

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.3181 of 2022

Arising Out of PS. Case No.-536 Year-2020 Thana- BEGUSARAI TOWN District- Begusarai

=====

Anita Devi, W/O Gupteshwar Paswan, R/O -Kapasiya Harrkh, P.S.- Nagar,Dist.- Begusarai

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (SJ) No. 4009 of 2022

In

CRIMINAL APPEAL (DB) No.760 of 2022

Arising Out of PS. Case No.-536 Year-2020 Thana- BEGUSARAI TOWN District- Begusarai

- =====
1. Amarjeet Kumar, Son of Shankar Thakur, R/V- Mushritola, Ward No. 12, Singhaul, P.S- Muffasil (Singhaul) ,Dist- Begusarai
 2. Gaurav Kumar, Son of Munish Chaudhary, R/V- Rajapur, Ward No. 7, P.S- Muffasil, Dist- Begusarai
 3. Sumit Kumar, Son of Ramswarath @ Rom Sogarath Mahto, R/V- Nagdah, P.S- Muffasil (Singhaul), Dist- Begusarai
 4. Himanshu Kumar, Son of Ram Balak Saw, R/o Bishanpur, Ward No.- 43, P.S- Nagar, Dist- Begusarai

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No presumption of victim having loose character- no physical relationship or illegal activity by victim established- statement as to the description of the place of recovery corroborates- accused not succeeded to elicit any fact by cross-examining the victim to contradict the allegation- victim's evidence reliable and trustworthy. (Para-18,20,21)

Victim's age below 18 years as per medical evidence and statement u/s 164 CrPC and Ossification test- evidence of witnesses sufficient- A1 identified by victim- recovery of objectionable articles from A1's house- involvement of A1 believable- conviction of A1 appears to be proper and legal. (Para-22,24,25)

Not sufficient evidence to justify conviction of A2 to A5- not identified by victim- only their presence not sufficient- conviction of A2 to A5 not proper and legal u/s 4 POCSO Act- conviction of A1 upheld- conviction of A2 to A5- set aside. (Para-26,27 and 28)

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Appearance :
(In CRIMINAL APPEAL (SJ) No. 3181 of 2022)
For the Appellant/s : Mr. Sanjeev Kumar, Adv.
Ms. Preeti, Adv
Mr. Ravi Kumar Pandey, Adv.
Ms. Shreya Jha, Adv.
For the Respondent/s : Mr. Ramchandra Singh, APP
(In CRIMINAL APPEAL (SJ) No. 4009 of 2022)
For the Appellant/s : Mr. Ashok Kumar Jha, Adv.
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT



Date : 22-03-2024

1. Since both appeals have arisen out of the same judgment hence they are being decided together by a common judgment.

2. Heard learned counsels for the appellants and learned APPs appearing for the State.

3. In this judgment, the appellants namely Anita Devi, Amarjeet Kumar, Gaurav Kumar, Sumit Kumar and Himanshu Kumar will be referred to as A1, A2, A3, A4 and A5 respectively.

4. The appellants have challenged the judgment impugned dated 30.07.2022 whereby they have been convicted by the court of learned Exclusive Special Court (POCSO Act)-cum-6th Additional District & Sessions Judge, Begusarai in POCSO Case No. 35/2020 arising out of Begusarai Town P.S. Case No. 536/2020 and also challenged the order of sentence dated 02.08.2022 whereby they have been sentenced for the offences for which they have been convicted.

5. The appellant, A1-Anita Devi, stood charged for the offences under sections 346, 367, 370, 370A, 372, 373, 376 all read with section 34 of IPC and 120B of the Indian Penal Code (in short 'IPC') and also stood charged for the offences under sections 4, 6, 12 and 17 of the Protection of Children from Sexual Offences



Act (in short 'POCSO Act') and also charged for the offences under sections 3, 4, 5 and 6 of Immoral Traffic (Prevention) Act (in short 'ITP Act'), all read with section 34 of IPC and also stood charged for the offences under sections 75 and 79 of Juvenile Justice Act (in short 'J.J. Act') read with section 34 of IPC and under section 30(a) of the Bihar Prohibition & Excise Act. The other appellants (A2 to A5) stood charged for the same offences like A1.

