

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1309 of 2024**

Arising Out of PS. Case No.-164 Year-2018 Thana- DUMARIAGHAT District- East
Champaran

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Prem Kumar Paswan @ Ranjan Paswan Son of Nagendra Paswan Village-
Navil Gandhi Nagar, P.S.- Dumariya Ghat, District- East Champaran

... .. Appellant

Versus

1. The State of Bihar
2. [REDACTED] village- Navin
Gandhinagar, PS- Dumariyaghat, Dist- East Champaran.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Raghav Prasad, Advocate Ms. Urmila Kumari, Advocate
For the State	:	Mr. Ajay Mishra, Addl.PP
For the Informant	:	None

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

Date : 23-06-2026

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

2. Despite valid service of notice on Respondent No. 2,
no one has entered appearance on his behalf to oppose the appeal.

3. The present appeal has been preferred for setting
aside the judgment of conviction dated 01.07.2024 (hereinafter
referred to as the ‘impugned judgment’) and the order of sentence
dated 08.07.2024 (hereinafter referred to as the ‘impugned order’)



passed by learned 7th Additional Sessions Judge-com-Special Judge, POCSO Act, East Champaran, Motihari (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 07/2020, CIS No. 134/2018 arising out of Dumariya Ghat P.S. Case No. 164 of 2018. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code (in short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act'). By the impugned order, he has been sentenced to undergo imprisonment for 20 years, out of which 10 years shall be rigorous imprisonment and rest 10 years shall be simple imprisonment and also awarded fine of Rupees 25,000/- for the offence punishable under Section 4 of POCSO Act and in default of payment of fine, the appellant shall suffer simple imprisonment for further one year.

Prosecution Case

4. The prosecution case is based on the written application of the informant (PW-4) wherein he has stated that his minor daughter aged about 8 years went to attend her tuition as usual from Prem Kumar Paswan @ Ranjan Paswan on 29.09.2018 at about 04:00 P.M. where accused Prem Kumar Paswan @ Ranjan Paswan after alluring her forcibly committed rape on her and in order to conceal the evidence, he tried to kill her. This occurrence



had taken place at about 04:00 P.M. It is stated that the informant's daughter came to her house and it was found that her frock and undergarment were completely soaked with blood. She disclosed to the informant weeping that accused Prem Kumar Paswan @ Ranjan Paswan had committed rape upon her by alluring her and threatened to kill her.

5. On the basis of the aforesaid *fardbeyan* of the informant, FIR being Dumariya Ghat P.S. Case No. 164 of 2018, was registered under Section 376 IPC and Sections 4 & 6 of the POCSO Act against Prem Kumar Paswan @ Ranjan Paswan. After investigation, Police submitted chargesheet bearing Charge Sheet No. 167 of 2018, dated 05.12.2018 against Prem Kumar Paswan @ Ranjan Paswan for the offence punishable under Section 376AB of IPC & Sections 4 and 6 of POCSO Act.

6. Learned trial court vide order 15.12.2018 took cognizance of the offence punishable under Sections 376AB IPC as well as under Sections 4 and 6 of the POCSO Act and found sufficient materials to proceed against Prem Kumar Paswan @ Ranjan Paswan. After supply of police papers, charges were explained to the accused which he denied and claimed to be tried, accordingly, the charges were framed vide order dated 27.09.2019



for the offences punishable under Sections 376AB IPC as well as under Section 4 of the POCSO Act.

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

List of Prosecution witnesses

Prosecution Witness No.	Name of Witness	Description of the Witness
P.W-1	Ramjana Upadhyay	Related to X
P.W-2	Ajay Kumar Upadhaya	Relative of the victim
P.W-3	Rajendra Rai	Independent witness
P.W-4	X	Victim's-father-cum-informant
P.W-5	Ravikant Yadav	Independent witness
P.W-6	Y	Mother of the Victim
P.W-7	Victim	Victim herself
P.W-8	Doctor Vandana Sharma	Medical officer
P.W-9	Abhinav Kumar Dubey	Investigating officer
P.W-10	Ajay kumar	Forensic expert at F.S.L, Patna
P.W-11	Doctor Sunil Kumar	Forensic expert at R.F.S.L, Muzaffarpur

List of Exhibits on behalf of Prosecution

Exhibit No.	Description of the Exhibit	Proved by/ Attested by
Ext.-1	Signature of informant over written application of F.I.R	P.W-4
Ext.-1/1	Signature of Rajan Diwedi along with written application of F.I.R	P.W-4
P-2	Age determination report of Victim.	P.W-8
P.-3	Charge-sheet No.-167/18, dated:05/12/2018	P.W-9
P.-4	Seizure-list of victim’s clothes	P.W-9
P-5	Medical examination report of victim.	P.W-8



P-6	Report of forensic science Laboratory, Patna.	P.W-10
P-7	Report of forensic science laboratory, R.F.S.L, Muzaffarpur.	P.W-11

8. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short ‘CrPC’). The appellant in his 313 CrPC statement denied the allegation and pleaded innocence.

