

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.552 of 2023**

Arising Out of PS. Case No.-75 Year-2014 Thana- BUXAR District- Buxar

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1. Sahina Khatoon W/O Pappu Dalal Banarsi R/O Muhalla Koeirpurwa P.S. Buxar (T) Dist. Buxar
  2. Pappu Dalal Banarsi S/O Jalaluddin R/O Muhalla Koeirpurwa P.S. Buxar (T) Dist. Buxar
  3. Munna Darijee S/O Ayub Ali R/O Muhalla Koeirpurwa P.S. Buxar (T) Dist. Buxar

... .. Appellant/s

Versus

1. The State of Bihar
2. MS. 'X'

... .. Respondent/s

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**Appearance :**

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|---------------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant/s       | : | Mr. Ajay Kumar Thakur, Advocate<br>Mr. Bachan Jee Ojha, Advocate<br>Mr. Navin Kumar Jha, Advocate<br>Mr. Ritwik Thakur, Advocate<br>Ms. Vaishnavi Singh, Advocate |
| For the Respondent-State: |   | Mr. Parmeshwar Mehta, Addl.PP                                                                                                                                     |
| For the Respondent No.2:  |   | None                                                                                                                                                              |

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

**Date : 24-02-2026**

Heard learned counsel for the appellants and learned Additional Public Prosecutor for the State. Earlier the informant-respondent No. 2 was served and she had entered appearance through a lawyer, but in course of hearing of the appeal, no one has appeared on behalf of the informant-respondent No. 2.

2. The appellants in this case are seeking setting aside of the judgment of conviction (hereinafter referred to as the 'impugned



judgment') dated 28.04.2023 and the order of sentence (in short 'impugned order') dated 29.04.2023 passed by the learned 6<sup>th</sup> Additional Sessions Judge-cum-Special Judge POCSO Court, Buxar (hereinafter referred to as the 'learned trial court') arising out of Buxar Town P.S. Case No. 75 of 2014 registered for offences punishable under Sections 376 and 120B of Indian Penal Code (in short 'IPC') and under Section 5 of the Immortal Traffic (Prevention) Act, 1956.

### **Prosecution Story**

3. The prosecution case is based on a written typed information under signature of the victim addressed to the Superintendent of Police, Buxar. In her written information, mother of the victim alleged that her daughter ('X') was kidnapped on 30<sup>th</sup> September 2012 at about 09:00 P.M., by Sahina Khatoon (appellant No.1). It is stated that Sahina Khatoon hatched a conspiracy and on finding the daughter of the informant alone in her house, came to her house and told her daughter that her mother was calling her and as the victim came to see her mother then Pappu Dalal Banarsi (appellant no.2) and Munna Darjee (appellant no.3) injured the victim and forcibly took her away in an auto-rickshaw to Buxar Station and from there they went to Mughalsarai and from Mughalsarai to Varanasi, from Varanasi she was taken to Mumbai where she stayed for about three months. The informant further alleged that her daughter was sold in brothel house and



her name and pan card were changed. She claimed that these facts were told by her daughter, who somehow returned saving her life. The informant alleged that rape was also committed with her daughter. In past, Munna Darjee (appellant no.3) had assaulted the informant and her daughter on 24<sup>th</sup> August 2009 and because she had made a complaint of this occurrence, they had kidnapped the victim girl and sold her in a brothel house.

4. On the basis of the said information Buxar Town P.S. Case No. 75 of 2014 dated 12.02.2014 was registered. Investigation was done and charge-sheet bearing No. 184 of 2015 dated 30.04.2015 was filed under Sections 376 and 120B of the I.P.C., under Section 5 of the Immoral Traffic (Prevention) Act and under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act') against the accused persons.

5. Cognizance of the offences was taken and on finding that the charges were triable by the Special Judge, POCSO Court, the learned Court ordered for supply of the police paper in compliance of Section 207 of the Cr.P.C. Thereafter, the charges were read over and explained to the accused persons-appellants, in Hindi, they denied the charges and claimed to be tried. By order dated 17.05.2018, charges under Sections 376, 120B of the I.P.C., Section 4 of the POCSO Act and Section 5 of the Immoral Traffic (Prevention) Act were framed.



