

IN THE HIGH COURT OF JUDICATURE AT PATNA

Heera Das

vs.

The State of Bihar

CRIMINAL APPEAL (DB) No.103 of 2019

30 April 2024

(Hon'ble Mr. Justice Rajeev Ranjan Prasad and Hon'ble Mr. Justice Shailendra Singh)

Issue for Consideration

Whether the conviction of Appellant under section 376 IPC and section 6 of POCSO Act is sustainable or not?

Headnotes

Protection of Children from Sexual Offences ('POCSO') Act, 2012- Section 40- POCSO Rules-Rule 4-Right of victims of sexual assault cases to participate in proceedings-Non-disclosure of identity of victims of sexual assault cases-appeal against conviction for offence punishable under Section 376 of IPC and Section 6 of the POCSO Act.

Held: In course of hearing of the appeal, it transpired that the victim in this case has not been served with any notice informing her about hearing of this appeal- a victim of the crime under the POCSO Act has a legally vested right to be heard at every step post the occurrence of an offence and such a victim has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal/revision- POCSO Rules recognise a statutory entitlement to the assistance of a representation by legal counsel for the family or the guardian of the child and the entitlement to be present and to participate in proceedings in accordance with the said provision-the learned trial court has not followed the directions as regards the non-disclosure of the identity of the victim as the identity of the victim has been fully disclosed- informant directed be as added as respondent no. 2 in the present appeal and the identity of the victim/her guardian/parents directed not to be disclosed in the records placed in public domain. (Para- 3, 5, 6, 10, 12, 13)

Case Law Cited

Jagjeet Singh and Ors. vs. Ashish Mishra @ Monu and Anr. (2022) 9 SCC 321; Arjun Kishanrao Malge vs. State of Maharashtra and Ors.; Nipun Saxena and Anr. vs. Union of India and Ors. (2019) 2 SCC 703Followed.

List of Acts

Protection of Children from Sexual Offences ('POCSO') Act, 2012; Indian Penal Code; Code of Criminal Procedure.

List of Keywords

Right of victims under POCSO Act- Non-disclosure of identity of victims of sexual assault- Participatory Rights of victim-Statutory Scheme of the POCSO Act-Investigation and Trial of Offences.

Case Arising From

Judgment of conviction dated 05.07.2017 and order of sentence dated 11.07.2017 passed by learned Special Judge (POCSO) Act, Samastipur in Sessions Trial No. 528 of 2013.

Appearances for Parties

For the Appellant/s : Mr. Vishal Agrawal, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

Headnotes Prepared by Reporter: Ghanshyam, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.103 of 2019

Arising Out of PS. Case No.-94 Year-2013 Thana- MUSRIGHRARI District- Samastipur

Heera Das, Son of Late Chulhai Dad, Resident of Village – Gangapur, P.S.-
Musrigharari, District – Samastipur

... .. Appellant

Versus

- 1. The State of Bihar
- 2. [REDACTED] W/o Ram Kishun Das, Resident of Village – Tenua, P.S. -
Mansur Chak, District – Begusarai

... .. Respondents

Appearance :

For the Appellant/s : Mr. Vishal Agrawal, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

11 30-04-2024 The present appeal arises out of the judgment of conviction dated 05.07.2017 and order of sentence dated 11.07.2017 passed by learned Special Judge (POCSO) Act, Samastipur in Sessions Trial No. 528 of 2013 arising out of Musrigharari P.S. Case No. 94 of 2013. The appellant has been held guilty of the offence punishable under Section 376 of the Indian Penal Code (in short ‘IPC’) and Section 6 of the Protection of Children from Sexual Offences (in short ‘POCSO’) Act, 2012. He has been sentenced to undergo life imprisonment for both the offences and has been directed to pay a fine of Rs. 50,000/-. In case of non-payment of fine, the appellant shall suffer additional six months rigorous



imprisonment.

2. This appeal has been admitted, the trial court records have been received and it has come up for hearing.

3. In course of hearing of the appeal, it transpired that the victim in this case has not been served with any notice informing her about hearing of this appeal. The learned Additional Public Prosecutor has not taken any step at his end to inform the victim or the informant.

4. As to the necessity to inform the victim of the crime under the POCSO Act , this Court has been taking a view that the victim/informant is required to be served with a notice about pendency and hearing of the appeal. This issue has been discussed at the Bar once again.

5. We have before us the judgment of the Hon'ble Supreme Court in the case of **Jagjeet Singh and Ors. vs. Ashish Mishra @ Monu and Anr.** reported in **(2022) 9 SCC 321** in which in paragraph '23' the Hon'ble Supreme Court has categorically held that a victim has a legally vested right to be heard at every step post the occurrence of an offence and such a victim has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal/revision.