9. The Defence has neither produced any witness nor exhibited any documentary evidence.

Finding of the Learned Trial Court

10. Learned trial court, after analysing the evidence of the victim found that there is no inconsistency in her evidence that the accused committed wrong upon her. Her testimony inspired confidence to the learned trial court as the defence led no evidence to prove his case of false implication.

11. Learned trial court found that the evidence of victim has been corroborated by other witnesses who soon after the occurrence saw victim’s clothes spotted with blood. Victim’s cloths were seized and sealed by medical officer and forwarded for forensic examination by investigating officer. The cloths were having traces of human blood and semen.

12. Learned trial court found that the prosecution has proved the foundational facts of the charge under Section 4 of



POCSO Act. Firstly that the victim was a minor and secondly the accused committed penetrative sexual assault with her, therefore, presumption of Sections 29 ad 30 comes into play in this case. Learned trial court opined that reverse burden applies in this case and it was the obligation of the defence to prove that the accused had not committed the offence which it has failed.

13. Learned trial court came to the conclusion that the prosecution has proved the charge under Section 376 IPC and Section 4 of the POCSO Act, accordingly, convicted the accused for the offences punishable under Section 376 of I.P.C & Section 4 of POCSO Act.

Submission on behalf of the Appellant

14. Mr. Raghav Prasad, leaned counsel for the appellant, has assailed the impugned judgment of conviction on the ground that the victim, writer of the written information and the father of the victim were present in the police station but the FIR has not been lodged on the basis of the statement of the victim. Thus, in his submissions, the FIR lodged by the father of the victim would lose its sanctity.

15. Learned counsel submits that there is no eye witness except the victim. The appellant was arrested only after five hours of the occurrence but the Investigating Officer did not follow the



mandatory provision of Section 53A CrPC (now known as Section 52 of the Bharatiya Nagarik Suraksha Sanhita, (BNSS)) and no medical examination of the accused was conducted. In absence of any medical examination, the semen present on the cloths of the victim has not been matched. This would, therefore, prove fatal to the prosecution.

16. Learned counsel further submits that in course of her deposition, the victim girl was unable to show any paper/document that could have certified that she was a student of the coaching institute. She was not able to disclose the name of any teacher, therefore, her very presence in the coaching institute is not well proved.

17. Learned counsel submits that the victim has been assessed between 13-14 years, no spermatozoa was found and the doctor (PW-8) had not found any sign of penetrative sexual Act. On these grounds, learned counsel submits that the prosecution had failed to establish the foundational facts as required under Section 29 of the POSCO Act.

18. It is also submitted that the presumption of the innocence of the accused is not lost sight of in a case under the POCSO Act. Hence, the prosecution is liable to prove its case beyond all reasonable doubts. In his submissions, in this case, the



prosecution has failed to establish the guilt of the accused beyond all reasonable doubts.

Submissions on behalf of the State

19. On the other hand, learned Additional Public Prosecutor for the State, opposed the appeal. Despite, service of notice on respondent no. 2, he has chosen not to appear in this appeal. Learned Additional Public Prosecutor for the State submits that it is an open and shut case. The occurrence took place inside the coaching institute of the appellant. The victim (PW-7) has narrated the entire manner of occurrence. She has been examined by the court as a child witness and found her competent to depose. She indicated to the learned trial court her private parts where she was still feeling pain. She identified the appellant in the dock and reiterated that it is this appellant who had committed wrong act with her.

20. From the pattern of cross-examination of the prosecution witnesses, we find that the defence had initially set up a case of there being outstanding dues on account of tuition fee which was not paid and that the case was lodged only to avoid the payment but PW-1 denied the suggestion. Further, it would appear from the cross-examination of PW-7 that she has clearly stated that she was going to the coaching only for 10-15 days. She has stated



she was being taught only by this appellant and on the date of occurrence, there was no other student with her as all were told to go and she was asked to stay.

