

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.782 of 2023

Arising Out of PS. Case No.-17 Year-2021 Thana- HARLAKHI District- Madhubani

Krishna Mukhiya, S/O Sri Kishori Mukhiya, R/O Village- Kauaha, P.S-
Harlakhi, Distt.- Madhubani. Appellant

Versus

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

... .. Respondents

with

CRIMINAL APPEAL (DB) No. 837 of 2023

Arising Out of PS. Case No.-17 Year-2021 Thana- HARLAKHI District- Madhubani

Ramawatar Mukhiya, S/O Nirdhan Mukhiya, R/O Village- Mangarhatta Tole
Laxmipur, Ward No. 17, P.S.- Khirhar, Dist. Madhubani. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 782 of 2023)

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Imteyaz Ahmad, Advocate
Mr. Shivam, Advocate
Ms. Kiran Kumari, Advocate
Mr. Rituraj Raman, Advocate
Mr. Purushottam Kumar, Advocate
Mr. Mudit Meet, Advocate
For the State : Mr. Bipin Kumar, Addl.P.P.

For the Resp No. 2 : None

(In CRIMINAL APPEAL (DB) No. 837 of 2023)

For the Appellant/s : Mr. Shailendra Kumar Jha, Advocate
Mr. Abhijeet Kunal, Advocate
For the Respondent/s : Mr. Bipin Kumar, Addl.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-05-2026

Heard Mr. Ajay Kumar Thakur, learned counsel for the
appellant in Cr. Appeal (DB) No.782 of 2023 and Mr. Shailendra
Kumar Jha, learned counsel for the appellant in Cr. Appeal (DB)



No. 837 of 2023 as well as Mr. Bipin Kumar, learned Additional Public Prosecutor for the State in both the appeals.

2. Though the informant-respondent no. 2 has entered appearance by filing *vakalatnama* but no one appeared on his behalf to oppose the appeal.

3. Both the appeals have been preferred for setting aside the judgment of conviction dated 05.06.2023 (hereinafter referred to as the 'impugned judgment') and order of sentence dated 13.06.2023 (hereinafter referred to as the 'impugned order') passed by learned Additional Sessions Judge-VII-cum-Spl. Judge, POCSO, Madhubani (hereinafter referred to as the 'learned trial court') in Trial No.163 of 2023, POCSO G.R. Case No. 07 of 2021 arising out of Harlakhi P.S. Case No. 17 of 2021. By the impugned judgment, both the appellants have been convicted for the offences punishable under Sections 376(D), 326, 324, 201 and 511 read with Section 34 of the Indian Penal Code (in short 'IPC'). By the impugned order, they have been sentenced to undergo rigorous imprisonment for twenty (20) years with a fine of Rs. 15,000/- each under Section 376D IPC and in default of payment of fine, they shall further undergo simple imprisonment for six months. They have been sentenced to undergo rigorous imprisonment for ten (10) years with a fine of Rs.10,000/- under Section 326 read



with Section 34 IPC and in default of payment of fine, they shall further undergo simple imprisonment for three months. Further, under Section 324 read with Section 34 IPC, they have been sentenced to undergo rigorous imprisonment for two (2) years and for the offence punishable under Section 201/511 read with Section 34 IPC, they have been sentenced to undergo imprisonment for one year with a fine of Rs.3,000/- and in default of payment of fine, they shall further undergo simple imprisonment for one month. All the sentences are to run concurrently.

Prosecution Case

4. The prosecution case is based on the *fardbeyan* of PW-5, who is the brother of the victim (PW-4), recorded by S.I. Gopal Krishna, Town P.S. Madhubani on 12.01.2021 at 18.00 hrs at Emergency ward, Sadar Hospital, Madhubani. In his *fardbeyan*, he has stated that on 12.01.2021 at about 8.00 A.M. in the morning, his sister (victim 'X') aged about 17 years, who is deaf and dumb and talks only by signs, had gone towards west of the river from the house at the dam (*bandh*) for fodder of the she-goat. It is alleged that at about 9.00 AM, one girl from his neighbourhood came running and informed that victim is lying in badly injured condition at the dam (*bandh*) and she is crying out in



pain. On this information, the informant and other family members along with villagers rushed towards the place of occurrence and on the way, saw that Lakshmi Mukhiya was coming from the site of the place of occurrence in nervous condition and his pants, clothes and face were smeared with blood who on seeing them ran towards another direction. The informant along with villagers reached near Manharpur in the wheat field and saw that his sister was lying unconscious in the field in injured condition and her eyes were damaged and blood was oozing out of them. The *paijamas* were open to the body and blood was oozing out from the internal part of the body. The wheat plant was crushed in the wheat field. Thereafter, his sister was taken to Primary Health Centre, Umgaon for her treatment from where she was referred to Sadar Hospital, Madhubani for her better treatment. The informant claimed that Lakshmi Mukhiya along with his other unknown associates committed rape with his sister and damaged both of her eyes.

