2026:JHHC:13567

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 345 of 2019

(*Against the judgment of conviction dated 07.02.2019 and order of sentence dated 13.02.2019 passed in POCSO Case No. 16 of 2017 arising out of Angara P.S. Case No. 119 of 2016 corresponding to G.R. Case No. 7043 of 2016 by the learned Additional Judicial Commissioner-XVIII cum Special Judge, POCSO, Ranchi)*

Ram Prasad Birhor, aged about 23 years, son of Late Vishwanath Birhor, resident of Getalsud Bukki Bolora, P.O. and P.S. Angara, District Ranchi, Jharkhand

--- --- **Appellant**

Versus

The State of Jharkhand --- --- **Respondent**

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For the Appellant : Mr. Nikhilesh Kumar Chatterjee, Advocate
Mr. Shiv Prasad, Advocate

For the State : Mrs. Nehala Sharmin, Spl.P.P.

PRESENT
HON'BLE MR. JUSTICE RAJESH KUMAR

J U D G M E N T

By Court

1. Heard learned counsel for the appellant and learned Spl.P.P. representing the State.

2. The present appeal has been preferred against the judgment of conviction dated 07.02.2019 and order of sentence dated 13.02.2019 passed in POCSO Case No. 16 of 2017 arising out of Angara P.S. Case No. 119 of 2016 corresponding to G.R. Case No. 7043 of 2016 by the learned Additional Judicial Commissioner-XVIII cum Special Judge, POCSO, Ranchi, whereby the appellant has been convicted for the offence punishable under Section 366, 354 of the IPC and Section 8 of the POCSO Act and has been sentenced to undergo R.I. for 3 years with a fine of Rs. 10,000/- and a default sentence of R.I. for 6 months under Section 366 IPC and further R.I. for 3 years with a fine of Rs. 10,000/- and a default sentence of R.I. for 6 months under

Section 8 of the POCSO Act. No separate sentence under Section 354 of the IPC has been passed in view of Section 42 of the POCSO Act.

3. The criminal law has been put into motion on lodging an F.I.R being Angara P.S. Case No. 119 of 2016 by the informant namely Sawan Birhor before the Officer-In-charge, Angara Police Station on 14.12.2024.

The brief story as per the prosecution is that on 08.12.2016 the minor sister of the informant aged about 12 years had gone to SBI Gondali Pokhar Branch for withdrawal of money, but on the way the above-named accused kidnapped her and took her to Patna. It is further alleged that when the informant had a telephonic conversation with the accused, the accused has disclosed that the victim had gone with him out of her own will and she will be returning on 12.12.2016 but when she did not return, the case has been instituted.

4. On the basis of the written report, case was registered as Angara P.S. Case No. 119 of 2016 for the offence punishable under Section 366A of the IPC against the accused – appellant.

5. On the basis of the investigation, the Police has submitted the chargesheet against the appellant and thereafter cognizance has been taken and the case was committed to the Court of Sessions.

6. Accordingly, the charge under Sections 366 & 354 of the IPC and Section 8 of the POCSO Act, 2012 was framed, which was explained to the appellant to which he pleaded not guilty and claimed to be tried.

7. To substantiate the prosecution story altogether six prosecution witnesses have been examined. Their brief statements are as follows:

I. **P.W.1(Victim)** – She has stated that in the month of December, 2016 at about. 2/2:30 P.M. when she had gone to Gundali Pokhar Bank then on way the accused forcibly pulled her on a Auto Rickshaw and taken to Khadgarha Bus Station and thereafter theymoved to Patna and kept under his captivity. It is also deposed that while staying at Patna the

accused person used to keep her at several Brick Kiln and also molested her. she was medically examined by a lady doctor and thereafter brought to Court where her statement was recorded by the Magistrate. She has also stated that her date of birth as recorded in the School Register is 01.03.2004. During cross examination she has stated that while boarding the Tempo she did not raise any alarm because except accused person and driver there was no one present.

II. **P.W.2(Pushpa Devi)** – She is the mother of the victim. She was not cross examined by the defence counsel though opportunity was provided. The accused person was also asked to have services of legal aid panel advocate but he denied, hence under the given circumstances the said witness was discharged.