21. Learned counsel submits that police seized the frock and underwear of the victim as per seizure list (Exhibit 'P-4/PW-9') on the very date of occurrence i.e. on 29.09.2018. Those clothes of the victim were sent to the Forensic Science Laboratory (FSL) for examination. The reports of the FSL have been proved by the prosecution through Dr. Sunil Kumar (PW-11) who happened to be the Assistant Director (Biology) in the regional Forensic Science Laboratory, Muzaffarpur. According to the FSL report (Exhibit 'P-7/PW-11'), blood has been detected on places in each of the exhibits marked 'A' and 'B'. Semen has been detected in each of the exhibits marked 'A' and 'B'. These exhibits 'A' and 'B' are the clothes of the victim.

22. It is submitted that mere non-examination of the appellant medically after his arrest would not result in throwing away the entire prosecution case. It is the fault of the Investigating Officer but on record there are unimpeachable materials to demonstrate that it is this appellant who had committed the sexual act which resulted in bleeding. The medical examination report of the victim (Exhibit 'P-4/PW-8') has been proved by the doctor



(PW-8). From this exhibit, it would appear that the doctor found the redness around labia majora and labia minora. The victim explained to the doctor that she was physically assaulted, she named the appellant and stated that he removed her undergarments and made sexual contact with her. She further stated that when she tried to escape, he hit her on face by hand. The doctor noticed wound on right side eyebrow and around right eye swelling plus contusion plus around outer side of right eye. It is, thus, submitted that the claim of the victim that she was also assaulted when she tried to escape finds support from the doctors version in Exhibit 'P-4/PW-8'. The statement of the victim remained consistent with her statement under Section 164 CrPC.

23. Learned counsel further submits that the victim (PW-7) in this case is a sterling witness and she would fall in the category of a wholly reliable witness in terms of Section 134 of the Indian Evidence Act (now Section 139 of the Bharatiya Sakshya Adhiniyam).

24. In course of hearing of the appeal, this Court noticed that the learned trial court has convicted the appellant under Section 376 IPC and Section 4 of the POSCO Act but while sentencing, the learned trial court decided to pass order of sentence under Section 4 of the POCSO Act because the sentence under



Section 376 IPC and Section 4 of the POSCO Act were the one and same. The learned trial court imposed twenty years of imprisonment out of which ten years shall be rigorous imprisonment and rest ten years shall be simple imprisonment and also to pay a fine of Rs. 25,000/-. This Court noticed that Section 4 of the POCSO Act, as existed on the date of occurrence, prescribed a minimum sentence of seven years which may extend to imprisonment for life. Vide Amendment Act 25 of 2019, in Section 4, the minimum sentence was enhanced to be not less than ten years but which may extend to imprisonment for life. A sub-section (2) was inserted by the Amendment Act 25 of 2019 with effect from 16.08.2019 which provided that in case of penetrative sexual assault on a child below the sixteen years of age, the minimum sentence shall be twenty years but which may extend to imprisonment for life and the imprisonment for life shall mean an imprisonment for the remainder of the natural life of that person. Section 376 IPC was also prescribing a minimum sentence of seven years prior to its amendment with effect from 03.02.2013.

25. As it appeared to this Court that the learned trial court has imposed a sentence of twenty years, perhaps by overlooking that at the time of occurrence, the minimum sentence was only seven years under Section 4 of the POCSO Act, this Court



called upon the learned Additional Public Prosecutor for the State to assist on the point of sentence. Mr. Ajay Mishra, learned Additional Public Prosecutor for the State, has submitted that the learned trial court seems to have awarded the sentence of twenty years imprisonment by overlooking the fact that at the time of occurrence, Section 4 provided for a minimum sentence of seven years which may extend up to imprisonment for life. Learned Additional Public Prosecutor, therefore, submitted that the sentence awarded by the learned trial court may be modified to bring it in tune with the provision existing at the time of occurrence.