5. On the basis of the aforesaid *fardbeyan* of the informant, FIR being Harlakhi P.S. Case No. 17 of 2021 dated 12.01.2021 was registered under Sections 376, 376(A), 376(D)/34 IPC and Section 3/4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') against Lakshmi Mukhiya



and others. Later on vide order dated 21.01.2021 Section 3/4 of the POCSO Act was substituted with Section 4/6 of the POCSO Act. Thereafter, vide order dated 07.01.2021, Section 201 IPC was also added. After investigation, police submitted chargesheet bearing Chargesheet No. 42 of 2021 dated 11.04.2021 against (1) Lakshmi Mukhiya, (2) Krishna Mukhiya and (3) Ramavatar Mukhiya for the offences punishable under Sections 376 (D), 324, 326, 307, 201/34 IPC and Section 4/6 of the POCSO Act.

6. Learned trial court vide order 12.07.2021 took cognizance of the offences punishable under Sections 376(D), 324, 326, 307, 201/34 IPC and Section 4, 6 of the POCSO Act against chargesheet named accused. Charges were read over and explained to the accused in Hindi to which they denied the charges and claimed to be tried. Accordingly, charges were framed vide order dated 29.06.2022 for the offences punishable under Sections 376(D), 324, 326, 307, 201/34 IPC and Section 4/6 of the POCSO Act.

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

List of Prosecution witnesses

Prosecution Witness No.	Name of the Witness	Description of the Witness
PW-1	Mother of the victim	Mother of the victim



PW-2	Sister of the victim	Sister of the Victim
PW-3	Father of the Victim	Father of the Victim
PW-4	Victim	Victim
PW-5	Informant	Brother of the Victim
PW-6	Prem Lal Paswan	Investigating Officer
PW-7	Dr. Murari Kumar	Medical Officer
PW-8	Sanjay Kumar Verma	Headmaster of Rajkiya Muk Badhir Vidyala, Darbhanga
PW-9	Dr. Sanjeev Kumar	Medical Officer
PW-10	Binod Mukhiya	Cousin of the Informant
PW-11	Ram Dayal Mukhiya	Neighbour

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
‘1’	Signature of PW-5 on the Fardbeyan	PW-5
‘2’	Seizure list dated 12.01.2021 of seized bamboo karchi and a a piece of jamun wood and bottle of Nepali Liquor	PW-6
‘2/1’	Seizure list dated 12.01.2021 of seized clothes of the victim	PW-6
‘2/2’	Seizure list dated 13.01.2021 of seized clothes of accused Lakshmi Mukhiya	PW-6
‘2/3’	Signature of the witness (PW-10) on seizure list dated 12.01.2021 of seized clothes of the victim	PW-10
‘2/4’	Signature of the witness (PW-10) on seizure list dated 13.01.2021 of seized clothes of accused Lakshmi Mukhiya	PW-10
‘3’	FIR of Harlakhi Police Station No. 17 of 2021	PW-6
‘4’	Confessional Statement of accused Lakshmi Mukhiya	PW-6
‘4/1’	Confessional statement of accused Krishna Mukhiya	PW-6
‘4/2’	Confessional statement of	PW-6



	accused Ramavtar Mukhiya	
‘5’	The entire report R.F.S.L. No. 219/21 dated 24.02.2021 of Forensic Science Laboratory, Muzaffarpur	
‘6’	Chargesheet bearing No. 42 of 2021 dated 11.04.2021	PW-6
‘7’	Medical Examination Report of the victim dated 12.01.2021 issued by the Medical Board	PW-7
‘7/1’	Signature of PW-7(Dr. Murari Kumar) on Medical Examination Report of the victim dated 12.01.2021 issued by the Medical Board.	PW-7
‘7/2’	Signature of Dr. Sanjeev Kumar on Medical Examination Report of the Victim dated 12.01.2021 issued by the Medical Board	PW-7
‘7/3’	Signature of Dr. Pravirti Mishra on Medical Examination Report of the Victim dated 12.01.2021 issued by the Medical Board.	PW-7
‘7/4’	Signature of Dr. Bhawana Grung on Medical Examination Report of the Victim dated 12.01.2021 issued by the Medical Board	PW-7
‘8’	Signature of PW-8 (Sanjay Kumar Verma) on the statement of the victim recorded under Section 164 CrPC	PW-8
‘8/1’	Statement of Victim recorded under Section 164 CrPC	
‘9’	Injury report of the victim dated 10.04.2021 related to her eye issued by the Sadar Hospital, Madhubani.	PW-9

