

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.580 of 2023

Arising Out of PS. Case No.-212 Year-2022 Thana- VAISALI GRP CASE District- Vaishali

Rajdeep Thathera S/O Lt. Nepal Thathera R/O Vill. Potka Thastheri Sai, Ps.
Chakradharpur, Dist. West Singhbhum, Jharkhand-833102

... .. Appellant

Versus

1. The State Of Bihar
2. Respondent No.2 (Informant) Bihar

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Vasant Vikas, Advocate Mr. Nilesh Kumar, Advocate Mr. Shivesh Kr. Singh, Advocate Mr. Abhishek Kr. Singh, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For the Informant	:	Mr. Arun Kr. Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 12-03-2026

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

2. The sole appellant in this case is seeking setting aside
of the judgment of conviction dated 05.04.2023 (hereinafter
referred to as ‘impugned judgment’) and the order of sentence
dated 12.04.2023 (in short called the ‘impugned order’), passed by
the Additional Sessions Judge-VI-cum-Special Judge, POCSO,
Vaishali at Hajipur (hereinafter referred to as the ‘learned trial



court') in POCSO Gr. No. 58 of 2022 (arising out of Sonapur (Hajipur) Rail P.S. Case No. 212 of 2022).

3. By the impugned judgment, the learned trial court has been pleased to convict the appellant for the offences under Sections 376(3)/363 of Indian Penal Code (in short 'IPC') and Section 4/8 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). Having convicted the appellant under these provisions, the learned trial Court has ordered the appellant to undergo rigorous imprisonment for 20 years for the offence under Section 376(3) of IPC and to pay a fine of Rs. 10,000/-. In default of payment of fine, the appellant shall undergo rigorous imprisonment for one year more. Further, the appellant has been sentenced to undergo rigorous imprisonment for five years under Section 363 of the IPC and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for six months more. For the offence punishable under Section 4 of the POCSO Act, the appellant has been ordered to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for six months more. Against for the offence under Section 8 of POCSO Act, the appellant shall undergo rigorous imprisonment for 4 years and also to pay a fine of Rs.4,000/-. In default of payment of the fine, he shall further undergo rigorous



imprisonment for six months. All the sentences are to run concurrently.

Prosecution Story

4. The prosecution case is based on the written information submitted by the father of the victim, who was himself posted at Sub-Inspector of Police in Rail P.S Sonepur in the district of Vaishali. In his written information dated 13.09.2022 giving rise to Sonepur (Hajipur) Rail P.S. Case No. 212 of 2022 under Sections 363/366A and Section 4/8 of POCSO Act (Exhibit-5), the informant has alleged that he resides with his wife and his daughter (X) aged about 15 years, in a government quarter situated in the Hajipur Station Campus. He further alleged that on the night of 06.09.2022, after having dinner, the informant's wife and his daughter went for sleeping and he went for duty. On 07.09.2022, the informant's wife called him and informed him that their daughter was missing and that her mobile number was switched off. After receiving this information, the informant along with his wife, started searching for their daughter. During the search of the room of his daughter, they searched her diary and found that a mobile number 7717794766 was written in it with the name Rajdeep Thathera (the appellant) aged about 20 years, S/o Late Nepal Thathera, R/o Village Potka Thatheri Sai, P.S. Chakradharpur, District West Singhbhum, Jharkhand. On inquiry, the informant's wife told him that for the last few days their



daughter had been talking with the said Rajdeep and there is an apprehension that the said Rajdeep (appellant) kidnapped his daughter for the purpose of marriage.

5. On the basis of this written information, FIR being Sonapur (Hajipur) Rail P.S. Case No. 212 of 2022 dated 13.09.2022 was registered under Sections 363/366A IPC and Section 8 of POCSO Act against this appellant. After investigation, upon completion charge-sheet was filed against the accused-appellant, showing sufficient materials to proceed against him and police submitted chargesheet bearing Chargesheet No. 292 of 2022 dated 30.11.2022 under Sections 363, 366(a) and 376 IPC and Section 8 of the POCSO Act against Rajdeep Thathera. Learned Special Court, POCSO vide order dated 15.12.2022 took cognizance of the offences punishable under above-mentioned Sections against the appellant.

