

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1499 of 2017

Arising Out of PS. Case No.-236 Year-2014 Thana- DALSINGHSARAI District- Samastipur

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Arvind Kumar Das @ Arvind Das S/o Late Maheshwar Das, R/o Mohalla- Ward No. 11

Loknathpur Ganj, P.S.- Dalsingsarai, Distt.- Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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*Code of Criminal Procedure, 1973---section Section 374(2), 53(A)---Indian Penal Code---  
section 376(2)(f)---POCSO Act--- section 4, 6---Appeal against conviction---allegation  
against the appellant is of committing rape on the minor girl, aged about one year---plea that  
there is no eye-witness to the occurrence in question and medical evidence does not support  
the allegation leveled by the prosecution---further argument that first Doctor who had given  
the treatment to the victim and the Investigation Officer were not examined by the  
prosecution.*

*Held: the Doctor, who had examined the victim, has specifically opined that vaginal swab  
report shows absence of spermatozoa and wound was stitched by the Doctor who treated her  
first. Hence, the opinion about the rape should be given by the Doctor treating first---  
prosecution failed to examine the Doctor who had treated the victim first---Even the father of  
the victim did not remember the name of nursing home where he took the victim girl for  
treatment-- though, as per the case of the prosecution, the accused was caught from the spot,  
he was not sent for necessary examination and the Investigating Agency has violated the  
provisions contained in Section 53(A) of the Code--- prosecution did not examine the  
Investigating Officer who had carried out the investigation--- major contradictions in the  
depositions of the prosecution witnesses and the prosecution failed to prove the case against  
the appellant/accused beyond reasonable doubt---impugned judgment of conviction and  
order of sentence set aside--- appeal allowed. (Paras 15-20)*

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Ward No. 11 Loknathpur Ganj, P.S.- Dalsingsarai, Distt.- Samastipur.

... .. Appellant/s

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**Appearance :**

For the Appellant/s	:	Mr. Raj Kishore Prasad, Advocate Mr. Nand Lal Prasad, Advocate
For the State	:	Km. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI  
and  
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

**Date : 24-04-2024**

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction dated 07.08.2017 and order of sentence dated 11.08.2017 passed by learned Special Judge, POCSO Act, Samastipur in G.R. No. 443/14 Registration No. 643/14, arising out of Dalsingsarai P.S. Case No. 236/14, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Section 376(2)(f) of the I.P.C. and Section 4 of the Protection of Children from Sexual Offences Act, 2012, whereby and whereunder the appellant has been found guilty for committing offence under Section 376 of the



I.P.C. and Section 6 of the Protection of Children from Sexual Offence Act, and sentence has been awarded to convict for life imprisonment and Rs. 50,000/- fine and in default of payment of fine, additional punishment of rigorous imprisonment for 6 months has been awarded under Section 6 of the POCSO Act and no separate sentence has been awarded for committing offence under Section 376 of the I.P.C. Further, it is directed that payment of fine shall be paid to the family member of the victim and period already undergone shall be adjusted.

2. The prosecution case, in brief, is as under:-

2.1. The wedding party of the informant's sister-in-law Rangila Devi had come on the occasion of her marriage. Marriage related rituals were going at her gate. The informant's one year old daughter was in her mother-in-law Bala Devi's lap. Meanwhile, her neighbour (accused) Arvind Das, aged 22 years, took her victim daughter from her lap and asked them to see the marriage rituals at gate. After the end of marriage rituals at the gate, she began to look for her daughter and the accused Arvind Das. Her husband and mother-in-law too began to search for them. When they could not find the two, they went to the house of Arvind Das at 03:00 a.m. on 22.05.2014 and they saw that informant's daughter was weeping near Arvind Das's house. When she reached



near her daughter, she found her underwear missing and subsequently noticed that she was bleeding from her private parts. They understood that Arvind Das had raped her daughter. Seeing them, Arvind Das began to flee. They raised a cry. Hearing the cry, people from surroundings came rushing and hearing the incident ran to catch Arvind Das. Arvind was hurt a little while fleeing. Arvind Das was handed over to the Police who had arrived on receiving the information and the injured victim was treated at Sub-Divisional Hospital, Dalsinghsarai.