6. The prosecution examined as many as seven witnesses and produced certain documents which have been marked exhibits. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-

List of Prosecution Witnesses

|      |                                            |
|------|--------------------------------------------|
| PW-1 | Victim, daughter of informant (X)          |
| PW-2 | Informant                                  |
| PW-3 | Dr. Madhu Singh                            |
| PW-4 | Harinath Ram                               |
| PW-5 | Dr. Yogendra Kumar                         |
| PW-6 | Sharda Kumar Jha,<br>Investigating Officer |
| PW-7 | Mirajuddin                                 |

List of Exhibits on behalf of the Prosecution

|               |                                                             |
|---------------|-------------------------------------------------------------|
| Exhibit ‘1’   | Signature of informant on written petition.                 |
| Exhibit ‘1/1’ | Registration of F.I.R. by S.H.O., Gorakh Ram                |
| Exhibit ‘1/2’ | Signature of S.H.O., Gorakh Ram on the back side of F.I.R.  |
| Exhibit ‘1/3’ | Writing of Formal F.I.R.                                    |
| Exhibit ‘2’   | Medical Report                                              |
| Exhibit ‘3’   | Writing and Signature of Dr. Yogendra Kumar on X-ray Report |
| Exhibit ‘4’   | Signature of Dr. Yogendra Kumar on Medical Report           |

7. After completion of the evidence on behalf of the prosecution, the statements of the accused persons-appellants were recorded under Section 313 Cr.P.C. In their statements they claimed innocence and contended that they were innocent and have been falsely implicated in this case.



8. The defence adduced one witness, Md. Aurangjeb, DW-1, and documentary evidences, Exhibit-D – Certified copy of FIR of Buxar Town P.S. Case No. 224/2009, Exhibit D/1 – Certified copy of judgment passed by the C.J.M., Buxar in G.R. Case No. 1385/2009 and Exhibit D/2 – Certified copy of order dated 06.02.2014 of National Lok Adalat.

**Findings of the Learned Trial Court**

9. The learned trial Court having examined the evidences available on the record concluded that the charges against the accused persons have been duly proved beyond all reasonable doubts. The trial court took a view that the victim (PW-1) has narrated the entire story and also identified the accused persons in the Court. Referring to the medical report (Exhibit-2), the learned trial court found that there was an old ruptured hymen and the vaginal opening was admitting two fingers easily and the doctors have opined that the victim had sexual intercourse in past and she was habitual.

10. The learned trial court held that the POCSO Act is a special legislation dealing with special circumstances and principle of reverse burden is applicable in the cases falling under POCSO Act. The presumption under Section 29 and Section 30 of the POCSO Act have been applied for and it has been held that the defence side has miserably failed to discharge the onus/burden. The trial court held that the prosecution side has brought on the record plausible evidence through the victim witness (PW-1) and other evidences, regarding the



commission of penetrative sexual assault by the accused persons upon the victim.

11. The learned trial court has further held that the charge under Section 5 of the Immoral Traffic Act, 1956 is also proved as the accused persons took the victim from Buxar to Mumbai via Banaras with a view to sell her in a Brothel house and by this way the victim was subjected to prostitution.

**Submissions on behalf of the Appellants**

12. Mr. Ajay Kumar Thakur, learned counsel for the appellant has assailed the impugned judgment and order on various grounds. It is submitted that the POCSO Act came into force with effect from 14.11.2012. The date of occurrence in this case is said to be 30<sup>th</sup> of September, 2012. The mother of the victim has deposed as PW-2. In Paragraph-5 of her deposition she has stated that she had gone to Mumbai after 1 and ½ month from the date of the missing of her daughter. She had received information about her daughter being at Mumbai from one Hasnain Khan. She has further stated in Paragraph-11 of her deposition that after seven days she had returned from Mumbai for Buxar and 15 days after reaching Buxar she had lodged the case. It is submitted that the date of missing of the victim (PW-1) is 30<sup>th</sup> September, 2012. It is submitted that on the date of occurrence the POCSO Act, 2012 had not been brought into effect.



13. Learned counsel further submits that the learned trial court could not appreciate that in this case the bone ossification test of the victim girl was conducted and in that test her age was found between 15-16 years. If plus/minus two years is added to the same, the upper extremity of the age of the victim would be 18 years. In this regard, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in case of **Rajak Mohammad vs. State of H.P.** reported in **(2018) 9 SCC 248** and the Hon'ble Delhi High Court in the case of **Court on its own Motion vs State (NCT pf Delhi) (Crl. Ref. 2/2024)** reported in **2024 SC OnLine Delhi 4484**. It is submitted that this Court has consistently followed these two judgments.

14. Learned counsel submits that on a bare reading of the deposition of PW-1 and PW-2, it would appear that they are contradicting each other on material aspects of the matter. PW-2 admits that she had earlier filed 4-5 cases of like nature which were compromised on payment of money. It is submitted that the learned trial court has discussed the presumption raised under Section 29 and 30 of the POCSO Act, 2012, but could not appreciate that to attract the said presumption, the foundational facts are required to be proved by the prosecution. It is submitted that in any case the principle of presumption of innocence of an accused cannot be lost sight off and that presumption still remains.