6. The charges were explained to the appellant in Hindi which he denied and claimed to be tried. Thereafter, the learned trial court framed the charges under Sections 376(3), 366A and 363 of IPC and Sections 4, 6 and 8 of the POCSO Act.

7. In course of trial, the prosecution examined as many as six witnesses and exhibited various documents including the statement of the victim recorded under Section 164 for the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'). The list



of witnesses and the description of the documents marked exhibits on behalf of prosecution are provided hereunder in a tabular form:-

List of Prosecution Witnesses:-

PW-1	Victim (X)
PW-2	Mother of the victim
PW-3	Dr. Deepti Sinha
PW-4	Dr. Seema Sinha
PW-5	Father of the victim (informant)
PW-6	Praveen Kumar (I.O.)

List of Exhibits:-

Exhibit ‘1’	Statement under Section 164 CrPC
Exhibit ‘2’	Signature of witness on medical examination application
Exhibit ‘3’	Dental Report
Exhibit ‘4’	Medical Report
Exhibit ‘5’	Written application
Exhibit ‘6’	Seizure List
Exhibit ‘7’	Birth certificate (original)
Exhibit ‘8’	FIR
Exhibit ‘9’	Charge-sheet

8. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C. in which he took a plea that he is innocent.

9. The defence did not adduce any oral or documentary evidence.

Findings of the learned Trial Court

10. The learned trial court analyzed the entire evidences available on the record and concluded that the victim girl is aged



about 15 years and there are direct evidence against the accused that he had kidnapped the minor daughter of the informant, took her away to one of his mama Alok Maharat, which has been proved by PW-6 Praveen Kumar, the Investigating Officer (in short 'I.O.'). The trial court held that the I.O. had found the tower location and the present physical address at Orrisa. The learned trial court rejected the defence plea that the accused had been falsely implicated in this case as according to the learned trial Court, the defence had failed to establish as to why and for which reason, the accused has been falsely implicated in the case.

11. The learned trial court observed that no self respecting woman would normally concoct rape allegation putting her character and the father or mother put their girl forward for the false implication and damage their self-respect in the Indian society.

12. The learned trial Court further held that so far as the medical evidence is concerned, the occurrence is of 06.09.2022 at the night hour and the victim was medically examined on 10.10.2022 and 15.10.2022 i.e. after one month of the alleged occurrence and in such a situation there are no chances of any motile or non-motile spermatozoa or any sexual activity with any injury on the part of the victim girl. It has been observed that minor contradictions cannot be taken for consideration to overlook



the consideration of the POCSO trial as the defence has to prove the innocence of the accused.

13. In ultimate analysis, the learned trial court held that the prosecution had miserably failed to prove the case under Section 366A of the IPC and Section 6 of POCSO Act against the accused, therefore, the accused-appellant has been acquitted under those provisions but so far as the other offences are concerned, as recorded hereinabove, the learned trial court has convicted the appellant.

Submission on behalf of appellant

14. Learned counsel for the appellant has assailed the impugned judgment on various grounds. At first instance, it is submitted that in this case, the learned trial court has failed to appreciate that the prosecution has suppressed the correct age of victim girl. It has come in the evidence of the victim (PW-1) that at the time of occurrence, she was studying in Delhi Public School at Chakradharpur, Jharkhand in Class-X. The Investigating Officer did not visit the said school to obtain the date of birth certificate of the victim girl. The parents of the victim did not produce the date of birth certificate from the school which she had first attended. What has been done is that when the trial was going on, a date of birth certificate was got prepared from the Gram Panchayat, Jamid under Section 12/17 of the Registration of Births and Deaths Act, 1969 and Rule 8 / 13 of the Jharkhand Registration of Births and



Deaths Rules, 2009. The certificate has been issued only on 09.12.2022. It has been marked as Exhibit '7' at the instance of the father of the victim, who has been examined as PW-5 in course of trial. It is submitted that in this case, a charge-sheet was filed against the appellant on 30.11.2022. On the said date, this birth certificate (Exhibit '7') was not forming part of the charge-sheet, therefore, it was not a part of police papers supplied to the appellant.