2.2. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, he had recorded the statement of the witnesses and thereafter filed the charge-sheet against the appellant/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court where the same was registered as Sessions Case No. G.R. No. 443/14 Registration No. 643/14.

3. Heard learned counsel Mr. Raj Kishore Prasad assisted by Mr. Nand Lal Prasad for the appellant and Km. Shashi Bala Verma, learned counsel for the Respondent-State.



4. Learned counsel for the appellant mainly submits that though it is alleged by the prosecution against the appellant that he has committed rape on the minor girl, aged about one year, there is no eye-witness to the occurrence in question and medical evidence does not support the allegation levelled by the prosecution. It is submitted that, PW-9 Dr. Manju Sahay, who had examined the victim, has specifically deposed before the Court that no external injury was found on the body of the victim and stitch wound was found at vulva and vaginal portion. It is also submitted that the said Doctor who had first treated the victim can give the opinion with regard to the rape committed on the victim. At this stage, it is pointed that the first Doctor who had given the treatment to the victim was not examined by the prosecution and, therefore, the allegation with regard to the rape has not been proved by the prosecution. It is further submitted that the prosecution has also failed to examine the Investigating Officer and, therefore, the prejudice has been caused to the defence by non-examination of the Investigating Officer. Learned counsel for the appellant would further submit that the appellant has been falsely implicated because of the local politics. It is further contended that the Investigating Agency has not followed the provisions contained in Section 53(A) of the Code after arrest of the appellant/accused.



Learned counsel has also pointed out the major contradictions from the deposition of the prosecution witnesses. Learned counsel urged that the prosecution has failed to prove the case against the appellant beyond reasonable doubt and, therefore, the impugned order be quashed and set aside.

5. On the other hand, learned A.P.P. has opposed the present appeal. It is contended that the informant is the mother of the victim. She has supported the case of the prosecution. Similarly, PW-8, who is the father of the victim and PW-5 who is the grand-mother of the victim have also supported the case of the prosecution. It is further submitted that PW-1 who is an independent witness has also supported the version of the informant. Learned A.P.P. would further submit that merely because the Investigating Officer and the Doctor, who has treated the victim first, were not examined by the prosecution, benefit of the same may not be given to the appellant/convict. It is further submitted that there was no reason for the informant to falsely implicate the appellant in the incident in question. Learned A.P.P., therefore, urged that the present appeal be dismissed.

6. PW-1 Pratibha Kumari has stated that when the occurrence took place, the victim girl was aged about 11 months. She was lying unconscious and was unable to speak.



7. PW-2 Nibha Devi has stated in her examination-in-chief that a wedding procession had come on the occasion of the marriage of her sister-in-law Rangeela Devi. Her daughter, aged about 1 year, was in her grandmother's lap. Arvind Das took the victim girl from her grandmother's lap to play. After two hours, they started searching for the girls and found her on a pile of leaves near Arvind Das's house. The girl was naked. There was no underwear below. There was no anklet on one foot. There was blood coming from her urinary tract. Arvind Das started running away. The villagers caught him and handed him over to the Police. The victim girl was treated at the government hospital at Dalsinghsarai.

7.1. In her cross-examination, she has stated that her husband was there on the day of the incident. They started searching for her daughter at 12.00 in the night and found her at 02:00-02:30 am. They found the girl in an unconscious state. They picked up victim girl and brought her home and then immediately took her to the hospital. The Police came to the village on the second day of the case. Further, she has stated that she did not see anyone committing rape. Arvind Das was seen running away from the incident site. The place of occurrence is to the west of Arvind Das's house. They caught Arvind and handed him over to the



Police. She has further stated that it is wrong to say that the alleged incident did not happen and that she had filed a false case against the accused because of rural politics and had given false testimony.

8. PW-3 Sanjay Kumar Mahto has stated in his examination-in-chief that one pant and one anklet was recovered by the Police from the front of the accused's house. The Seizure List was made. He recognizes the accused by face.