6. Yet in another judgment in the case of **Arjun Kishanrao Malge vs. State of Maharashtra and Ors.**, the Hon'ble Bombay High Court has discussed the mandate of Section 40 of the POCSO Act read with Rule 4 of the POCSO Rules. The Hon'ble Bombay High Court has held that the POCSO Act read with Rules 4(13) and 4(15) of the POCSO Rules recognise a statutory entitlement to the assistance of a representation by legal counsel for the family or the guardian of the child and the entitlement to be present and to participate in proceedings in accordance with the said provision. It has been further held that "as a necessary corollary, there is also an entitlement of such persons to be made aware of the filing of applications and the hearings scheduled on such applications at the various stages of the proceedings".

7. In the said judgment, the Hon'ble Bombay High Court has also noticed the role of Special Juvenile Police Unit (in short 'SJPU') and issued directions as under:-

“(i) Notwithstanding the duty of the SJPU to intimate the child's family or guardian or the legal counsel under Rule 4 of the POCSO Rules:

(a) Where an application is made before the court on behalf of the prosecution, it shall be the duty of the office of the Public Prosecutor to issue notice of hearing of such application to the child's family or as the case may be, the



guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings.

(b) When an application is made before the court on behalf of the accused, it shall be the duty of the accused to issue notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings.

(ii) When an application is made on behalf of the prosecution, it shall be the duty of the police officer to confirm to the relevant court that service of such application along with all relevant documents and the record necessary for effective participation in the proceedings, and the notice of hearing has been undertaken and completed along with proof of service.

(iii) In the event, it has not been possible to serve the child's family, guardian or legal counsel, it shall be the duty of the SJPU to inform the reasons in writing to the relevant court.

(iv) The appropriate court, before proceeding to hear the application, shall ascertain the status of service of notice, and if it is found that notice has not been issued, the court may make such reasoned order as it deems fit to secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the child's family or guardian or legal counsel.

(v) In the event despite issuance of notice, the child's family, guardian or legal counsel, does not attend the



hearing, the court may proceed further without the presence of such noticee, or issue a fresh notice, as the court may deem fit and proper, considering the interest of justice.

(vi) When the proceedings under the Act would also relate to an offence against Sections 376(3), 376-AB, 376-DA or 376-DB of the Penal Code, 1860, the notice to the victim shall be issued under Section 439(1-A) read with Rules 4(13) and 4(15).

(vii) This order shall be brought to the notice of all the Sessions Judges and Special Court Judges in the State of Maharashtra.”

8. On going through the judgment of the Hon’ble Bombay High Court in the case of **Arjun Kishanrao Malge** (*supra*), we find ourselves in agreement with the views of the Hon’ble Bombay High Court. This is in consonance with the statutory scheme of the POCSO Act and the rules framed thereunder as also the judgment of the Hon’ble Supreme Court in the case of **Jagjeet Singh and Ors. vs. Ashish Mishra @ Monu and Anr** (*supra*).

9. We, therefore, direct that the directions contained in Paragraph 20 of the judgment in the case of **Arjun Kishanrao Malge** (*supra*) shall form part of this order and the same must be followed in the State of Bihar.

10. This Court finds from the judgment of the learned trial court that the learned trial court has not followed the directions as regards the non-disclosure of the identity of the



victim in the judgment. On a reading of the judgment of the learned trial court it is found that the identity of the victim has been fully disclosed. In case of **Nipun Saxena and Anr. vs. Union of India and Ors.** reported in **(2019) 2 SCC 703**, the Hon'ble Supreme Court has dealt with this aspect of the matter while dealing with Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Paragraph '44' and '45' of the judgment in **Nipun Saxena (supra)** case are quoted hereunder for a ready reference:-

“44. In *Bijoy v. State of W.B.*⁶, the Calcutta High Court has given a detailed judgment setting out the reasons while dealing with the provisions of POCSO and held that neither during investigation nor during trial the name of the victim should be disclosed.

45. The Calcutta High Court in *Bijoy case*⁶ has also given other directions to ensure that the provisions of the law are followed in letter and spirit, and the fundamental rights of a child victim and other basic human rights are protected. We are in agreement with all these directions. Though some of the issues dealt with in these directions do not strictly arise in this case, keeping in view the fact that we are dealing with the rights of children, we are annexing the directions issued by the Calcutta High Court as Annexure 1 to this judgment. We request all the Chairpersons and Members of all the Juvenile Justice Committee of all the High Courts in the country to go through the judgment of the Calcutta High Court and the directions issued therein and they may issue similar directions, keeping in view the particular needs of each High Court/State.”

6. 2017 SCC OnLine Cal 417 : 2017 Cri LJ 3893



11. The directions issued by the Hon'ble Calcutta High Court in the case of **Bijoy vs. State of W.B.** have been incorporated in paragraph '53' of the judgment of the Hon'ble Supreme Court in the case of **Nipun Saxena** (*supra*). We reproduce those directions hereunder for a ready reference:-

“53. ANNEXURE — 1

(Directions issued by the Calcutta High Court in *Bijoy v. State of W.B.*⁶ SCC OnLine Cal para 40)

“1. Police Officer or the Special Juvenile Police Unit receiving complaint as to commission or likelihood of commission of offence under the Act shall forthwith register the same in terms of Section 19 of the Act and furnish a copy free of cost to the child and/or his/her parents and inform the child or his/her parents or any person in whom the child has trust and confidence of his/her right to legal aid and representation and if the child is unable to arrange for his/her legal representation, refer the child to the District Legal Services Authority for necessary legal aid/representation under Section 40 of the Act. Failure to register first information report in respect of offences punishable under Sections 4, 6, 7, 10 and 12 of POCSO shall attract penal liability under Section 166-B of the Penal Code as the aforesaid offences are cognate and/or *pari materia* to the Penal Code offences referred to in the said penal provision.

