

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Amarjeet Sahni @ Amarjeet Kumar Sahni**

**Vs**

**The State of Bihar**

**CRIMINAL APPEAL (DB) No. 73 of 2022**

30 November, 2023

**(Honourable Mr. Justice Chakradhari Sharan Singh and Honourable Justice Smt. G. Anupama Chakravarthy)**

**Headnotes**

**Indian Penal Code, 1860 – Section 376(3) – Rape of minor – Sole reliance on statement under Section 164 CrPC – Sustainability of conviction** – Conviction under Section 376(3) IPC cannot be based solely on the statement under Section 164 CrPC when the victim herself during trial admitted that nothing wrong was done to her. The statement under Section 164 CrPC is a previous statement and can be used only for corroboration or contradiction, not as substantive evidence unless supported by oral evidence in court under oath. [Refer to: R. Shaji v. State of Kerala, (2013) 14 SCC 266] (Para 22-23)

**Indian Penal Code, 1860 – Section 376(3) – Medical evidence not supporting prosecution case** – In absence of medical evidence corroborating the allegations of sexual assault, and in absence of injury or any foreign particle on the victim's private parts, the Court held that the prosecution failed to prove the offence beyond reasonable doubt. Medical evidence found the hymen as old partially ruptured but no sign of recent sexual activity or injuries was found. (Para 14-15, 23)

**Indian Penal Code, 1860 – Section 448 – House trespass – Acquittal justified in absence of reliable evidence** – Apart from the statement under Section 164 CrPC, there was no reliable oral or documentary evidence proving the appellant's forcible entry into the victim's house. The victim's deposition in court did not support the prosecution's version during cross-examination. (Para 20-23)

**Criminal Procedure Code, 1973 – Section 164 – Evidentiary value of statement** – A statement under Section 164 CrPC can only be used for corroboration or contradiction of the statement given in court during trial. If the victim, during her examination-in-chief or cross-

examination, negates the content of her Section 164 CrPC statement, conviction based solely on that statement is not sustainable. [Refer to: R. Shaji v. State of Kerala, (2013) 14 SCC 266 – Para 26, 29] (Para 22-23)

**Criminal Law – Appreciation of Evidence – Contradictory statements of victim – Impact on conviction** – Where the victim has given contradictory versions in her examination-in-chief and cross-examination, and prosecution evidence is not corroborated by medical or independent evidence, benefit of doubt must be given to the accused. (Para 23)

<b>Appearances for Parties</b>
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For the Appellant : Mr. Rajnikant Pandey, Advocate

For the Respondent : Ms. Shashi Bala Verma, APP

Headnotes Prepared by Reporter: Ms. Akanksha Malviya, Advocate

<b>Judgment/Order of the Hon'ble Patna High Court</b>
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**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (DB) No. 73 of 2022**

Arising Out of PS. Case No.-270 Year-2018 Thana- WARISNAGAR District- Samastipur

Amarjeet Sahni @ Amarjeet Kumar Sahni S/O Yogeshwar Sahni Resident Of  
Village - Danhar Pand, P.S.- Warisnagar, District- Samastipur.  
... .. Appellant

Versus

The State of Bihar  
... .. Respondent

**Appearance:**  
For the Appellant : Mr. Rajnikant Pandey, Advocate  
For the Respondent : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN  
SINGH  
and  
HONOURABLE JUSTICE SMT. G. ANUPAMA  
CHAKRAVARTHY  
CAV JUDGMENT  
(Per: HONOURABLE JUSTICE SMT. G. ANUPAMA  
CHAKRAVARTHY)**

**Date : 30-11-2023**

This appeal has been filed against the judgment of conviction dated 21.12.2021 and order of sentence dated 23.12.2021 passed by Learned Additional Sessions Judge 6<sup>th</sup>-cum-Special Judge, (POCSO) Act, Samastipur in T.R. No. 129/21, R.N. No. 982 of 2018 (which arose out of Warisnagar Case No. 270 of 2018), wherein the appellant has been convicted for the offences punishable under Sections 448 and 376(3) of the Indian Penal Code, which is as under:



Appellant's Name	Sentence			
	Convicted under Section	Imprisonment	Fine(Rs.)	In default of fine
Amarjeet Sahni	376(3) of the IPC	R.I. for 20 years	20,000/-	S.I for 3 months
	448 of the IPC	S.I. for 1 year	-	-

All the sentences have been directed to run concurrently. However, the appellant was not found guilty for the offences punishable under Section 6 of POCSO Act.

2. As the matter relates to Section 376 of the Indian Penal Code and section 6 of the POCSO Act, we are of the considered view that the names of the victim or the parents of the victim shall not be disclosed in the judgment in order to safeguard the identity of the victim girl as per the directions of the Hon’ble Supreme Court.

3. We have heard Rajnikant Pandey, Learned counsel for the appellant and Learned Additional Public Prosecutor for the State of Bihar.