9. PW-4 Mithilesh Kumar has stated in his examination-in-chief that on the day of wedding ceremony of Rampukar Roy's daughter, the accused Arvind Das took the victim girl to play with her. Arvind Das took the victim girl in his lap. The search for the girl continued for about 2-3 hours. Arvind and the child were not there. He was also searching for the girl. While searching, he reached Arvind Das's house. When he searched the house, he was not found there. When he came out of the house, he saw that the victim girl was crying on a pile of leaves. The anklet worn by the girl was open. Blood was oozing from the lower part of her body. After seeing them, Arvind Das started running away from there. The girl was found. They chased Arvind and caught him. Arvind was handed over to the Police. They took the girl to the hospital.





9.1. In his cross-examination, he has stated that the girl was unconscious when she was found. Further, he has stated that the victim girl was bleeding from the lower part of her body.

10. PW-5 Bela Devi has deposed in her examination-in-chief that Arvind Das took the victim girl from her lap saying her to do the wedding ceremony and he took the child in his lap. Shee did not find her granddaughter till 03:00 am. When even Arvind Das was not found, she started worrying about her granddaughter. Her granddaughter was found on a pile of leaves in the backyard near Ramsevak's house. Arvind Das was also standing there. Blood was oozing out through the urinary tract of her granddaughter. She was not wearing underwear and did not have an anklet on her one leg. Seeing them, Arvind Das started running away. The Police came and arrested Arvind Das. She took her granddaughter to the hospital. Dalsinghsarai Hospital referred her to Samastipur Sadar Hospital where she was treated.

10.1. In her cross-examination, she has stated that when she went to see her granddaughter, she was lying unconscious. Nibha Devi picked up the girl and brought her home and then took her to the hospital at 04:00 am. She has further stated that it is not the case that, due to village politics, Arvind was falsely implicated and the incident as described, is not the same.



11. PW-6 Munna Jha has not supported the case of the prosecution and he has been declared hostile by the prosecution.

12. PW-7 Manish Kumar has stated in his examination-in-chief that the Police found the underwear for the victim from the pile of leaves that was lying near the house of Arvind Das. One anklet was also found. The Seizure List was prepared by *Darogaji*.

12.1. In his cross-examination, he has stated that he had not seen the said occurrence with his own eyes. Further, he has stated that he did not know whether there was blood in the undergarment of the victim.

13. PW-8 Sanjay Kumar Rai has stated in his cross-examination that when the victim girl was found, she was crying and not unconscious. There were blood stains on the shirt worn by the victim girl. The shirt worn by the victim, leaves, blood and soil were not seized by the *darogaji*. Further, he has stated that Arvind Das was wearing jeans pant, shirt and t-shirt. He caught and took Arvind Das with him to his house where he was kept for 1-1.1/2 hours. It is also stated that there were blood spots on the pant worn by Arvind Das and semen was also present on his underwear. His underwear was examined at *thana*. The underwear was of red colour. He did not see whether there were blood spots on the underwear. *Darogaji* did not seized the underwear and jeans pant



of the accused. He has also stated that he did not see whether Arvind Kr. Das has committed rape. He has later stated that he took the victim girl for treatment at a private nursing home, the name of which he does not remember. Later, he took her to the Sub-Divisional Hospital at Dalsinghsarai, Samastipur.

14. PW-9 Dr. Manju Sahai was posted at Sadar Hospital, Samastipur as a Medical Officer on 22.05.2014. She had found following injuries:-

“M/I old healed sear on right knee. No. of teeth upper jaw 6 lower jaw 3.

No external injuries were found on her body.

Internal examination:- Recent stitched wound found on vulva and vagina on middle of post fourchette extending to perimeal region about 1/2” in length.

No other injuries and bleeding found on other part of private part. Vaginal swab taken from stitched wound shows absence of spermatozoa. Vaginal swab taken before stitching of the wound.

X-ray of wrist including phalanges AP view shows absence of epiphysis in first, second and third metacarpal bone and phalanges.

X-ray of upper end of radius shows absence of appearance of epiphysis in upper end of radius. All X-ray plates and injury attached with signed by me attached.

**Opinion:-**

Age of victim is in between one and one and half years. Vaginal swab report shows absence of spermatozoa and wound was stitched by Dr. treating first. So opinion about rape should be given by Dr. treating first.



