried.

8. The prosecution, in order to substantiate its case, has examined as many as five witnesses and exhibited some documents on its behalf. List of prosecution witnesses and exhibits are being mentioned hereunder in tabular form:-

List of Prosecution Witnesses :

Prosecution Witness No.	Name of witness	Description
1.	X	Informant/ victim
2.	Rita Devi	Sister of victim



3.	Rajesh Prasad	Independent Witness
4.	Dr. Nutan Sinha	Doctor
5.	Narendra Kuamr Singh	Investigating officer

List of Exhibits on behalf of the prosecution :

Exhibit No.	Description of the Exhibit	Date
1	Signature of victim (informant) on the fardbayan	30.03.2016
2	Signature of victim (informant) on medical report	30.03.2016
3	Medical Report of the victim (informant)	15.12.2016
4	Age determination Report	07.02.2022

9. The appellant was examined under section 313 of the Code of Criminal Procedure on 07.03.2018.

10. The defence adduced three witnesses and exhibited one document on its behalf. List of prosecution witnesses and exhibits are being mentioned hereunder in tabular form:-

List of Defence Witnesses :

Defence Witness No.	Name of witness	Description
1.	Shri Chandra Prasad	Father of the Appellant
2.	Deepak Kumar	Appellant
3.	Dharmdev Prasad	witness of the sale deed

List of Exhibit on behalf of the defence :

Exhibit No.	Description of the Exhibit	Date/attested by
A	Signature of witness Dharmdev Prasad on the sale deed	24.03.2021/DW 3



11. It is pertinent to mention here that after the examination of the appellant under Section 313 of the Code of Criminal Procedure on 07.03.2018 and after closing of the defence witness, the learned Trial Court noticed the order, dated 08.03.2017, passed by this Court, in Criminal Misc. No. 9164 of 2017, in which it was the confession of the appellant before this Court that the victim-informant is his wife and he is the father of the child. The appellant has also wrote a letter addressed to the learned Trial Court on 29.04.2016, when he was under judicial custody that the victim-informant is his wife and he is the father of the child. When the learned Trial Court noticed the above mentioned order and letter, the statement of the appellant was again recorded under Section 313 of the Code of Criminal Procedure on 01.09.2021.

12. Learned Counsel appearing on behalf of the appellant has submitted, at the very outset, that the judgment of conviction is against the weight of evidence and has been passed upon presumption of guilt. It is contended that the finding of the learned Trial Court with regard to the age of the victim is wholly unsustainable in the eyes of law and has resulted in grave miscarriage of justice. The conviction of the appellant under Section 6 of the Protection of Children from Sexual Offences Act,



2012 is entirely dependent upon proof of the victim being a minor; however, the prosecution has miserably failed to establish the same in accordance with the established principles.

13. It is further argued that no proper age determination of the victim was carried out in accordance with the mandate of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the provisions of the of the Prevention of Children from Sexual Offences Act, 2012 could only be invoked only after foundational facts, including the minority of the victim, are duly established by the prosecution. In the present case, as the age of the victim has not been proved in accordance with law, therefore, the provisions of the Prevention of Children from Sexual Offences Act, 2012, will not be attracted.

14. Learned Counsel further submits that the alleged Age Determination Report, marked as Exhibit-4, was exhibited on 07.02.2022, i.e., at a highly belated stage, long after the twice examination of the accused under Section 313 of the Code of Criminal Procedure had already been concluded. Since, the said age verification report was brought on record after closing of the prosecution and defence witness and after recording of the statement of the appellant under Section 313 of the Code of Criminal Procedure, the incriminating circumstance arising



therefrom was never put to the appellant and the appellant was deprived of a valuable opportunity to explain or challenge the alleged determination of age, causing serious prejudice to him.

15. Learned Counsel further submits that the Age Determination Report (Exhibit-4) has not been exhibited in accordance with law. Neither PW 4 (the doctor) nor PW 5 (the Investigating Officer) have deposed anything regarding the preparation, basis, or methodology of the said age verification report. The Investigating Officer (PW 5) has neither conducted any investigation into the authenticity of the age verification report nor any competent witness was examined to prove its contents. As such, the conclusion of the learned Trial Court regarding the minority of the victim is wholly unsustainable.

16. The purported age determination is based solely on Exhibit-4, which is not only unproved, but also suffers from serious procedural irregularities. It is a cardinal principle of criminal law that the prosecution must prove its case beyond reasonable doubt, and in the absence of reliable and admissible evidence regarding the age of the victim, the benefit of doubt must necessarily be given to the appellant.

17. Learned Counsel further submitted that the statutory presumption under Section 29 of the Protection of Children from



Sexual Offences Act, 2012 can be invoked only after foundational facts, including the minority of the victim, are duly established by the prosecution. In the present case, as the age of the victim has not been proved in accordance with law, the said presumption is not attracted.