4. The criminal case was set into motion basing on the written information given by the victim, who is the informant (PW 2), dated 30.9.2018 to the S.H.O., Warisnagar Police Station, wherein the informant has stated that on 26.9.2018 at 5:00 PM,



the appellant entered into her house forcibly and raped her. When the victim raised alarm then the appellant threatened her that, if she would make any noise then she and her parents would be killed. Thereafter, the appellant fled away. When her mother returned back, then she narrated the entire incident to her, upon which her mother went to the *Sarpanch*, who assured her that the victim would get the justice and the victim would not be required to go anywhere else. But nothing happened and finally the victim submitted her written complaint before the police.

5. Basing on the written application of the victim, the SHO, Warisnagar Police Station, registered the case against the appellant *vide* FIR bearing Warisnagar P.S. Case No. 270 of 2018 dated 30.09.2018 for the alleged offences punishable under sections 448, 506, 376 and 34 of the IPC and under Section 4 of the POCSO Act.

6. During the course of investigation, the Investigating Officer has recorded the statement of the witnesses under Section 161 of the Cr.P.C., got examined the victim under Section 164 of the Cr.P.C. and further referred the victim for medical examination. On completion of the investigation and after receiving the documents, laid charge-sheet against the



appellant for the offences under Sections 448, 376(AB) and 506 of the IPC and under Section 6 of the POCSO Act.

7. The trial court took cognizance against the appellant *vide* order dated 04.02.2019 for the aforesaid offences and later charges were framed under Sections 448, 376(2)(m) and 506 of the IPC and Section 6 of the POCSO Act on 27.02.2019, against the appellant, read over and explained to him. The accused pleaded not guilty and claimed to be tried.

8. In order to prove the case against the appellant beyond the reasonable doubt, the prosecution has examined eight witnesses which are as follows:

<u>Rank</u>	<u>Name</u>
P.W. 1	Mother of the victim
P.W. 2	The Victim herself
P.W. 3	Satrughan Sahni
P.W. 4	Nand Kishore Sah
P.W. 5	Mantun Kumar Sah
P.W. 6	Dr. Kanti Kumar (Medical Officer)
P.W. 7	Pankaj Chandra Verma(Judicial Officer)
P.W. 8	Nand Kishore Choudhary (Investigating Officer)



9. In addition to the oral evidence of the prosecution’s witness, the prosecution also brought on record several documentary evidence which are as follows:

<u>S. No.</u>	<u>Exhibit No.</u>	<u>Description</u>
1.	Exhibit -P1/W2	Signature of the victim on her statement u/s 164 Cr.P.C.
2.	Exhibit-P2/W2	Signature of the victim on the written statement on the basis of the F.I.R.
3.	Exhibit-P3/W2	Signature of the victim on the requisition for her medical examination
4.	Exhibit-P4/W6	Medical Report of the victim
5.	Exhibit-P5/W7	Statement of the victim u/s 164 Cr.P.C.
6.	Exhibit-P6/W8	Endorsement over the written complaint the basis of the F.I.R.
7.	Exhibit-P7/W8	Charge-sheet against the accused.

10. P.W. 1 is mother of the victim girl. Her evidence discloses that the incident took place about nine months back at about 04:00 P.M. and at that particular point of time she was working in the fields. Later came to know that the accused was falsely implicated. As P.W. 1 did not support the case of the prosecutions, she was declared as hostile. In the cross-examination, she denied about the statement given to the Investigating Officer alleging that the appellant raped the victim girl, aged about 12 years.

11. P.W. 2 is the victim girl herself. Her evidence disclose that the appellant came to the house and forced her to



sleep with him and also admitted about giving the statement under Section 164 of the Cr.P.C. to the Magistrate and also about the complaint. However, it is testified by P.W. 2 that she did not know the contents of the statement/ written application given to the Police and also admitted that nothing wrong happened to her. It is pertinent to mention that P.W. 2 was not declared as hostile. Therefore, it can be construed that victim also did not support the case of the prosecution.

12. P.W. 3, namely, Satrugan Sahni independent witness was examined, but did not support the case of the prosecution and on the other hand he deposed that the appellant hails from a good family and never does any wrong.

13. Likewise P.W. 4, Nand Kishore Sah, P.W. 5- Mantun Kumar Sah, who are hearsay witnesses also did not support the case of the prosecution. In their cross-examination, it is specifically stated by them that there is dispute between both the families of appellant and victim and that the appellant was falsely implicated in this case.

14. P.W. 6, namely, Dr. Kranti Kumari, who was one of the members of the Medical Board testified that she examined the victim and found the hymen old partially ruptured, but did not find any injuries on the private part of the victim. She further





testified that swabs which are collected from the Vagina, were sent to FSL, but the report disclose that no spermatozoa was found. She opined that basing on the physical and radiological examination, the age of the victim was between 14 to 15 years. Further, there is no sign of rape or sexual contact and no injury or foreign body was found on the private parts of the victim.

15. P.W. 7, the Judicial Officer, who recorded the statement of the victim under Section 164 of the Cr.P.C.. The said statement was marked as Ext. P5.