2. The police officer on registration of FIR shall promptly forward the child for immediate emergency medical aid, whenever necessary, and/or for medical examination under Section 27 of the Act and ensure recording of the victim's statement before the Magistrate under Section 25 of the Act. In the event, the police officer or the Special Juvenile Police Unit is of the opinion that the child falls within the definition of “child in need of (sic) care and protection” as defined under Section 2(d) of the Juvenile Justice (Care and

6. 2017 SCC OnLine Cal 417 : 2017 Cri LJ 3893



Protection of Children) Act, 2000, [as suitably modified by the Juvenile Justice (Care and Protection of Children) Act, 2015 (sic)] the said police officer or the Special Juvenile Police Unit shall forthwith forward the child to the jurisdictional Child Welfare Committee for providing care, protection, treatment and rehabilitation of the child in accordance with law.

3. Whenever a registration of FIR is reported to the Special Court, the Special Court shall make due enquiries from the investigating agency as to compliance of the aforesaid requirements of law as stated in Directions 1 and 2, above and pass necessary orders to ensure compliance thereof in accordance with law, if necessary.

4. Officer in charge of the police station and the investigating officer in the case including the Special Juvenile Police Unit shall ensure that the identity of the victim is not disclosed in the course of investigation, particularly at the time of recording statement of the victim under Section 24 of the Act (which as far as practicable may be done at the residence or a place of choice of the victim or that of his/her parents/custodian, as the case may be), his/her examination before the Magistrate under Section 25 of the Act, forwarding of the child for emergency medical aid under Section 19(5) and/or medical examination under Section 27 of the Act.

5. The investigating agency shall not disclose the identity of the victim in any media and shall ensure that such identity is not disclosed in any manner whatsoever except the express permission of the Special Court in the interest of justice. Any person including a police officer committing breach of the aforesaid requirement of law shall be prosecuted in terms of Section 23(4) of the said Act.

6. Trial of the case shall be held in camera in terms of Section 37 of the Act and evidence of the victim shall be promptly recorded without unnecessary delay and following the procedure of screening the victim from the accused person as provided in Section 36 of the Act. The evidence of the victim shall be recorded by the Court in a child-friendly atmosphere in the presence of the parents, guardian or any other person in whom the child has trust and confidence by giving frequent breaks



and the Special Court shall not permit any repetitive, aggressive or harassive questioning of the child particularly as to his/her character assassination which may impair the dignity of the child during such examination. In appropriate cases, the Special Court may call upon the defence to submit its questions relating to the incident during cross-examination in writing to the court and the latter shall put such questions to the victim in a language which is comprehensible to the victim and in a decent and non-offensive manner.

7. In the event, the victim is abroad or is staying at a far off place or due to supervening circumstances is unable to physically attend the court to record evidence, resort shall be taken for recording his/her evidence by way of video conference.

8. The identity of the victim particularly his/her name, parentage, address or any other particulars that may reveal such identity shall not be disclosed in the judgment delivered by the Special Court unless such disclosure of identity is in the interest of the child.

9. The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under Section 357-A of the Code of Criminal Procedure, 1973 (sic) or any



other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of Section 33(8) of the Act.

10. The Special Court shall ensure that the trial in cases under POCSO is not unduly protracted and shall take all measures to conclude the trial as expeditiously as possible preferably within a year from taking cognizance of the offence without granting unreasonable adjournment to the parties in terms of Section 35(2) of the Act.”

12. We, are of the view that this order be brought to the notice of all the Sessions Judges and Special Court Judges in the State of Bihar. A copy of the order be also forwarded to the Director General of Police, State of Bihar, the Director of Prosecution, State of Bihar and the Superintendent of Police of each of the districts in the State of Bihar for effective implementation of the POCSO Act and the rules made thereunder. A copy of this order be also forwarded to the Member Secretary, Bihar State Legal Services Authority and Bihar Judicial Academy for wider deliberation.

13. This Court directs that the informant be as added as respondent no. 2 in the present appeal in course of the day. The identity of the victim/her guardian/parents shall not be disclosed in the records placed in public domain.



14. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State, submits that he will get the notice served upon the informant through the Office of the Superintendent of Police, Samastipur within a week and shall submit a report to this Court as regards service of notice upon respondent no. 2.

15. Office shall hand over the copy of notice to Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor, by tomorrow.

16. List this appeal on 13th May, 2024 under the same heading maintaining its position.

(Rajeev Ranjan Prasad, J)

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(Shailendra Singh, J)