15. Learned counsel further refers the evidences of the doctors, who have been examined in this case, as PW-3 and PW-4. Dr. Deepti Sinha (PW-3) has stated that on police requisition, she has examined the victim on 15.10.2022 and she has stated that according to dentician and OPG X-ray by the dental age, the victim is below 18 years. In her cross-examination, she has stated that dental age may vary from radiological age. Dr. Seema Sinha (PW-4) has stated that she was posted as Specialist Lady Gynecologist at Sadar Hospital, Hajipur. On police requisition, she had examined the victim on 15.10.2022. She has observed that "no external physical injury was found". She was sent to the radiologist Dr. L.P. Gupta and according to him, her age is above 22 years. She has concluded that taking consideration of the report, her age is around 18 years and in her opinion, it was difficult to say recent sexual activity has taken place or not. She has proved her report, which has been marked as Exhibit '4'. In her cross-



examination, she has stated that she found no recent sexual activity and there was no injury on the private part of the victim. With these evidences of the two doctors, learned counsel for the appellant submits that the victim has to be taken as at least 18 years of age. He has relied upon the judgments of the Hon'ble Supreme Court in the case of **Rajak Mohammad vs. State of H.P.** reported in **(2018) 9 SCC 248** and the Hon'ble Delhi High Court in the case of **Court on its own Motion vs. State (NCT of Delhi) (Crl. Ref. 2/2024)** reported in **2024 SC OnLine Delhi 4484**.

16. Learned counsel further submits that the statement of the victim as PW-1 would clearly demonstrate that she was friendly to the appellant who is in the same age group and was the resident of same locality in Chakradharpur. Being well acquainted and friendly with the appellant, she had left her house on receipt of a call from the appellant and on his request to stay with him during the night, she had decided to stay with him and for that reason, she has stated that when she told him that it was late in night and she should go otherwise her mom would scold her, he told her that he would leave her to her house in the morning and thereafter, he took her on a visit here and there and she was in the vehicle with the appellant. It only shows her proximity with the appellant and that they were friendly to each other.

17. Learned counsel further submits that the victim (X) in this case cannot be said to be a sterling witness and the



conviction of the appellant based on the sole testimony of the victim (PW-1) would not be safe. It is submitted that while the parents of the victim, who have deposed as PW-2 and PW-5, have stated that the victim returned home after one month from the date of her missing, the victim herself came out with a different statement saying that she was subjected to rape in the night of 06.09.2022 and on the very next date i.e. 07.09.2022, when he was bringing her *via* Patna Bus Stand then they were caught by the police and the police informed her mother and father, whereafter she told the story to her mother and father and, thereafter, her father lodged the case. Thus, the statement of the victim (PW-1), if taken into account she had returned home on the very next day and, thereafter, the case was lodged by her father whereas her mother and father both have stated that the victim returned after one month.

18. Learned counsel further submits that her father (PW-5) was himself posted as Sub-Inspector of Police in the same police station where the case has been registered. Despite being the police officer, he chose to submit a written information only on 13.09.2022 i.e. seven days after the victim went missing from her house. This cannot be said to a natural conduct of a police officer whose daughter had gone missing. It is further submitted that the informant (PW-5) claimed that he found a writing in the diary which was in the pen of his daughter and she had written the name



of this appellant and mobile number and his wife informed him that their daughter was talking with this boy for some time. Although the I.O. has stated that father of the victim had produced the diary (Exhibit '6'), the mother (PW-2) has stated that no diary was produced before the I.O.. In any case, the writing in the case diary was never sent to any handwriting expert and there is no proof of the fact that the victim had written the name of appellant in the diary and from that the informant had come to know about the boy. It is submitted that PW-1 has stated in her cross-examination that on the day she left her house only her mom was in the house and she had left without telling her mom in the night. She has stated that the appellant had not taken her away forcibly.