18. It is also relevant to submit that the appellant has consistently taken the stand that the informant/victim is his wife and their relationship was consensual in nature. In the absence of proof of minority, such relationship cannot be brought within the ambit of the offence of rape.

19. The second limb of argument of learned Counsel for the appellant was that the incriminating material regarding the age of the victim-informant was never put to him while recording his statement under Section 313 of the Code of Criminal Procedure; rather the question regarding the minority of the victim was put to him while recording his statement under Section 281 of the Code of Criminal Procedure, and due to non-placement of the incriminating question, the appellant has been prejudiced.

20. Learned Counsel has concluded his argument by submitting that the impugned judgment of conviction is fit to be set aside as the prosecution has miserably failed to prove its case beyond reasonable doubts.



21. In support of his submissions, learned Counsel has placed reliance upon the decisions of the Supreme Court, in the cases of **Naresh Kumar v. State of Delhi (AIR 2024 SC 3233)**, **Ramji Prasad Jaiswal @ Ramjee Prasad Jaiswal and others v. The State of Bihar (AIR Online 2025 SC 1073)**, **Lalu Yadav vs State of UP (AIR 2024 SC 5194)**, **Jaya Mala v. Home Secretary, Government of J & k and Others (AIR 1982 SC 1297)** and **Kunal Chatterjee vs The State of west Bengal and Others**, passed in **SLP (CRL.) No. 7004 of 2025**.

22. On the other hand, learned Counsel for the State argued that the evidence adduced on behalf of the prosecution, have supported the prosecution case. The deposition of PW 1 (the victim-informant) is of credible nature, as such, the deposition of the victim (PW 1) itself can form the sole basis of conviction of the appellant.

23. On the age verification report of the victim-informant, learned Counsel submits that on the application of the prosecution, dated 03.02.2022, there is endorsement of learned Counsel for the appellant that he has no objection if the age verification report is exhibited at this belated stage and on the ground of no objection by the either parties, the learned Trial Court, by order, dated 07.02.2022, has directed for exhibiting this



document, which was prepared on the date of lodging of the First Information Report itself. After giving no objection for exhibiting the age verification report, the appellant cannot, at the appellate stage, take a plea that the age verification report has not been proved properly.

24. Learned Counsel further submitted that the medical evidence indicates that the victim-informant carried pregnancy of 7-8 months and thus it cannot be denied that the victim has been subjected to sexual assault. It has also been submitted that if any, a consent is given by a minor, that consent is a nullity in the eyes of law and the same amounts to rape.

25. On the point of non-placement of the age of the victim-informant in the statement of the appellant recorded by the learned Trial Court, on 07.03.2018, it has been submitted by learned Counsel for the State that all the incriminating questions were put to the appellant on 07.03.2018, though the same has been recorded on a format meant for examination of accused persons under Section 281 of the Code of Criminal Procedure, but on going through the contents of the statement and order, dated 07.03.2018, it is crystal clear that the statement of the appellant was recorded under Section 313 of the Code of Criminal



Procedure. and mere recording the statement on a wrong format would not vitiated the entire trial.

26. It has lastly been submitted that there is no illegality in the impugned judgment and order of conviction, as such, the appeal is devoid of any merit and fit to be dismissed.

27. I have heard learned Counsel for the appellant and learned Counsel for the State and have also gone through the entire materials available on record.

28. In order to give my conclusive finding, it is necessary to analyze and discuss the evidence of prosecution witnesses and the other documents, which were exhibited.

29. In order to appreciate the evidence adduced by the prosecution against the appellant, I would like to first take note of the evidence of the PW 1, the informant of this case and the sole victim also.

30. PW 1, in her examination-in-chief, has stated that the informant came in contact with the appellant while she was residing with her elder sister and brother-in-law in their house. The appellant used to say that he would marry her and did wrongful acts with her. The appellant used to say that if she will disclose, he will kill her. The appellant did not marry her and she got pregnant. A panchayat was also conducted, but the appellant's father did not



turn up in the panchayati. When her brother-in-law went to ask, they assaulted him with lathi five times. The Panch told her brother-in-law to go and file a case. The informant went to the police station with her brother-in-law. This witness has proved her signature on the fardbayan, which has been marked as Exhibit -1. This witness has further deposed that her treatment had taken place in Muzaffarpur, but her examination was done at Motihari and she has put her signature on it. This witness has identified her signature on the medical report, which has been marked as Exhibit-2. I identify the accused Deepak Kumar.