26. One more development took place in course of hearing of the appeal. We noticed that Section 313 CrPC statement of the appellant was recorded on 15.06.2024 in which he declared his age as 24 years. Since the occurrence is of 29.09.2018, therefore, this Court noticed that at the time of occurrence, the appellant was eighteen years old but then a question arose as to what is the date of birth of the appellant? If the appellant's date of birth would fall after 29.09.2000, then on the date of occurrence, i.e. on 29.09.2018, he would be below eighteen years of age. On record, there was nothing to show that what is the date of birth of the appellant, therefore, in order to ascertain as to what is the correct date of birth of the appellant, this Court got connected with



the appellant through virtual/online mode from the Central Jail, Motihari. He was presented by the person in charge of the jail. The appellant was identified and he interacted with the Court. The appellant has stated that his date of birth is 01.01.2000. Thus on the date of occurrence, the appellant was eighteen years and nine months approximately.

27. At this stage, learned counsel for the appellant submits that since on the date of occurrence, the appellant was only a little more than eighteen years of age, he was also in an immature young age, he may be given an opportunity to connect himself with the mainstream of the society after his release from jail and for that reason, this Court may consider reducing the sentence reasonably if the judgment of conviction is not interfered with.

Consideration

28. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State, as also on perusal of the trial court's records, we find that in this case, the victim has been assessed between 13-14 years of age as per the medical examination report (Exhibit 'P-4/PW-8'). The occurrence took place on 29.09.2018 in the coaching institute of the appellant. From the pattern of cross-examination of the victim (PW-7), it appears that the defence has not suggested her that she had not



gone to the coaching institute on the date of occurrence. In fact, the pattern of cross-examination, particularly the suggestions given to the father of the victim (PW-4) in paragraph '10' would show that the defence took a plea that there were outstanding fee and on not making payment of the same, he had lodged a false case. The defence did not suggest to the victim that she had not gone to the coaching institute on the date and time of occurrence. While cross-examining the victim, the defence set up a case that she had received injuries due to fall, which the victim denied.

29. The I.O. (PW-9) is the Station House Officer of Dumaria Ghat Police Station who had assumed the charge of investigation himself. He had recorded the statement of the father of the victim, statement of the victim and some other witnesses who supported the prosecution case. He had sent the victim for her medical examination with a women police officer and women *Chowkidar*. The I.O. has stated in his re-examination that he had received the clothes of the victim in a sealed *dibba* of which the seizure list was prepared by Sub-Inspector of Police Amit Verma. He identified the signature of Amit Verma (Exhibit 'P-4/PW-9').

30. This Court further finds from the medical examination report (Exhibit 'P-4/PW-8') proved by Dr. Vandana Sharma (PW-8) that the victim was examined in the Sadar Hospital,



Motihari on 13.09.2018 by PW-8 who was posted as a Specialist Gynecologist in the hospital. She was also a member of the Board. Age of the victim was assessed between 13-14 years. She proved her signature and that of Dr. Manoj Kumar Singh. The entire report has been marked Exhibit 'P-2'. The doctor was cross-examined by the defence and she was also re-examined by order of the court. She has stated that on physical examination, right side eyebrow swelling was present. Contusion present around outer side of right eye. On local examination of private parts, she had noticed redness present on labia majora and minora. She had collected blood-stained undergarments and clothes and handed over to police Amit Verma for forensic test. She proved her report which was written in her hand and bore her signature. This report has been marked Exhibit 'P-4/PW-8'. PW-8 has further stated that she found signs of sexual assault on victim's body.

31. This Court has further noticed that the FSL report (Exhibit 'P-7/PW-11') shows that one frock and one underwear, which were marked Exhibit 'A' and 'B' respectively, were received in the FSL on 04.12.2018. The parcel was duly sealed with impressions of seal corresponding with the seal impression forwarded. The result of examination shows:- "(1) Blood has been detected at places in each of the exhibits marked 'A' and 'B', (2)



Semen has been detected in each of the exhibits marked 'A' and 'B' and (3) Serological report on origin and group of blood and semen would follow." The prosecution witnesses, namely Ajay Kumar (PW-10) and Dr. Sunil Kumar (PW-11) are the Assistant Directors who were posted in the Forensic Science Laboratory, Patna and Muzaffarpur respectively. PW-10 has proved the report (Exhibit 'P-6/PW-10'). PW-10 has given the serological report for their origin and grouping. On all the exhibits, human blood and semen of group 'A' have been found. PW-11 has proved the report (Exhibit 'P-7/PW-11') and the result of the examination of exhibits marked 'A' and 'B' have been taken note of hereinabove.