19. Learned counsel further submits that in the kind of evidences available on the record, neither the presumption under Section 29 and 30 of the POCSO Act would be attracted nor the principle of presumption of innocence of the accused is lost. The learned trial court seems to have relied upon the date of birth certificate which was not falling in any of the categories envisaged under Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the panchayat certificate is not contemporaneous piece of evidence and it has only been fabricated and concocted in course of trial.



Submissions on behalf of the Informant and State

20. Learned Additional Public Prosecutor for the State as well as learned counsel for the informant have opposed the bail. It is submitted that even as the date of birth certificate issued by the Registering authority of the Panchayat has been prepared during trial and it was not forming part of the charge-sheet, it being a piece of evidence on the record is required to be considered and duly appreciated. It has been submitted that the learned trial court has not committed any error in admitting the said piece of evidence (Exhibit '7') and relying upon the same.

21. Learned counsel further submits that the victim seem to be acquainted with the appellant and she had gone outside her house to meet him, still there are evidences on the record that the appellant made her to stay with him and then committed rape on her at least once as stated by PW-1. In such circumstance, there would be no reason to disbelieve the testimony of the victim. Minor discrepancies in the evidence of the victim (PW-1), PW-2 and PW-5 may not be vital and would not affect the outcome of the case otherwise.

Consideration

22. Having heard learned counsel for the parties and on perusal of the trial court records, we find that in this case the learned trial court has not only admitted the date of birth certificate issued by the Gram Panchayat (Exhibit '7') in course of trial but



has heavily placed reliance on the same to come to a conclusion that the victim was minor at the time of the occurrence. This Court is of the considered opinion that the trial court has erred in appreciation of the evidences and in attaching adequate evidentiary value to the documentary evidence. It is evident that PW-1 was studying in Class-X in Delhi Public School at Chakradharpur, her date of birth certificate as mentioned in the school admission register, would have been admissible and reliable piece of evidence but the prosecution has suppressed the same. This is a material information/evidence which has been suppressed by the prosecution and for that reason, an adverse inference is required to be drawn in terms of Section 114(g) of the Evidence Act. We have noticed the age of the victim as stated by PW-3 and PW-4, who are the two doctors, and had examined the victim. The bare perusal of the report of PW-4 and PW-5, which have been marked Exhibit '4' and Exhibit '6' respectively, would show that the age of the victim (X) was around 18 years. How to assess the age of the victim under the POCSO Act has been eloquently discussed by the Hon'ble Supreme Court in the case of **Rajak Mohammad** (supra) and the Hon'ble Delhi High Court in the case of **Court on its own Motion** (supra). The views expressed by the Hon'ble Delhi High Court in the case of **Court on its own Motion** (supra) are 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.”

23. The Hon’ble Supreme Court had occasion to consider this aspect of the matter in the case **Rajak Mohammad** (*supra*) and the paragraph ‘9’ and ‘10’ of the judgment in case is reproduced hereunder:-

“9. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.

10. We will, therefore, have to hold that in the present case the prosecution has not succeeded in proving that the prosecutrix was a minor on the date of the alleged occurrence. If that is so, based on the evidence on record, already referred to, we will further have to hold that the possibility of the prosecutrix being a consenting party cannot be altogether ruled out.”



24. Keeping in view the afore-mentioned judicial pronouncements on the subject, we would have no hesitation in recording that in this case the age of the victim would come to above 18 years and as such, the charges framed under the POCSO Act are not sustainable. The basic ingredients which is required to be present to prove all these charges is that the victim must be a 'child' within the meaning of Section 2(d) of the POCSO Act. This being the position, we reverse the finding of the learned trial court that the victim was a minor.