31. In her cross-examination, this witness (PW 1) has deposed that she did not remember her date of birth as the same was not disclosed by her parents. After the last rites of my father, who died 8-9 years ago, this witness came to her sister's place. This witness further deposed that only the appellant used to come in the house and nobody else come there. The appellant contacted the informant (PW 1) on the pretext of marriage, but she did not tell about this to her sister and brother-in-law, because her sister and her brother-in-law did not like the appellant visiting their house. This witness has further disclosed that she used to go to market with the appellant but they did not go together. This witness further deposed that the appellant established physical



relationship with her on the pretext of marriage, but she used to resist the physical relationship and always used to tell the appellant to marry her and in the last the appellant refused to marry with her.

32. This witnesses (PW 1) has denied the suggestion of the defense that there were many people on visiting terms in the house of her sister and she has illicit relations with many people. She has also denied that the appellant is not the father of the child she gave birth to and had filed this false case to pressurize the appellant to become her husband.

33. Now, coming to the deposition of the PW 2, Reeta Devi, the elder sister of the informant (PW 1), she has stated in her examination-in-chief that the informant is her sister and she has been living at her house since childhood. The appellant used to come to the house and had done wrong with the informant and the appellant has told about marrying the informant. When this witness went to the house of the appellant to tell about it, his parents attacked us. A panchayat was conducted. The appellant accepted in the panchayati that he would marry, but his parents did not accept. One child was born. This witness claimed to identify the appellant, who was present.

34. In the cross-examination, PW 2 has stated that the informant is 16 years old and the appellant told her that he had



illicit relations with the informant, but the informant never disclosed this fact. When the appellant told her, she had scolded and beaten the informant. This witness has further deposed that nobody, except the appellant, used to come to the house. When the child was born, the appellant was pressurized, who told to marry the informant.

35. This witness (PW 2) has denied the suggestion advanced on behalf of the defense that the appellant had no illicit relationship with the victim-informant and it is not true that the child is not of the appellant and this false case has been filed to pressurize the appellant.

36. PW3, an independent witness, in his examination-in-chief, has stated that he did not know much about the incident and he heard that the informant was pregnant with the appellant, upon which a panchayati was conducted, in which the appellant and his parents accepted the fact of marriage, but they refused the marriage. When the informant gave birth to the appellant's child, she was 17-18 years old. This witness had identified the appellant, who was present.

37. In his cross-examination, PW 3 has deposed that he had heard about the incident and did not see the incident taking place.



38. This witness (PW 3) has denied the suggestion of behalf of the defense that he had given false statement at the behest of the informant.

39. PW 4 (the doctor), Dr. Nutan Sinha, had examined the victim-informant on 24.11.2014. She has deposed that at the time of examination, the size of the uterus was 36 to 38 weeks and she had identified her signature on the medical examination report, which has been marked as Exhibit-3.

40. Though this witness (PW 4) has been cross-examined by the defense, but nothing relevant came out of it.

41. The last witness examined on behalf of the prosecution is the Investigating Officer (PW 5) of this case. This witness has deposed that on 24.11.2014, he was posted as Assistant Sub-Inspector of Police, in Kalyanpur Police Station and after registration of the case, he was given the charge of investigation by the Station House Officer. This witness took over the charge of investigation and during investigation, he recorded the statements of the informant, Rita Devi, Rajesh Prasad and one another person. This witness further deposed that the medical examination of the informant was conducted at Motihari Sadar. After completion of investigation, he has submitted charge sheet against the appellant



on 20.02.2015, under Sections 493 and 376 of the Indian Penal Code.

42. This witness (PW 5) was cross-examined and in his cross-examination, he has deposed that except the informant, none of the witnesses had seen the incident with their own eyes and they are hearsay witnesses. This witness had not submitted charge sheet under the penal sections of the Protection of Children from Sexual Offences Act, 2012. The informant was six months pregnant during the medical examination. The informant and the appellant were not living as husband and wife. PW. 2 and the brother-in-law of the informant did not know about the physical relationship before the pregnancy of the informant. This witness has further deposed that he was not aware as to whether the sample of blood of the informant was taken or not at the time of medical examination and he did not investigate the case on point of the informant having physical relations with other person also. than the appellant. During investigation, the defense statement of the appellant was not recorded.

43. After the examination of prosecution witness was over, three witnesses from the side of the defense were examined, who are, (i) father of the appellant, (ii) the appellant himself and (iii) one Dharmdeo Prasad, and all of them have deposed in their



deposition that this false case has been lodged by the informant because he lived with her brother-in-law, Dev Kumar Prasad, whose father, Amir Bhagat, had sold land to the grandfather of the appellant and he was demanding his land back on the same rate on which it was sold to the grandfather of the appellant.