2. Above examination was conducted by medical board under the chair membership of Dr. V.K. Verma Deputy Superintendent and member Dr. Rajesh Kumar and myself. Marked report has been written by me and bears my self sign and sign of Dr. V.K. Verma and Dr. Rajesh Kumar. Medical marked as ext.-3.”

14.1. In the cross-examination, she has stated that she has not found any type of external injuries on external parts of the body of the victim. Further, she has stated that no blood was found on private part of the victim. She did not treat the victim firstly. She found only recent stitched wound. She cannot say whether rape has been committed or not because the wound was stitched. She has taken vaginal swab from the stitched wound that shows absence of spermatozoa.

15. We have re-appreciated the entire evidence led by the prosecution. We have also considered the submissions canvassed by the learned counsels appearing for the parties. It would emerge from the record that PW-6 has not supported the case of the prosecution and he was declared hostile. It would further reveal that there is no eye-witness to the occurrence in question. However, it is a specific case of the prosecution through PW-1, PW-2, PW-4, PW-5 and PW-8 that when the victim girl was not found, they started searching for her and thereafter she was found crying on a pile of leaves. However, some of the witnesses stated that the victim girl was unconscious, whereas some of the



witnesses have stated that she was conscious and was crying. It is also the case of the prosecution through the aforesaid witnesses that the blood was oozing from the lower part of the body of the victim and the accused was caught from the spot while fleeing away from the place of occurrence. However, it is pertinent to note that the Doctor, who had examined the victim, has specifically opined that vaginal swab report shows absence of spermatozoa and wound was stitched by the Doctor who treated her first. Hence, the opinion about the rape should be given by the Doctor treating first. She has further stated that recent stitched wound was found on vulva and vagina. It is further stated by the said Doctor that no other injuries and bleeding was found on private part. During cross-examination, she has specifically stated that she cannot say whether rape has been committed or not because the wound was stitched.

16. At this stage, it is relevant to observe that the prosecution has failed to examine the Doctor who had treated the victim first. Even the father of the victim, i.e. PW-8, during cross-examination, has stated that he took the victim girl for treatment at a private nursing home, however, the name of which he does not remember. Thus, we are of the view that, from the aforesaid



evidence led by the prosecution, it cannot be conclusively said that the rape was committed on the victim.

17. It would further reveal from the evidence that though, as per the case of the prosecution, the accused was caught from the spot, he was not sent for necessary examination and the Investigating Agency has violated the provisions contained in Section 53(A) of the Code. Further, from the cross-examination of PW-8, who is the father of the victim, it is revealed that he had specifically stated that shirt worn by the victim, leaves, blood and soil were not seized by *Darogaji*. Even the clothes of the accused were also not seized by the Investigating Officer.

17.1. It is important to observe, at this stage, that the prosecution did not examine the Investigating Officer who had carried out the investigation and it is the specific case of the defence that because of the non-examination of the Investigating Officer, prejudice has been caused to the accused.

18. It is a specific defence of the accused by putting suggestion during cross-examination to the prosecution witnesses that because of the local politics, he has been falsely implicated.

19. We are also of the view that there are major contradictions in the depositions of the prosecution witnesses and the prosecution has failed to prove the case against the



appellant/accused beyond reasonable doubt, despite which, the Trial Court has recorded the order of conviction. Accordingly, the said order is required to be quashed and set aside.

20. Accordingly, the impugned judgment of conviction dated 07.08.2017 and order of sentence dated 11.08.2017 passed by learned Special Judge, POCSO Act, Samastipur in G.R. No. 443/14 Registration No. 643/14, arising out of Dalsingsarai P.S. Case No. 236/14 are quashed and set aside.

21. The appellant, namely Arvind Kumar Das @ Arvind Das, is acquitted of the charges levelled against him by the learned Trial Court. He is in custody. He is directed to be released forthwith, if not required in any other case.

22. The appeal stands allowed.

**(Vipul M. Pancholi, J)**

**(Sunil Dutta Mishra, J)**

Sachin/-

AFR/NAFR	A.F.R.
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