15. It is submitted that according to the victim (PW-1), Sahina Begum (appellant No.1) had told her that her mother had come and she was calling her on the road side, she was taken to the road where Pappu Dalal and Munna Darjee started beating her and forcibly took her in a tempo and from there she was taken to Mughalsarai by train where she was kept in the house of the sister of Pappu Dalal. She has claimed that in the house of the sister of Pappu Dalal, Pappu Dalal and Munna Darjee both had committed wrong act with her. Learned counsel submits that PW-1 has further stated that after her kidnapping and before her return to Buxar, no case was lodged at Buxar. She has stated that her co-villager Mehadi Hasan lives in Mumbai and is engaged in rickshaw pulling, he had seen her and had informed her mother but her mother (PW-2) has stated in her deposition that one Hasnain had informed her. The said Mehadi Hasan or Hasnain have not been interrogated by the police and they were not made charge-sheet witnesses.

16. It is submitted that according to PW-1 her mother came to Mumbai and met Mehadi at the police station in Mumbai, her mother had got recorded a report on which Mehadi Hasan and the victim both had put their signatures. In Paragraph-8 of her deposition PW-1 has reiterated that she had also put her signature at the Mumbai Police Station. Contrary to this evidence of PW-1, PW-2 has stated that when she went to Mumbai, she brought her daughter to the police station, she



did not remember the name of the police station but claimed that she was asked to go away from the police station. It is submitted that apparently the prosecution has suppressed the first version of the prosecution story which was disclosed to Mumbai Police.

17. Learned counsel further submits that the evidence adduced by PW-1 and PW-2 are highly doubtful. In her examination-in-chief the victim (PW-1) has stated that she somehow came out of the brothel house and reached her home at Buxar and after reaching Buxar, she told the entire occurrence to her mother whereafter her mother had lodged the case. It is pointed out that on the one hand she claims that her mother had come to Mumbai and then she had met Mehadi in the Mumbai Police Station. This is a self contradictory statement of PW-1.

18. Learned counsel submits that it is highly improbable that despite missing/kidnapping of the victim girl, her mother did not inform the police station at any stage. The FIR has been lodged on 12.02.2014 that is at least after more than one year of the return of the victim. If the victim had returned within nearly 3-4 months, the date of her return would relate back to the month of January, 2013, but the FIR has been lodged in February, 2014. The creditworthiness of the FIR gets blemished and it would not be safe to sustain the conviction of the appellants on the basis of these vacillating evidences on the record.



**Submissions on behalf of the State**

19. The appeal has been contested by learned Additional Public Prosecutor for the State. It is submitted that the victim (PW-1) has narrated the entire occurrence and supported the prosecution case. The learned Additional Public Prosecutor, however, admits that as per the evidences available on the record the victim had returned Buxar after three months but the present FIR has been lodged in February, 2014 therefore inordinate delay in lodging of the FIR can not be contested.

**Consideration**

20. We have considered the rival submissions at the bar and perused the trial court records. It is an admitted position emerging from the records that the date of missing/kidnapping of the victim is 30.09.2012 at about 9:00 P.M. The informant (PW-2) did not go to the police station to submit any information regarding her missing daughter. Her daughter had been taken to Mumbai via Banaras and she claims to have gone to Mumbai on information received from one Hasnain but even at this stage she did not inform the police station and no police help was taken in order to recover the victim girl. The victim (PW-1) returned after three months according to her own statement but police did not take her for recording of her statement under Section 164 of the Cr.PC before the Learned Magistrate.



21. The Investigating Officer (PW-6) took charge of the investigation on 12.02.2014 at 03:45 P.M., and visited the hut of the informant. The I.O. did not go for verification of the statement of the victim to the brothel house or to the police station where the victim claimed to have gone in Mumbai. PW-6 has contradicted the evidence of PW-2. In paragraph nos. '16 and 17' of his deposition, PW-6 has stated that PW-2 had not made any statement that two persons had committed rape with the victim and put vermilion on her forehead and solemnized marriage after taking her to Varanasi. PW-6 has further stated that neither the victim nor the informant had told him that Hasnain had informed that he had brought the victim to Mumbai.