44. From the evidence discussed above, it is evident that the appellant had established physical relationship with the informant on the pretext of marriage right from the very beginning and the child given birth by the informant is of the appellant. This finds strength by the answer given by the appellant under Section 313 (1) (b) of the Code of Criminal Procedure, 1973, that in the order, dated 08.03.2017, passed by this Court, in Criminal Misc. No. 9164 of 2017, it was the confession of the appellant before this Court that the victim-informant is his wife and he is the father of the child. This factum is also supported by the letter of the appellant addressed to the learned Trial Court on 29.04.2016, when he was under judicial custody that the victim-informant is his wife and he is the father of the child.

45. At one place, i.e. at the time of cross-examination of the informant (PW 1) on 30.03.2016, the defense was adamant to prove that the informant had illicit relations with many persons and the same version changed at the time of recording his



statement under Section 313 (1) (b) of the Code of Criminal Procedure, 1973, wherein he confessed that the informant is his wife and he is the father of the child. The defence has also tried to give this case a colour of land dispute.

46. The issue of consensual sexual relationship leads to be question as to whether the victim was actually a minor and whether her age determination was done in accordance with the procedure laid down under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

47. With regard to the minority of the victim, no document was brought on record by the prosecution, i.e. school/ matriculation certificate and/or the date of birth certificate, duly issued by the Municipality or the Panchayat. The victim has been directly medically examined, in which the doctor has assessed her age between 16 and 17 years.

48. The Supreme Court has in many cases have taken the view that radiological examination for the purpose of age determination is not very reliable and there is always a possibility of an error of plus and minus two years.

49. Reliance may be placed on the decisions of the Supreme Court in the case of **Ram Suresh Singh v. Prabhat Singh and Another**, reported in (2009) 6 SCC 681 and **Om**



Prakash v. the State of Rajasthan and Another, reported in **(2012) 5 SCC 201**. Further, in the case of **Rajak Mohammad v. H.P.**, reported in **(2018) 9 SCC 248**, it has also been laid down that the age determination on the basis of radiological examination may not be accurate determination and thus sufficient margin on either side has to be allowed.

50. Paragraph 9 of the **Rajak Mohammad** (supra) is being quoted herein below:

“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.”

51. In the case of Court on its **Own Motion Vs. NCT of Delhi**, reported in **2024 SCC OnLine Delhi 4484**, the Division Bench of Delhi High Court framed two questions and answered the same 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.”

52. Applying such principle laid down by the Supreme Court and the Delhi High Court, the upper age of the victim is raised to 19 years and thus the victim can be safely considered to be major, thereby excluding the applicability of the provisions of the Prevention of Children from Sexual Offences Act, 2012.

53. So far as the last objection raised by the appellant with regard to non-placing the incriminating material regarding the minority of the victim-informant while recording his statement under Section 313 of the Code of Criminal Procedure is concerned; from perusal of the statement of the appellant recorded on 07.03.2018, it would be evident that the question regarding the age of the informant-victim was placed before him. Though the



format of examination was under Section 281 of the Code of Criminal Procedure, but from going through the contents, I find that the contents are same as of recorded the statement of the accused under Section 313 of the Code of Criminal Procedure and mere change in format will of no help to the appellant.

54. In the backdrop of what have been discussed and pointed out above, I am firmly of the view that the prosecution has failed to establish the charge under Section 6 of the Prevention of Children from Sexual Offences Act, 2012, inasmuch as the informant-victim was major at the time of occurrence.

55. From the consistent case of the prosecution, specially the deposition of the prosecutrix (informant-victim, PW 1) herself, duly supported by the confession of the appellant before this Court in the bail application and also before the Trial Court (through a letter and also in the second statement recorded under Section 313 of the Code of Criminal Procedure), the prosecution has established that the appellant established physical relationship with her on the pretext of marriage right from the very beginning and there is no lacunae in the recording of the statement of the appellant under Section 313 of the Code of Criminal Procedure.

56. Section 90 of the Indian Penal Code deals with the *consent* and is quoted herein below:



“90. Consent known to be given under fear or misconception.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

57. In the present case, the consent allegedly obtained by the appellant by the victim is under misconception of fact, i.e. under the promise of marriage and as such the *consent* of the victim is not a *consent* under Section 90 of the Indian Penal Code.

58. While this Court maintains the conviction of the appellant under Section 376 of the Indian Penal Code, I set aside his conviction under Section 6 of the Prevention of Children from Sexual Offences Act, 2012.

59. The appellant, having remained in jail custody for more than seven years one month, as of now, as such, the period



already undergone by him would suffice the ends of justice and he is directed to be discharged from the liabilities of his bail bonds.

60. With the modification in conviction and sentence aforesaid, this appeal is partly allowed.

61. The Registry is directed to return the Lower Court’s Record forthwith, along with a copy of this judgment.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	07-04-2026
Uploading Date	12-05-2026
Transmission Date	12-05-2026