32. We have also noticed that in this case, Section 164 CrPC statement of the victim was recorded. She has remained consistent with her statement under Section 164 CrPC recorded on 01.10.2018 and her statements in course of trial.

33. On going through the entire materials available on the record, we find that the victim in this case is a sterling witness. There is nothing to disbelieve her even partially. She is a wholly reliable witness in terms of Section 134 of the Indian Evidence Act (now known as 'Bharatiya Sakshya Adhiniyam').

34. We are of the opinion that not only the foundational facts have been proved in this case, the defence is not able to take a



consistent stand and plea in course of cross-examination of the prosecution witnesses. While the presumption of innocence remains intact even in a case under the POCSO Act, it is for the defence to create a doubt in the prosecution story by preponderance of probability. We have found that in this case, the prosecution stood on its own leg but the defence failed to create any doubt in the prosecution story. Thus, no benefit of doubt can go to the accused-appellant. The appeal against judgment of conviction fails.

35. Now, coming to the impugned order dated 08.07.2024, by which the appellant has been awarded sentence to undergo imprisonment for twenty years, out of which ten years shall be rigorous imprisonment and rest ten years shall be simple imprisonment and also to pay a fine of Rs. 25,000/- for the offence punishable under Section 4 of the POCSO Act and in default of payment of fine, the appellant shall suffer simple imprisonment for further one year. The trial court has directed that the amount of fine realised shall be payable to the victim and it shall also be adjusted from the compensation amount awarded to her.

36. At this stage, we would extract Section 4 of the POCSO Act as existed at the time of occurrence hereunder for a ready reference:-

“4. Punishment for penetrative sexual assault.- Whoever commits penetrative sexual



assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.”

37. Vide Amendment Act 25 of 2016, the POCSO Act was amended, certain new provisions were inserted and in some of the provisions, the minimum sentence was enhanced. After the amendment with effect from 16.08.2019, Section 4 read as under:-

“4. Punishment for penetrative sexual assault.

—²[(1)] Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ³[ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

⁴[(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with 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 natural life of that person, and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]”.

2. Section 4 renumbered as section 4(1) thereof by Act 25 of 2019, s. 3 (w.e.f. 16-8-2019).

3. Subs. by Act 25 of 2019, s.3, for “seven years” (w.e.f. 16-8-2019).

4. Ins. by Act 25 of 2019, s. 3 (w.e.f. 16-8-2019).



38. It is evident on going through Section 4 of the POCSO Act, as existed at the time of occurrence, that the minimum sentence under Section 4 of the POCSO Act was seven years which would have extended to the imprisonment for life. Sub-section (2) of Section 4 did not exist at the time of occurrence, therefore, no sentence may be awarded under sub-section (2) of Section 4. The trial court has missed out on this development of law and awarded a sentence of twenty years imprisonment to the appellant. We are of the considered opinion that the twenty years imprisonment awarded to the appellant cannot sustain the test of law and it cannot be said to be in accordance with law as existed at the time of occurrence. What would be a proper sentence commensurate to the status of guilt was a question before this Court.

39. This Court, as recorded hereinabove, has interacted with the appellant who disclosed that his date of birth is 01.01.2000, therefore, on the date of occurrence, he was about eighteen years and nine months. Taking note of the age of the appellant, we are of the view that he was in quite young and impressionable age though he had crossed eighteen years of age and was liable to be tried as an adult but while awarding



sentence to the appellant, care is required to be taken to ensure that the appellant is assimilated to the mainstream of the society after completion of his sentence.

40. We have discussed the matter at length at the Bar. Learned Additional Public Prosecutor for the State has also fairly submitted that this Court may consider imposing a reasonable period of sentence which may be commensurate to the status of guilt and at the same time, may allow the appellant to return to his life after release. This Court is of the view that a period of twelve years of imprisonment, out of which ten years would be rigorous imprisonment and two years would be simple imprisonment, would be a reasonable sentence which may be imposed upon the appellant.

41. Accordingly, we modify the sentence awarded by the learned trial court to that of twelve years of imprisonment, out of which ten years will be rigorous imprisonment and two years will be simple imprisonment. The other parts of the sentence, such as fine and the simple imprisonment which the appellant may have to suffer in case of non-payment of fine, as awarded by the learned trial court, shall remain the same.

42. The impugned order of sentence is modified to the extent indicated herein above.



43. This appeal is partly allowed.

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

(Rajeev Ranjan Prasad, J)

(Kumar Manish, J)

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