25. The learned Trial Court has convicted the appellant for the offence punishable under Section 363 of the IPC. We reproduce Section 363 of IPC hereunder:-

“363.Punishment for kidnapping.- whoever kidnaps any person from ¹[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

A perusal of the same would show that whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment for either description for a term which may extend to seven years, and shall also be liable to fine. In this case, the victim has not stated that she was kidnapped by the appellant. She has rather stated about her friendly relationship with the appellant and that she had left her home on her own to meet him. She has been found aged above 18 years in our findings above. By

1. The word “British India” have successively been subs. By the A.O. 1948, the A.O. 1950 and Act 3 of 1951, s. 3 and the Schedule, to read as above



no stretch of imagination, the ingredients of Section 363 of IPC can be said to be satisfactory.

26. This would bring us to the last question as to whether the charge under Section 376(3) may be taken to have been proved. Section 376(3) reads as under:-

“**376(1)**

(2)

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.]”

27. We have discussed hereinabove that the victim has stated that she had gone on her own to meet the appellant and on his request she had stayed with him through out the night hours. She has alleged that the appellant established physical relationship with her only once on 06.09.2022 and then she along with the appellant was caught by the police on 07.09.2022 at Patna Bus Stand. On the other hand, her parents have stated that she returned home after one month and thereafter, her statement was recorded under Section 164 of the Cr.P.C. She has stated in her 164 Cr.P.C. statement once again the same fact and this time she has given the date of occurrence as 07.09.2022. It is evident to us that victim,

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



who was major, had left her house on her own and then she had gone on to travel with the appellant and returned home after a month, but she is suppressing the entire occurrence. The defence has suggested to the victim in her cross-examination that she was not taken away forcibly from her house and the victim has admitted that the appellant had not taken her away forcibly from her house. The defence suggested that no such occurrence had taken place and she was making a false statement which she denied. The mother of the victim was suggested by the defence that her daughter was having love with the appellant and she had gone somewhere outside but by putting pressure on her daughter they had got registered a false case against the appellant, who is wholly innocent. She was also suggested that her husband was the Station House Officer in the same police station, therefore, a false case was lodged by him misusing his position.

28. On giving a complete consideration to the entire facts and circumstances of the case and the evidences which have found on the record, we are unable to put the evidence of the victim in the category of a sterling witness. Who will be sterling witness has been discussed by the Hon'ble Court in case of **Rai Sandeep @ Deepu vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**. Paragraph '22' of the said judgment is being reproduced hereunder for a ready reference:-



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

* Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.



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

29. Having regard to the discussions hereinabove and judicial pronouncements on the subject, we are of the considered opinion that in this case the foundational facts for raising presumption under Sections 29 and 30 of the POCSO Act are not available. In any case, the principle of presumption of innocence of an accused is not lost in a case under the POCSO Act and what is required on the part of an accused under the POCSO Act is to only rebutt the presumption under Sections 29 and 30 of the POCSO Act by way of preponderance of possibilities. The degree of proof as required to the prosecution is not similar to that as required by an accused to be proved to raise the presumption of innocence.

30. In our opinion, the conviction of the appellant is not sustainable. We, therefore, set aside the impugned judgment and order of the learned trial court and acquit the appellant of the charges by giving him benefit doubt.



31. We have been told that in SLP (CRL.) No(s).21000 of 2025, the Hon’ble Supreme Court has been pleased to grant suspension of sentence and direction has been issued that the appellant shall be produced before the concerned trial court as early possible and the learned trial court shall release him on bail on such condition as it may deem fit and proper to impose to ensure his presence in the proceedings. It has been informed that the appellant has, however, yet not been released perhaps for the reason that he could not arrange for the bailors.

32. Since the appellant has been acquitted, we direct that the appellant shall be released forthwith if not wanted in any other case.

33. Learned counsel has placed before us the copy of the order dated 27.02.2026, which we have kept on records.

34. This appeal is allowed.

35. Let a copy of the judgment together with the trial court’s records be sent down to learned trial court.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18 .03.2026
Transmission Date	18.03.2026