8. Thereafter, the statements of the accused persons, namely, Laxmi Mukhiya, Krishna Mukhiya and Ramavtar Mukhiya were recorded under Section 313 of the CrPC. Accused Laxmi Mukhiya in his 313 CrPC statement stated that he is



innocent. He stated that he is in relationship with the victim for three years and when the brother of the victim got to know about the relationship, brother of the victim assaulted him and falsely implicated in this case. Accused Krishna Mukhiya in his 313 CrPC statement stated that he is innocent and he was not involved in the occurrence. He has also stated that he was catching fish. Accused Ramavtar Mukhiya in his 313 CrPC statement stated that he is innocent and he was cooking food at Vasuki Vihar on the date and time of the occurrence.

9. The defence has produced five witnesses on behalf of accused, Krishna Mukhiya and Ramavtar Mukhiya which is being mentioned hereunder in tabular form:-

List of Defence witnesses

Defence Witness No.	Name of the Witness	Description of the Witness
DW-1	Kishori Mukhiya	Friend of Ramavtar Mukhiya
DW-2	Rama Shankar Mukhiya	Relative of DW-1
DW-3	Apachh Safi	Neighbour of Krishna Mukhiya
DW-4	Manjay Kumar Yadav	Co-worker of Krishna Mukhiya
DW-5	Pramod Mukhiya	Friend of Ramavtar Mukhiya

10. The accused, Lakshmi Mukhiya did not adduce any evidence. The defence did not produce any documentary evidence.



Findings of the Learned Trial Court

11. Learned trial court after analysing the evidences available on the record found that the victim girl identified all the three accused persons by gestures and demeanor. Learned trial court found that the victim was deaf and dumb and her statement under Section 164 CrPC was recorded by learned Magistrate with the help of interpreter Sri Sanjay Kumar Verma (PW-8) and in her statement, victim told about the wrongdoing by the three accused with gesture and also told by gesture that they had gouged her eyes with stick. Learned trial court observed that the victim has been found to be a competent witness and her testimony inspires confidence to reach to the conclusion that all the three accused were present at the place of occurrence and committed rape on the victim.

12. Learned trial court found that Dr. Murari Kumar (PW-7) in his evidence stated that during medical examination, Medical Board found injury over her eyes and on examination lacerated wound by sharp object on upper lid of both the eyes was found. Learned trial court from reading the evidence of the Investigating Officer (PW-6) found that blood-stained piece of Jamun wood and bamboo karchi with which the victim's eyes was gouged were seized by the I.O. The I.O. sent it to RFSL,



Muzaffarpur and the report shows presence of blood on bamboo karchi and wooden piece of Jamun. Hence, RFSL report also corroborates the fact that the victim got injury on her eyes.

13. Accordingly, learned trial court after taking into account all the facts and circumstances of the case and the materials present on the record held guilty and convicted Lakshmi Mukhiya, Ramavtar Mukhiya and Krishna Mukhiya for the offences punishable under Sections 376(D), 326, 324, 201/511 read with Section 34 IPC. Learned trial court, however, acquitted accused Laxmi Mukhiya, Ramavtar Mukhiya and Krishna Mukhiya for the offences punishable under Sections 4 and 6 of the POCSO Act and Section 307 of the IPC.

Submissions on behalf of the Appellants

14. Learned counsel for the appellants submits that these appellants are not named in the First Information Report. Their names transpired in the confessional statement of the co-accused Lakshmi Mukhiya made before police. However, the confessional statement recorded by police is an inadmissible document which cannot be admitted in evidence. The learned trial court has grossly erred in allowing the confessional statement of the accused to be admitted and relied upon.



