

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5263 of 2023

Arising Out of PS. Case No.-12 Year-2019 Thana- MAHILA P.S. District- Bhagalpur

Md. Ibran @ Imran, Son of Md. Suddin Ali, Resident of Narayanpur, P.S.-
Bhawanipur (Bihpur), Distt - Bhagalpur

... .. Appellant/s

Versus

1. The State of Bihar
2. YYY W/O HHH, Resident of Vill.- Narayanpur, P.S.- , Bihpur
(Bhawanipur), Distt - Bhagalpur

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rana Pratap Singh, Adv.
For the State	:	Mr. Ramchandra Singh, APP
For the Resp. No. 2	:	Mr. Chandan Kumar Kashyap, Adv. Mr. Mritunjay Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

Date : 22-06-2026

Heard Mr. Rana Pratap Singh, learned counsel for the appellant, Mr. Ramchandra Singh, learned APP for the State and Mr. Chandan Kumar Kashyap, learned counsel for the Respondent No. 2.

2. The instant appeal has been preferred against the judgment of conviction dated 29.11.2022 and the consequent order of sentence dated 30.11.2022 passed by the learned Exclusive Special Judge (POCSO Act)-cum-7th Additional District & Sessions Judge, Bhagalpur, in POCSO



Case No. 45 of 2019 arising out of Naugachia Mahila P.S. Case No. 12 of 2019, whereby and whereunder 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'). The appellant has been sentenced to undergo rigorous imprisonment for ten years with a fine of Rs. 10,000/- (Rupees Ten Thousand) under Section 4 of the POCSO Act and in default of payment of fine, he has been directed to undergo simple imprisonment for three months. No separate sentence has been awarded to the appellant for the offence under Section 376 of the IPC considering the provision under section 42 of the POCSO Act.

Prosecution story : -

3. The prosecution case, in brief, is that on 25.04.2019, the informant, YYY (PW-1), submitted a written application before the Station House Officer, Naugachia Mahila Police Station. In her application, she alleged that on the intervening night of 24.04.2019, her younger sister (victim), a minor girl aged about 16 years, was sleeping in the courtyard of their house. It was alleged that during the night, the accused, Md. Ibran, unlawfully entered the premises and



by putting the victim in fear with a pistol, dragged her towards a room (Kothli) situated near the house of one Md. Inlaan. The informant chased them but Md. Ibran pointed the pistol at her and threatened to kill her, whereupon she stopped out of fear. Thereafter, he fled away from the place of occurrence. The informant further stated that upon reaching the room, she found the victim lying on the floor in an injured and distressed condition. The victim disclosed to her that the accused had committed rape upon her. It was also alleged that the accused was a notorious criminal involved in the illegal liquor trade and owing to his criminal antecedents and influence, no person in the locality was willing to depose against him.

4. The informant recorded her fardbeyan on 25.04.2019 at about 10:00 A.M. at Naugachia Mahila Police Station and detailed the above-mentioned incident. Upon that basis, a formal FIR bearing Naugachia Mahila P.S. Case No. 12 of 2019 was registered for the offences punishable under Sections 323, 341, 376 & 448 of the IPC and Sections 4 & 12 of the POCSO Act, which set the criminal law in motion.

5. During the course of investigation, the statement under section 164 of the Code of Criminal Procedure (in short, 'Cr.P.C.') of the victim was recorded before the Judicial



Magistrate and the statement of the victim and other witnesses under section 161 of the Cr.P.C. was also recorded by the Mahila police officer.

6. After completion of the investigation, the appellant was charge-sheeted for the offences punishable under Sections 341, 342, 323, 376, 448 & 506 of the IPC and Sections 4 & 12 of the POCSO Act.

7. After cognizance of the alleged offences, the learned Magistrate committed the case of the appellant to the Court of Sessions, Bhagalpur, for trial. The appellant stood charged for the offences under Sections 341, 342, 323, 376, 448 & 506 of the IPC and Sections 4 & 12 of the POCSO Act. The said charges were read over and explained in Hindi to the appellant by the trial court, to which he pleaded not guilty and claimed to be tried.

8. During the trial, the prosecution examined altogether eight witnesses who are as under :

Rank	Name	Nature of Evidence
PW-1	YYY	Elder sister of the victim
PW-2	ZZZ	Father of the victim
PW-3	Sweta Kumari	ASI, Naugachia Mahila Police station (I.O.)
PW-4	XXX	Victim
PW-5	AAA	Mother of the victim
PW-6	Dr. Jyotsna	Doctor
PW-7	Dr. Anand Kumar Murari	Radiologist



PW-8	Dr. Beena Pani Poddar	Medical officer
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9. In addition to the above mentioned ocular evidence, the prosecution proved and exhibited the following documents in documentary evidence :-

Sr. No	Exhibit No.	Description	Proved by/Attested by
1.	Ext.-P1	Signature on typed written application	PW-1
2.	Ext.-P2/PW-3	Formal FIR	PW-3
3.	Ext.-P3/PW-3	Statement of the victim recorded under section 161 of the Cr.P.C.	PW-3
4.	Ext.-P4/PW-3	Charge-sheet	PW-3
5.	Ext.-P3/1 /PW-4	Signature of the victim on her statement recorded under section 161 of Cr.P.C.	PW-4
6.	Ext.-P5/PW-4	Signature of the victim on her statement recorded under section 164 of Cr.P.C.	PW-4
7.	Ext.-P6/PW-6	Medical report	PW-6
8.	Ext.-P7/PW-7	Whole X-Ray report of radiologist	PW-7
9.	Ext.-P8/PW-8	Whole report of Clinical Examination	PW-8

10. After the completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Cr.P.C. by the trial court. The appellant denied the material circumstances appearing against him in the prosecution evidence and pleaded innocence.