III. **P.W.3(Sawan Birhor)** – He is the informant of the case. He has stated that on the date of occurrence when her minor sister aged about 13 years had gone to Bank for withdrawal of money then on the way the accused person kidnapped her and taken her to Patna. He has further stated that the occurrence was narrated to him on telephone by the wife of Ram Prasad Birhor. He has further deposed that after 3-4 days, the Victim returned home and disclosed the occurrence to the family members. This witness was not cross-examined by the defence.

IV. **P.W.4(Mamta Devi)** – She is the sister-in-law of the victim. She has supported the case and identified the accused in the dock.

V. **P.W.5(Raghunandan Tiwary**)- He is the Investigating Officer of the case. He has deposed that after getting charge of investigation of this case, he visited place of occurrence which is home of the Victim situated at Village Angara,

Kusum Toli. This witness has further deposed that during course of investigation he has recorded the statement of Victim and other witnesses and produced the Victim for recording her statement under Section 164 Cr.P.C. It is deposed that after the statement, the Victim was sent for Medical Examination and after receiving the same and after examining its contents and being satisfied on each and every aspect of investigation, charge sheet was submitted against the accused. During cross examination he has admitted that he had not recorded statement of witnesses who were residing near the house of Victim and further the contents of Medical Examination Report is also not known to him.

VI. **P.W.6 (Sweta Lal)** – She is the doctor who has conducted medical examination on the victim on 22 12.2016. She has assessed the age of the victim as 13-14 years and the injury might be due to attempted sexual assault. During cross examination, she has stated that in most of the cases ossification test is conclusive proof of the age estimation.

8. The prosecution has also adduced documentary evidence as under:

I. **Exhibit -PW1/A-** Signature of the victim over her statement recorded under Section 164 Cr.P.C.

II. **Exhibit-2-** Endorsement over Written Report dated 14.12.2016

III. **Exhibit-3 -**Formal F.I.R dated 14.12.2016

IV. **Exhibit-4-** Medical Report of the victim

V. **Exhibit-5 -**Statement of the victim recorded under Section 164 Cr.P.C.

9. After conducting full-fledged trial, the learned Trial Court has convicted and sentenced the appellant as aforesaid.

10. Learned counsel for the appellant has submitted that the prosecution has failed to establish the factum of minority of the victim

because no document whatsoever has been produced in this regard before the Court. It has been further submitted that the accused has not been given fair trial since the witnesses have not been cross-examined. It is further submitted that the appellant has remained in custody for more than two years against the maximum punishment of three years awarded by the learned Trial Court.

11. Learned counsel for the State has supported the judgment of conviction passed by the learned Trial Court and has submitted that there are enough materials on record to prove the prosecution case.

12. Heard learned counsel for the parties and after perusal of the record, it appears that appellant has been convicted on the strength of the statement of the victim girl and taking aid of Section 29 and 30 of the POCSO Act i.e., presumption.

13. From perusal of the record, it further appears that no legal assistance has been provided to the accused-appellant, even the witnesses have not been cross examined i.e., neither the advocate has examined them nor the learned Trial Court. Thus, it is clear cut case where fair trial has not been given to the accused.

14. However, in view of above special matrix of the case, since the statement of the victim, aged about 13-14 years about the incident appears to be reliable, therefore conviction of the appellant under Sections of 366 and 354 of the IPC and Section 8 of the POCSO Act is hereby affirmed.

15. So far as the sentencing part is concerned, since the appellant has already undergone custody for 2 years, 4 month and 17 days, no useful purpose would be served by again sending the appellant in jail. Therefore, the sentencing part is hereby reduced to the period already undergone by the appellant.

16. With the above modification in the judgment of conviction dated 07.02.2019 and order of sentence dated 13.02.2019 passed in POCSO Case No. 16 of 2017 arising out of Angara P.S. Case No. 119 of 2016 corresponding to G.R. Case No. 7043 of 2016 by the learned

Additional Judicial Commissioner-XVIII cum Special Judge, POCSO, Ranchi, the criminal appeal is disposed of.

17. Since the appellant is on bail, he is discharged from the liability of his bail bond.

(Rajesh Kumar, J.)

A. Mohanty
Jharkhand High Court
Dated 6th May, 2026

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___/____/2026