15. Learned counsel submits that in this case, the occurrence is said to have taken place at the other side of the river around 9:00 AM and one girl from the neighborhood is said to have informed the mother of the victim (PW-1) that her daughter is lying in injured condition and bleeding through eyes but neither in course of investigation nor in course of trial, PW-1 was able to disclose the name of the girl and her whereabouts, except that at a belated stage in trial, PW-1 claimed that she is *natni* of one Kishori Mukhiya and resides at a distance of three *kosh* (six miles) away from the village of the victim.

16. Learned counsel submits that as regards the age of the victim, the prosecution claimed that she was minor but the learned trial court has noticed that the prosecution had not brought on record any piece of evidence in form of school certificate, municipal body's certificate or the medical opinion to prove that the victim was below 18 years of age. Therefore, the charges under the POCSO Act failed.

17. Learned counsel submits that PW-11, who is the *bhaisur* of PW-1, claimed that he had seen from the other side of the river current that the victim was weeping, she was in naked condition, he had brought the victim to the opposite side of the river. The prosecution witnesses like mother, father and sister of



the victim claimed that they had gone to the place of occurrence, but the fact is that the place of occurrence is on the other side of the river from where the victim had already been shifted to the opposite side by PW-11, therefore, in this case, the prosecution witnesses had no occasion to see the actual place of occurrence. There are material contradictions in the statement of the victim (PW-4), her mother (PW-1), younger sister (PW-2) and her father (PW-3). The accused persons-appellants were arrested on the same day, their blood samples were taken, but no matching of the blood samples have been done. The clothes of these appellants were not seized by police, hence, there is no scientific evidence to connect these appellants with the occurrence.

18. Learned counsel submits that the informant is cousin brother of the victim who has clearly stated in his *fardebayan* recorded after about nine hours of the occurrence that her sister had crossed over to the other side of the river for grazing the she-goats. According to him, after getting information from a girl that his sister was badly injured and was crying in pain, he and other family members and *mohalla* people were going to the said place, on way, they saw Lakshmi Mukhiya, aged about 20 years, fleeing away. He claimed that he, along with his family members and *mohalla* people, crossed over the river and went to the wheat plot



of Manharpur where her sister was lying unconscious after getting badly injured. This statement of the informant gets contradicted from the evidence of PW-11, who is the first person said to have seen the victim. Even the mother of the victim (PW-1) claimed that when she reached the place of occurrence, her *bhaisur* (PW-11) was already present there. PW-11 has stated that he had brought the victim in naked condition from the other side of the river, therefore, there is no question for the informant to cross over the river and go to the place of occurrence because the victim had already been shifted away to the other side of the river.

19. Learned counsel submits that even as regards the condition of the victim, while PW-1 claimed in her examination-in-chief that she was in naked condition, in her cross-examination she has stated that at that time the victim was wearing *sameej* and jacket.

20. Learned counsel submits that while PW-1 claimed that she had taken the victim to Umgaon Hospital directly from the place of occurrence, PW-11 has stated that the victim was first brought to her house from where she was taken to the hospital on a tempo.

21. It is submitted that there is no witness at all to say that these two appellants were either seen at the place of



occurrence or near the place of occurrence at any point of time immediately before or after the occurrence.

22. It is submitted that the victim (PW-4) in this case is not a sterling witness. She avoided most of the questions put to her during her cross-examination. According to PW-2, the victim had studied up to Class-VIII, but the victim has stated that she can write only her name, therefore, there is a material contradiction affecting the veracity of the statement of the victim as regards her capability to read and write. The victim had never been medically examined to certify that she was deaf and dumb. Moreover, while recording her evidence in course of trial, the learned trial court has not followed the judgment of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Darshan Singh @ Darshan Lal** reported in **(2012) 5 SCC 789** wherein the Hon'ble Supreme Court has held that the requirements as to how to record the deposition of a person who is not in a position to speak.

23. It is lastly submitted that the presumption of innocence is not lost. The prosecution has failed to lay down sufficient foundation to raise presumption of guilt and the appellants are able to demonstrate that there may be a miscarriage of justice if the conviction of the appellants are sustained on the sole testimony of the victim who is not a sterling witness.



Submissions on behalf of the State

24. Learned Additional Public Prosecutor for the State has opposed the submissions of learned counsel for the appellants. It is submitted that the impugned judgment and order have been passed by the learned trial court after analysing the evidences available on the record. There is no infirmity in the matter of appreciation of evidences by the learned trial court. In such circumstance, no interference with the impugned judgment and order is required.