16. P.W. 8, Nand Kishore Chaudhary, is the A.S.I. of Warisnagar Police Station, who received written application on 30.09.2018 addressed by the victim. His evidence further disclose that basing on said written application he registered the case in Crime No. 270 of 2018 on the file of Warisnagar Police Station, which is exhibited as Ext. P6. He further testified that he submitted the F.I.R. in verbatim and also recorded the statements of independent witnesses. Further, he visited the scene of offence, and recorded the statement of the victim under 164 of Cr.P.C. and also got the victim examined by the Doctors. In the cross-examination, it is admitted that the victim was alone in her house at the time of the incident and further parents of the victim



accompanied her to the Court at the time of the recording of the statement under Section 164 of Cr.P.C.

17. It is specifically contended by learned counsel for the appellant that even in the absence of oral or documentary evidence (except the 164 Cr.P.C. statement), the trial court has erroneously convicted the appellant and, therefore, the judgment of conviction dated 21.12.2021 and order of sentence dated 23.12.2021 passed by Learned Additional Sessions Judge 6<sup>th</sup>-cum-Special Judge, (POCSO) Act, Samastipur in T.R. No. 129/21, R.N. No. 982 of 18 (which arose out of Warisnagar Case No. 270 of 2018), is erroneous, unsustainable and deserves to be set aside. It is also contended that there is delay of four days in filing of the complaint, which is not explained by the prosecution.

18. On the other hand learned Additional Public Prosecutor appearing on behalf of the State of Bihar contended that even in absence of legal evidence, the sole prosecution evidence need not be disbelieved and, therefore, prayed to confirm the judgment of the trial court.

19. We have perused the impugned judgment of the Trial Court and the entire material on record and have given thoughtful consideration to the rival submissions made by the



appellant as well as learned APP for the State. The first and foremost aspect which requires to be addressed by this Court is that whether there is any evidence on record to prove the guilt of the appellant for the offences which he was convicted.

20. On perusal of the 164 Cr.P.C. statement, it is evident that the victim was alone in the house on 26.09.2018 and that the appellant came to the house of the victim grabbed her hand tightly, open his bottom clothes, committed rape on her and fled away.

21. Except the 164 Cr.P.C. statement i.e. Ext. P5, no incriminating material is available on record to prove the guilt of the appellant.

22. It is pertinent to mention that the Hon'ble Apex Court in the case of ***R. Shaji vs. State of Kerala*** reported in ***(2013) 14 SCC 266*** has held that:

*“26. Evidence given in a court under oath has great sanctity, which is why the same is called substantive evidence. Statements under Section 161 CrPC can be used only for the purpose of contradiction and statements under Section 164 CrPC can be used for both corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under*



*Section 164 CrPC, he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 CrPC. Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case.*

*29. During the investigation, the police officer may sometimes feel that it is expedient to record the statement of a witness under Section 164 CrPC. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential, owing to which the witnesses may be influenced. (Vide Mamand v. Emperor [(1946) 59 LW 138 : AIR 1946 PC 45], Bhuboni Sahu v. R. [(1948-49) 76 IA 147 : AIR 1949 PC 257], Ram Charan v. State of U.P. [AIR 1968 SC 1270 : 1968 Cri LJ 1473] and Dhanabal v. State of T.N. [(1980) 2 SCC 84 : 1980 SCC (Cri) 340 : AIR 1980 SC 628])”*

The above citation squarely applies to the facts of the case.

23. On perusal of the judgment of the Trial Court, it is evident that the Trial Court has convicted the accused solely



considering the 164 Cr.P.C. statement of the victim girl. It is relevant to mention that the victim's testimony is of two versions, contrary to chief-examination and cross-examination. On the one hand, she deposes that rape was committed by the appellant and in the cross-examination admits that appellant had not done any wrongful act. Further, the medical evidence does not support the case of the prosecution in any manner to prove the sexual assault against the victim. Therefore, the finding of the trial court that the accused committed rape on the victim, solely relying upon the 164 statement cannot be sustained. Therefore, the conviction of the appellant for the offence punishable under Section 448, and 376(3) of the Indian Penal Code and Section 6 of the POCSO Act are not sustainable and the judgment and conviction and the order of sentence dated 21.12.2021 and 23.12.2021 respectively are, hereby, set aside.

24. Accordingly, the appeal is allowed and judgment of conviction dated 21.12.2021 and order of sentence dated 23.12.2021 passed by Learned Additional Sessions Judge 6<sup>th</sup>-cum-Special Judge, (POCSO) Act, Samastipur in T.R. No. 129/21, R.N. No. 982 of 2018 (which arose out of Warisnagar Case No. 270 of 2018) are hereby set aside.



25. The appellant, namely, Amarjeet Sahni @  
Amarjeet Kumar Sahni is in custody since 21.12.2021. Let him  
be released forthwith, if not required in any other matter.

(G. Anupama Chakravarthy, J)

*I agree*  
(Chakradhari Sharan Singh, J):-

*Shanu/-*

(Chakradhari Sharan Singh, J)

AFR/NAFR	AFR
CAV DATE	29.11.2023.
Uploading Date	13.12.2023.
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