IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4248 of 2018

CNR No. BRHC010614542018

Arising Out of PS. Case No.-109 Year-2015 Thana- KASHICHAK District- Nawada

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Gorelal Singh Son of Balmiki Singh Resident of Village-Rebra,P.S. Kashichak,Distt.-Nawada

... ... Appellant/s

Versus

1. The State of Bihar
2. Hajari Mistri Son of Late Bharath Mistri Resident Of Village - Rewara, Ps-Kashichak (Shahpur OP), Dist- Nawada

... ... Respondent/s

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Appearance :
For the Appellant : Mr. Dhananjay Kumar, Advocate
For the State : Mr. Bipin Kumar, APP
For the Informant : Mr. Subodh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

Date : 27-10-2026

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

2. The present appeal has been preferred against the judgment of conviction dated 26.09.2018 and the order of sentence dated 04.10.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Nawada in Sessions (POCSO) Case No. 36 of 2015, arising out of Kashichak P.S. Case No. 109 of 2015, whereby the appellant has been convicted under Sections 448 and 354 of the Indian Penal Code

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and Section 8 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo rigorous imprisonment for one year and pay a fine of Rs. 1,000/- under Section 448 of the IPC, to undergo rigorous imprisonment for four years and pay a fine of Rs. 10,000/- under Section 354 of the IPC and to undergo rigorous imprisonment for four years and pay a fine of Rs. 10,000/- under Section 8 of the POCSO Act. All the sentences were directed to run concurrently and in case of default of payment of fine, to further undergo rigorous imprisonment of six months.

3. The prosecution case, in brief, is that on 16.12.2015, at about midnight, this appellant entered the house of the informant, namely Hajari Mistri, by removing bricks from a window and attempted to molest the informant's granddaughter, who was sleeping with her sister. When the victim and her sister raised an alarm, the appellant fled from the place of occurrence. It was further alleged that the appellant took away the victim's nose pin, described as *Besar*. The informant and other witnesses claimed to have identified the appellant in the light of a torch.

4. During trial, the prosecution examined altogether seven witnesses. P.W. 1, namely Hajari Mistri, is the informant

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who supported the prosecution case regarding the occurrence. P.W. 2, namely Anar Devi, also supported the prosecution version and stated that the victim and her sister identified the appellant in torchlight. P.W. 3, namely Neha Kumari, the victim's sister, stated that she was sleeping with the victim when the appellant entered the room and opened the victim's clothes. She further stated that, when she protested, the appellant slapped her. P.W. 4, the victim, supported the allegation that the appellant entered the room through the window and molested her. She also stated that the appellant took away her *Besar*. P.W. 5, namely Bablu Singh, was declared hostile. P.W. 6, namely Dr. Kumari Ragini Sinha, a member of the Medical Board, deposed regarding the examination of the victim on 05.01.2016. The medical examination recorded the victim's physical characteristics and secondary sexual characteristics. The Medical Board assessed her age to be between 15 and 16 years. No injury was found on the victim. P.W. 7, namely Ranjit Kumar, the Investigating Officer, proved the relevant documents relating to the institution of the case and investigation. He stated that the victim's statement under Section 164 CrPC was recorded and that, after completion of investigation, charge-sheet was submitted. In his cross-examination, he referred to

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certain omissions in the statements of the informant and the victim's sister regarding the details of the occurrence.

5. The defence examined D.W. 1, namely Pappu Ram, who stated that he resided near the informant's house and that he had not heard any alarm on the alleged date of occurrence. The defence also suggested that the case had been instituted due to a monetary dispute between the parties concerning a shop. No documentary evidence was adduced on behalf of the defence.

6. After hearing the parties, the learned trial court convicted the appellant and sentenced him, as indicated in the opening paragraph of this judgment.

7. Learned counsel for the appellant assails the judgment of conviction and the order of sentence passed by the learned trial court and submits that the prosecution witnesses are related to the informant and that their evidence suffers from material inconsistencies. It is further submitted that the victim's statement recorded under Section 164 of the Cr.P.C. does not fully correspond with her deposition before the trial court. Learned counsel has also drawn attention to the absence of any injury on the victim and submitted that the appellant has been falsely implicated on account of the existing monetary dispute

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between the parties.

8. Learned Additional Public Prosecutor for the State and learned counsel for the informant, on the other hand, has opposed the appeal and submitted that the victim's testimony is supported by the evidence of her sister and other prosecution witnesses. It is contended that the absence of physical injury does not, by itself, discredit the victim's testimony and that the learned trial court has rightly appreciated the evidence on record.

9. Having considered the rival submissions and upon perusal of the materials available on record, this Court finds that the victim has specifically attributed acts of sexual assault to the appellant. Her testimony receives support from the deposition of her sister, who stated that she was present at the time of occurrence. The discrepancies pointed out by the defence, including the variations between the victim's statement under Section 164 of the Cr.P.C. and her deposition before the trial court, have to be considered in the context of the evidence as a whole. The absence of physical injury, in the circumstances of the present case, is not sufficient by itself to discard the victim's testimony.

10. The learned trial court has considered the

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evidence and found the appellant guilty under Sections 448 and 354 IPC and Section 8 of the POCSO Act, while acquitting him of the charges relating to theft and attempted rape. On an overall consideration of the materials available on record, this Court finds no sufficient ground to interfere with the finding of guilt recorded against the appellant. The conviction of the appellant is, accordingly, affirmed.

11. So far as the sentence is concerned, the appellant has been sentenced to undergo rigorous imprisonment for one year under Section 448 IPC and rigorous imprisonment for four years each under Section 354 IPC and Section 8 of the POCSO Act, along with fines as imposed by the learned trial court. Having regard to the nature and circumstances of the occurrence and the period of imprisonment already undergone by the appellant, this Court is of the view that the ends of justice would be served if the substantive sentence is modified to the period already undergone by the appellant.

12. Accordingly, the judgment of conviction dated 26.09.2018 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Nawada in Sessions (POCSO) Case No. 36 of 2015 arising out of Kashichak P.S. Case No. 109 of 2015 is hereby affirmed. However, the order of sentence dated

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04.10.2018 is modified to the period already undergone by the appellant.

13. In result thereof, the appellant, above named, is discharged from the liability of his bail bond in connection with this case. The fine, if already deposited, shall remain deposited; however, if the same has not been deposited, the appellant shall not be required to deposit it.

14. The appeal, accordingly, stands disposed of.

15. Interlocutory application(s), if any, also stand disposed of.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	NAFR
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