Consideration

25. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as also perused the trial court's records.

26. It is evident on going through the records that these two appellants are not named in the *fardbeyan* of the informant (PW-5). According to the informant, his sister who is the victim (X) aged about 17 years is deaf and dumb who can understand the things by indications. She had left her house on 12.01.2021 at 08:00 AM to bring fodder for the she-goats towards western side crossing over the river. At about 09:00 AM, a girl from neighbourhood came shouting and informed that his sister (X) is badly injured and is crying in pain. On getting this information, the



informant along with his other relatives and neighbours in the *mohalla* were going towards the said place, on way, he saw Lakshmi Mukhiya (not before this Court) aged about 20 years, was fleeing away in nervous condition and his clothes, pant and face were having blood, he fled away on seeing the informant side.

The informant has further stated that he along with his family members crossed over the river and went to the wheat field in Manharpur where he found that his sister (X) was lying in a badly injured condition and was unconscious, her both eyes were damaged and bleeding, her trouser was open and blood was coming from the internal part of the body, the wheat plants in the field were trampled and crushed. The informant has stated that in such condition, he took his sister to the Primary Health Center, Umgaon and got her treated. Her sister's condition was serious, therefore, she was referred to Sadar Hospital, Madhubani where his sister was getting treatment. The informant alleged that Lakshmi Mukhiya and his other unknown associates have committed rape on his sister and damaged her both eyes. The fardbeyan has been recorded on 12.01.2021 at 18:00 Hours in the Sadar Hospital, Madhubani. It bears the left thumb impression of PW-3.



27. This Court finds that as per fardbeyan, the victim girl had crossed over the river and is said to have gone to collect fodder but she was found in the wheat plots where wheat plants were present. The I.O. (PW-6) has stated in paragraph '22' of his deposition that he had recorded a sanha on 12.01.2021 at 04:00 PM, thereafter, he had started from the police station. The place of occurrence is situated at a distance of 5 kilometers from the police station. In paragraph '24' of his deposition, the I.O. has stated that he had not recorded in the case diary that who informed him about the place of occurrence, further in the margin of the case diary, he had not recorded the date and time of reaching the place of occurrence. In paragraph '25' of his deposition, the I.O. has stated that in the case diary, he had not recorded the length and breadth of the wheat field and had not recorded that to what extent the wheat crops were standing. While giving the description of the place of occurrence, the I.O. (PW-6) has stated that when he reached the place of occurrence, he found that the wheat field was trampled and crushed. Beside the place of occurrence, he found a ten inch long bamboo stick which was having blood mark, he found one more piece of wood of twelve inch. He has stated that dry bamboo stick having seven inch thickness with blood and hair was found. He had also found one dry jamun wood piece of eight inch length



and half inch thick which was having blood from both sides, he had also found plastic empty bottle of nepali countrymade liquor. He had prepared the seizure list in presence of Kishori Mukhiya and Raushan Yadav. This Court finds that while Raushan Yadav has not been produced by the prosecution, Kishori Mukhiya has deposed as DW-1. Although the I.O. has proved the seizure list as Exhibit '2/1', it is found that he has not given any plausible explanation for not producing the seizure list witnesses on behalf of the prosecution.

28. This Court further finds that the I.O. (PW-6) had arrested Lakshmi Mukhiya on the date of occurrence itself. He had extracted confessional statement of Lakshmi Mukhiya in which said Lakshmi Mukhiya is said to have confessed his guilt and named these two appellants as his associates who were involved in commission of rape. The I.O. has stated in paragraph '5' that the confessional statement is recorded in his writing and the same bears his signature as also the signature of Ramavtar Mukhiya. At his instance, the confessional statement of Lakshmi Mukhiya has been marked Exhibit '4'. He had arrested these two appellants and recorded their confessional statements also in his own pen which he has proved as Exhibit '4/1' and Exhibit '4/2' respectively. The I.O. (PW-6) had seized a white colour jeans pant of Lakshmi