22. We have further noticed that PW-6 has stated that he had got to know through secret information that the informant and the victim are used to lodge these kind of cases and then they compromise after taking money and this has become their occupation. In this regard, the statement of the I.O. (PW-6) may be found in paragraph no. '18' of his deposition. In paragraph no. '21' of his deposition, the I.O. has disclosed that in Buxar Town P.S. Case no. 322 of 2012 the victim had herself told in the Court that she had gone on her own and no one had kidnapped her. In case no. 324 of 2009 also she entered into a compromise after taking money. He has also stated that in course of investigation he had not gone to Mughalsarai, Banaras or Mumbai.



23. We are of the view that in the kind of inordinate delay in lodging of the FIR, the ratio of the judgment in the case of **Mehraj Singh (L/Nk.) vs State of U.P.** reported in **(1994) 5 SCC 188** would come into play and the prosecution story as disclosed in the written information would lose its sanctity.

24. As regard the presumption under Sections 29 and 30 of the POCSO Act, this Court has, on various occasions, examined the scope of application of the presumption. So far as the present case is concerned, this Court is of the considered opinion that the basic foundational facts such as the prosecution story, the age of the victim and that she was allured and was sold in a Brothel house in Mumbai have not been prima-facie proved. Reliance in this regard is placed on the judgments of the Hon'ble Delhi High Court in the case of **Veerpal vs. State** reported in **2024 SCC OnLine Del 2686 (para '20')** and of the Hon'ble Kerala High Court in the case of **Joy V.S. vs. State of Kerala** reported in **2019 SCC OnLine Ker 783 (para '10' and '11')**. The presumption of innocence in such cases remains intact. In this connection, we rely on the judgment of the Hon'ble Supreme Court in the case of **Ramanand vs. State of U.P.** reported in **AIR 2022 Supreme Court 5273**. Paragraph '99' and '101' are being reproduced hereunder for a ready reference:-

“99. It is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his case. It is not necessary for the accused person to prove his case beyond a reasonable doubt or in default to incur a verdict of guilty. The onus of proof



lying upon the accused person is to prove his case by a preponderance of probability. In American Jurisprudence, 2<sup>nd</sup> Edn., Vol. 30, the expression “preponderance of evidence” has been defined in Article 1164. In America the term means “the weight, credit and value of the aggregate evidence on either side, and is usually considered to be synonymous with the term greater weight of the evidence”, or “greater weight of the credible evidence”. It is a phrase which, in the last analysis, means probability of the truth. To be satisfied, certain, or convinced is a much higher test than the test of “preponderance of evidence”. The phrase “preponderance of probability” appears to have been taken from Charles R. Cooper v. F.W. Slade Charles R. Cooper v. F.W. Slade, (1857-59) 6 HLC 746. The observations made therein make it clear that what “preponderance of probability” means “more probable and rational view of the case”, not necessarily as certain as the pleading should be.

**101.** The inalienable interface of presumption of innocence and the burden of proof in a criminal case on the prosecution has been succinctly expounded in the following passage from the treatise The Law of Evidence, 5<sup>th</sup> Edn. by Ian Dennis at p. 445:

“The presumption of innocence states that a person is presumed to be innocent until proven guilty. In one sense this simply restates in different language the rule that the burden of proof in a criminal case is on the prosecution to prove the defendant’s guilt. As explained above, the burden of proof rule has a number of functions, one of which is to provide a rule of decision for the fact-finder in a situation of uncertainty. Another function is to allocate the risk of mis-decision in criminal trials. Because the outcome of wrongful conviction is regarded as a significantly worse harm than wrongful acquittal the rule is constructed so as to minimise the risk of the former. The burden of overcoming a presumption that the defendant is innocent therefore requires the State to prove the defendant's guilt.”

[Emphasis supplied]



25. We are of the considered opinion that the evidences of PW-1 and PW-2 are not trustworthy and it would not be safe to sustain the conviction of the appellants on the testimonies of PW-1 and PW-2. The appellants are acquitted of the charges.

26. The impugned judgment of conviction and order of sentence dated 28.04.2023 and 29.04.2023 respectively passed by learned 6<sup>th</sup> Additional Sessions Judge-cum-Special Judge, POCSO Court, Buxar in POSCO Case No. 27 of 2016. C.I.S. No. 63 of 2020 arising out of Buxar Town P.S. Case No. 75 of 2014 are accordingly, set aside.

27. The appellant no. 2, Pappu Dalal Banarsi and the appellant no. 3, namely, Munna Darjee are in jail, therefore, they shall be released forthwith if not wanted in any other case. Appellant no. 1, Sahina Khatoon is discharged from the liability of the bail-bonds.

28. Let the trial court’s records along with the copy of the judgment be sent down to the learned trial court.

**(Rajeev Ranjan Prasad, J)**

**( Praveen Kumar, J)**

Shivam/-

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