11. The appellant did not produce any oral or documentary evidence in support of his defence.

12. While convicting the appellant for the offences



under Section 4 of the POCSO Act and Section 376 of the IPC, the learned trial court mainly placed reliance upon the testimony of the victim (PW-4).

Consideration and Analysis:

13. I have heard both sides and perused the impugned judgment, the evidence adduced by the prosecution and the statement of the accused/appellant.

14. The appellant has been convicted for the offences under Section 376 of the IPC and Section 4 of the POCSO Act. While convicting the appellant, the trial court observed that the victim was below 18 years of age at the time of commission of the offences and also placed reliance upon her statement recorded under Section 164 of the Cr.P.C. to corroborate the prosecution allegations made in the FIR. As per the trial court, the prosecution succeeded in establishing the foundation of the allegation and therefore, the onus shifted upon the appellant to prove his innocence, which he failed to discharge. Consequently, the appellant was convicted.

15. The case of the prosecution, as disclosed in the FIR, is based on the statement (Exhibit P-2) of the informant, who is the elder sister of the victim. The informant alleged in the prosecution story that on the intervening night of



24.04.2019, her minor sister (the victim) was asleep in the courtyard of their house. In the morning at about 5:00 A.M., the appellant entered the courtyard of the house where the victim was sleeping. Thereafter, the appellant forcibly dragged the victim, who resisted and started crying. However, the appellant took her in a dragging condition to an isolated house belonging to one Md. Inlaan. The informant further alleged that she chased the appellant while crying, but the appellant threatened to kill her by showing a pistol, due to which she stopped. At that time, no other person came forward to save her sister.

15.1. As per the prosecution story mentioned in the FIR, the appellant was involved in illicit trafficking of liquor and was a notorious person, due to which no villager dared to say anything against him. According to her, after some time, the accused came out of the *kothli* (room) of the alleged isolated house and fled towards the village. Thereafter, she went inside the *kothli* and found her sister in an agonized condition. Upon inquiry, the victim disclosed that she had been raped by the appellant.

16. Now, it is to be examined whether the aforesaid prosecution story, as set out in the FIR, finds support from the evidence of the prosecution witnesses or not. The informant was



examined as PW-1. She deposed that she did not know about the incident, and thereafter stated that the incident had taken place two years ago, however, she again stated that she did not know about the incident. These statements show that the informant did not remain consistent with the prosecution version given by her in the FIR, though she identified her signature on the FIR. Her evidence is completely contrary to the prosecution story narrated in the FIR.

16.1. In her cross-examination, PW-1 further deposed that at present her sister (the victim) is residing with the appellant as his wife. The father (PW-2) and the mother (PW-5) of the victim did not support the prosecution case in their testimony, rather, they admitted the existence of a love affair between the appellant and the victim and also acknowledged their matrimonial relationship.

16.2. Now, coming to the evidence of the victim, who is the most important witness of the prosecution. She was examined as PW-4 and she deposed in her examination-in-chief that the alleged incident had taken place about three years ago, and that she had a love affair with the appellant. She further stated that they later got married and they have a son from their conjugal relationship, and she is presently residing in her



sasural with the appellant. Though this witness admitted her signature on her previous statement recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate but the statements made by her in court are completely contradictory to her earlier statement.

17. While convicting the appellant for the offences under Section 376 of the IPC and Section 4 of the POCSO Act, the learned trial court mainly relied upon the victim's statement recorded under Section 164 of the Cr.P.C. as corroborative of the prosecution case; however, the said statement stands contradicted by her testimony before the trial court. Therefore, the prosecution is not entitled to derive benefit solely on the basis of the victim's earlier statement.

18. As regards the prosecution story as narrated in the FIR, though the victim's statement recorded under Section 164 of the Cr.P.C. supports the prosecution version, the FIR itself does not contain the statement of the victim, but rather that of her sister (PW-1), whose testimony before the court is also inconsistent with both the victim's Section 164 statement and the prosecution case narrated in the FIR.

19. So far as the age of the victim on the date of occurrence is concerned, as per medical expert's opinion, her



age was assessed to be between 17 and 19 years at that time. It is a settled proposition of law that there is always a possibility of an error of margin of two years on the lower as well as upper side in the age assessed by medical experts. If a two-year margin is added on the higher side, the age of the victim comes to about 21 years at the time of the alleged occurrence.

Conclusion:

20. After having analysed the evidence of the prosecution witnesses and other evidences, this Court is of the considered opinion that the approach adopted by the trial court in convicting the appellant for the aforesaid offences was not proper. The prosecution remained fail to establish the foundation of the allegation, and therefore, it is not entitled to the benefit under Section 29/30 of the POCSO Act. The conviction of the appellant under Section 376 of the IPC and Section 4 of the POCSO Act is not sustainable in the eye of law. Accordingly, the impugned judgment and order convicting and sentencing the appellant for the charged offences are set aside and the appeal is allowed.

21. The appellant is in custody, so, he is directed to be released forthwith if his custody is not required in any other case.



22. Let the records of the trial court, along with a copy of this judgment, be transmitted forthwith to the trial court for needful and necessary compliance.

(Shailendra Singh, J)

annu/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	29.06.2026
Transmission Date	29.06.2026