Mukhiya which was having blood mark and a blue colour janghiya having a mark like semen. This seizure list has been exhibited as Exhibit '2/2' at the instance of PW-6. This Court finds that while these two appellants were also arrested on the same day and their blood samples were taken but the clothes of these two appellants were not seized by the I.O. The clothes of victim were sent to the Forensic Science Laboratory (FSL) where those were marked as Exhibit '1/a' and Exhibit '1/b' respectively. On Exhibit '1/a', blood in two small quantities was found which was not sufficient for serological test. The blood present on the clothes of the victim was not matched with the blood samples of these appellants which were Exhibit '5/y' and '5/z' respectively. The bamboo sticks were also sent to the FSL which were marked Exhibit '3/A' and Exhibit '3/B'. Blood were present on those bamboo sticks and the small wooden piece but there is no matching of the said blood with the blood samples of these appellants. The blood sample of victim was also taken and sent to FSL for examination where the same was marked Exhibit '6' but even this blood sample of the victim has not been matched with the blood found on the bamboo stick and the small wooden pieces. On clothes of the victim, semen was not found, though on the clothes of Lakshmi Mukhiya (not before this Court) which was marked Exhibit '2/X' and Exhibit '2/Y', semen



and blood respectively were found. We are presently not concerned with Exhibit '2/x' and Exhibit '2/y'.

29. This Court has found that in paragraph '28' of his deposition, PW-6 has stated that he reached the house of the victim in village Barhi which is at a distance of half to quarter of one kilometer in the east side from the police station. He met the sister (PW-2) and other family members of the victim on 12.01.2021 at 17 Hours (05:00 PM). He had recorded their statements but he had not mentioned the date and time of recording of their statements in the case diary. He had not recorded the statement of Kishori Mukhiya (DW-1) in the case diary. It is, thus, evident that before recording of the fardbeyan of the informant (PW-5), the I.O. had already recorded the statement of the sister and other family members of the victim but the FIR was not lodged on the basis of the statement of the sister and other family members of the victim girl. In this case, the occurrence has taken place at around 09:00 AM and immediately after the occurrence, the informant and his family members reached the place of occurrence and brought the victim to the Primary Health Center, Umgaon where she was treated but the police station was not informed about the occurrence. It gains importance because the 'Barhi' village is situated at a distance of only half or quarter to one kilometre from



the place of occurrence. Therefore, the informant must have reached the place of occurrence within 10-15 minutes. House of Krishna Mukhiya is at a distance of 1- 1½ kilometer and house of Ramawatar Mukhiya is at a distance of 3 kilometer from the place of occurrence. There is no witness to say that they were seen going towards the place of occurrence.

30. The I.O. had not recorded the statement of the Doctor who firstly treated the victim in Umgaon Primary Health Center. No document showing treatment of the victim in Umgaon Primary Health Center has been produced in course of trial. Thus, the delay in lodging of the FIR is of about nine hours. If this delay is considered together with the fact that the I.O. had already recorded the statement of the sister and other family members at the house of the victim at about 05:00 PM but that has not been made basis of the FIR, the prosecution would be liable to explain the delay in lodging of the FIR. The first version of the prosecution case came through the statement of the sister of the victim but that has not been made basis of lodging the FIR. This aspect is to be considered further keeping in view that in his fardbeyan, the informant (PW-5) has stated that he had seen Lakshmi Mukhiya fleeing away towards the eastern side. He had not mentioned name of these two appellants in his fardbeyan even as these two



appellants have been involved in this case on the basis of a confessional statement (Exhibit '4') which would be an inadmissible document, hit by Section 25 of the Indian Evidence Act. The trial court has grossly erred in placing reliance upon the confessional statement of the co-accused and then the confessional statement extracted from these two appellants in police custody.

31. This Court further finds that in this case, even as the victim (PW-4) is said to have made statement under Section 164 CrPC after a month from the date of arrest of the accused, on a bare perusal of the statement (Exhibit '8/1'), it would appear that it is the mother of the victim whose statement has been recorded. The interpreter who was engaged to interpret the sign/indications of the victim deposing was not administered oath. In the case of **State of Rajasthan vs. Darshan Singh** (supra), the Hon'ble Supreme Court has dealt with the requirements as to how to record the deposition of a person who is not in a position to speak. The relevant paragraphs from the said judgment are being reproduced hereunder for a ready reference:-

“27. In Meesala Ramakrishan v. State of A.P.⁴, this Court has considered the evidentiary value of a dying declaration recorded by means of signs and nods of a person who is not in a position to speak for any reason and held that the same amounts to a verbal statement and, thus, is relevant and

4. (1994) 4 SCC 182 : 1994 SCC (Cri) 838



admissible. The Court further clarified that “verbal” statement does not amount to “oral” statement. In view of the provisions of Section 119 of the Evidence Act, the only requirement is that the witness may give his evidence in any manner in which he can make it intelligible, as by writing or by signs and such evidence can be deemed to be oral evidence within the meaning of Section 3 of the Evidence Act. Signs and gestures made by nods or head are admissible and such nods and gestures are not only admissible but possess evidentiary value.

28. Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing, if literate or through signs and gestures, if he is unable to read and write. A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

29. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the



aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.”

32. Keeping in view the judgment of the Hon’ble Supreme Court, as above, when this Court goes through the evidence of the victim, it is found that in this case, one Sanjay Kumar Verma, Assistant Headmaster, *Rajkiya Muk Badhir Vidyalaya, Darbhanga* was engaged to take help in interpreting the sign of the victim. The Court has not recorded its opinion as to whether the victim is able to read and write. PW-2, who is the younger sister of the victim, has stated in paragraph ‘5’ of her deposition that her sister (victim) has studied upto Class-VIII. No question in writing was given to the victim seeking his answers in writing. The person who was engaged as Interpreter has not been administered oath. Similar position was there at the time of recording of her statement under Section 164 CrPC. In fact, on a bare perusal of her 164 CrPC statement, it would appear that the victim has put her signature in Hindi. In course of deposition also, she has put her signature on the deposition sheet. While examining the evidence of the victim (PW-4), we have noticed that she told that she can only write her name even as her sister (PW-2) has stated that her *didi* (victim) had studied up to Class-VIII. Thus, it



is evident that she could have answered the questions in writing but the learned trial court has not done it.

33. This Court has further found that according to the informant and the mother of the victim, a girl from the neighbourhood had come shouting and informed them that the victim girl was badly injured and was lying in pain in injured condition but in course of trial or investigation, the name of the said girl was not disclosed either by the informant or any other prosecution witnesses. On this point, the prosecution witnesses seem totally unaware. PW-1, who is the mother of the victim, has stated in her examination-in-chief that one girl had come to tell her that bleeding was taking place from the eyes of her daughter. PW-1 has stated that her daughter was in naked condition, therefore, after putting a shawl (*chadar*) on her, she was put on a tempo and was taken to Umgaon Hospital. She has stated at a belated stage that the girl was *natini* of one Kishori Mukhiya and she resides at a distance of two *kosh*. In course of investigation, the said girl has not been examined. She is not a charge-sheet witness. Therefore, the prosecution story that one girl had come shouting and informed that the victim was lying in pain in injured condition has not been substantiated.



34. In her cross-examination (paragraph '8'), PW-1 has stated that when she reached near her daughter, Ramdayal Mukhiya (PW-11) was already present there. He was in *lungi* and *ganji*. Her daughter was lying on the earth and she was bleeding from her eyes, she was wearing *sameej* and jacket at that time. This Court, therefore, finds contradiction in the statement of PW-1 as regards the condition of the victim at the place of occurrence. According to PW-1, the victim was taken to Umgaon Hospital from the place of occurrence itself, but Ramdayal Mukhiya (PW-11) has stated that when he went towards the *bandh* (ridge) at about 10:00 AM, he found the victim weeping at the other side of the river current. He brought the victim to this side. At that time she was naked, clothes were put on her, she was bleeding from her eyes, thereafter, she was brought to the village by a tempo and then she was taken to the hospital. About the occurrence, he is a hearsay witness, but he claims himself an eyewitness of the circumstances immediately existing at the place of occurrence. He is a witness to the condition of the victim immediately after the occurrence. His statements in this regard are full of contradictions. He has not named any of the accused. He claims that he had brought the victim to this side from the other side and she was in



naked condition, but the victim (PW-4) has not stated so during her examination in course of trial.

35. This Court further finds that on the one hand, the informant (PW-5) claims that when he reached the place of occurrence, he found the victim lying unconscious but PW-11, who is a chance witness in the neighbourhood of the informant, has stated that the victim was weeping at the time she was being put in the tempo at her house. This witness had seen the victim from some distance when she was being taken to the hospital. This witness has clearly stated that he had not seen the occurrence and was deposing on the basis of hearsay, he did not know the persons involved in commission of rape. The evidence of PW-11 creates doubt over the statement in the *fardbeyan* that the victim was lying unconscious at the place of occurrence.

36. In this case, Dr. Murari Kumar (PW-7) is the Medical Officer who was posted at Sadar Hospital, Madhubani on 12.01.2021. He was one of the members of the Medical Examination Board who examined the victim on 12.01.2021 at 4:30 PM. On the deposition of this witness, medical report (Exhibit '7') and his signature on the medical report (Exhibit '7/1') as also signature of Dr. Sanjeev Kumar, Dr. Pravriti Mishra and Dr. Bhawana Grung on the medical report have been marked Exhibit



‘7/2’, ‘7/3’ and ‘7/4’ respectively. The opinion of the Medical Board as recorded in paragraph ‘2’, ‘3’ and ‘4’ of the deposition are as under:-

“2. Medical board examined victim with consent of her father on dated 12-01-2021 at 04:30 PM and found the following:-

Secondary sexual character well developed. Injury present over her private part – Tear present at fourchette (0.3cm x 0.3cm) Recent tear of hymen present. Vaginal swab was stained with blood.

Injury over eye – Victim found uncooperative to vision and on examination. Lacerated wound by sharp object medially upper lid of both eye. Cornea clear both eye and conjunctival congestion seen in both eye. Details of posterior segment evaluation is under process. So, no definite opinion about eye injury can be given presently.

3. Pathological examination of vaginal swab done by Dr. K. Kaushal, M.O., Sadar Hospital, Madhubani. According to pathological report shows- No spermatozoa found in vaginal smear, WBC 0 to 2 HPF, RBC-Nil, E-Cell 3 to 4 HPF, Other-Nothing.

4. Opinion of Medical Board – the above injuries might be indicative of sexual assault.”

37. In his cross-examination, PW-7 has stated that he is not an eye specialist and has not examined the eyes of the victim. In paragraph ‘14’ of his deposition, he has stated that the board members are not definite as to whether sexual assault has been committed or not. It is evident from the medical report that the medical examination was conducted at 4:30 PM itself. It is not



stated that who brought the victim to the hospital but one thing is clear that till that time, police had not arrived and the victim was examined with the consent of her father. There is no statement that before the Medical Board, the victim's father alleged any sexual assault on the victim.

38. The victim disclosed her age as about 17 years, but from the evidence of her mother (PW-1), it is evident from paragraph '3' that she had three daughters and one son. The eldest daughter is aged about 35 years, she has two sons. The victim girl (X) is two years younger to the eldest daughter and the third daughter (PW-2) is two years younger to the victim. This Court finds that while examining the applicability of the charges under the POCSO Act, the learned trial court has noticed the evidences on the point of age of the victim in paragraph '114' of the impugned judgment. It is the finding of the learned trial court that the prosecution had not brought school certificate or other document of proof of birth and there is no medical opinion regarding age of the victim. The prosecution had not been able to prove the fact that the victim was under 18 years of age at the time of incident, therefore, the charges under the POCSO Act failed.

39. We have found that during her cross-examination, PW-4 avoided answering the questions put to her. In answer to all



the questions put to her in the cross-examination, the interpreter said that the victim was unable to answer. In these circumstances, this Court is of the considered opinion that a conviction on the basis of sole testimony of the victim (PW-4) would not be safe.

40. The defence has also adduced evidences by bringing five witnesses, we are not going into those evidence of the defence for the reason that we are of the opinion that the prosecution has failed to stand on its own leg. The presumption of innocence of the accused is not lost. Once the accused has been able to demonstrate suppression of the first version of the prosecution, delay in lodging of FIR and the prosecution witnesses are making contradictory statements, even as the victim (X) cannot be put in the category of a 'sterling witness', the accused are able to make an inroad to impress upon this Court as to their possible false implication at a belated stage.

41. The statement of the accused persons recorded under Section 313 CrPC would show that these two appellants have denied their involvement in the occurrence and pleaded innocence. It is important to note that Lakshmi Mukhiya (not before this Court) has stated in his statement under Section 313 CrPC that he was in love with the victim for three years, which came to the



notice of the brother of the victim girl who assaulted him and lodged a case making false allegations.

42. In ultimate analysis, we are of the considered opinion that the impugned judgment and order of the learned trial court are liable to be set aside. Accordingly, we set aside the impugned judgment and order of the learned trial court and acquit the appellants of the charges, giving them benefit of doubt.

43. The appellants are in custody. They shall be released forthwith if not wanted in any other case.

44. These appeals are allowed.

45. Let a copy of this judgment together with the trial court's records be sent down to the learned trial court

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

arvind/Rishi-

AFR/NAFR	
CAV DATE	
Uploading Date	14.05.2026
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