6. The trial court held the appellant no. 1 guilty of the offences punishable under sections 3, 4, 5 and 6 of ITP Act and under section 4 of POCSO Act. She was acquitted of other offences for which she was charged.

7. The trial court convicted the appellants A2 to A5 for the offence punishable under section 4 of POCSO Act and they were acquitted of other charged offences.

8. The trial court sentenced the appellant A1 to undergo rigorous imprisonment for one year with a fine of Rs. 1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month for the offence under section 3 of ITP Act read with section 120B of IPC. She was further sentenced to undergo simple imprisonment for one year with a fine of Rs. 1,000/- and in default of payment of fine, to further undergo



simple imprisonment for one month for committing the offence under section 4 of ITP Act read with section 120B of IPC. She was further sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month for committing the offence under section 5 of ITP Act read with section 120B of IPC. She was further sentenced to undergo rigorous imprisonment for seven years with a fine of Rs. 10,000/- and in default of payment of fine, to further undergo simple imprisonment for six months for committing the offence under section 6 of ITP Act read with section 120B of IPC and she was also sentenced to undergo rigorous imprisonment for ten years with a fine of Rs. 50,000/- and in default of payment of fine, to further undergo simple imprisonment for six months for committing the offence under section 4(1) of POCSO Act read with section 120B of IPC. All these sentences were directed to run concurrently.

9. The trial court sentenced the appellants A2, A3, A4 and A5 to undergo rigorous imprisonment for ten years with a fine of Rs. 50,000/- each and in default of payment of fine, to further undergo simple imprisonment for six months for committing the



offence under section 4(1) of POCSO Act read with section 120B of IPC.

Prosecution's story :-

10. The prosecution's story in brief is that the informant, the Circle Inspector, received the information from one Md. Jahid Hussain, a member of Justice Ventures India Trust that the appellant A1 indulged in prostitution by bringing minor girls from different places and thereafter, the informant under the leadership of Dy. S.P. Headquarter, Nishit Priya, raided the said place and recovered the victim and so many objectionable articles and the said articles were also seized. As per the informant, in order to verify the secret information, a police team consisting of several male and female police personnel, all posted at Town police station, Begusarai, including Md. Jahid Hussain, a member of J.V.I. Trust, was formed. The team under the leadership of Dy. S.P. raided the house of appellant A1 and recovered a minor girl, aged about 16 years at that time, who was being compelled into prostitution and she was found in an objectionable condition and the appellant A1, co-convict Rani Kumari @ Rani Parveen and other appellants were also apprehended at the spot. Thereafter, the house of appellant A1 was searched and several used and unused condoms, erotican capsules, C.P.U., web camera, several *cheque*



books and one ATM card in the name of A1, a small diary having mobile numbers of several persons, 10 sets of mobile phones of different companies, several empty wine bottles, one EPSON billing machine and some Indian currency of different denominations were recovered. A seizure memo was prepared in respect of these seized materials in the presence of witnesses and when the victim was interrogated regarding her identity, she revealed her name and address and also stated that she had gone to Delhi with one namely Vasant Kumar one year ago where she was left alone by the said Vasant Kumar and thereafter, she came to Patna by a train where she was kept by one person and she was brought to Begusarai at the house of appellant A1 by the said person of Patna and she had been residing in the house of A1 for last one month. The victim further alleged that the appellant A1 and co-convict Rani Kumari @ Rani Parveen forced her to undergo prostitution and they brought persons by taking Rs. 1,000/- from each and when she denied to involve in prostitution, she was assaulted by them and both confined her in a room which was locked from outside. The victim further alleged that she had to undergo sexual relation with 10-12 persons everyday.

11. The Circle Inspector, Madan Kumar Singh, informant of this case, filed a written FIR (Ext P-6) describing the



above allegations, on that basis, a formal FIR bearing Sadar Town P.S. Case No. 536/2020 was registered under sections 346, 367, 370, 370(A), 372, 373, 376, 120(B) read with section 34 of IPC, under sections 4, 6, 12 and 17 of POCSO Act, under sections 3, 4, 5 and 6 of ITP Act, under sections 75 and 79 of J.J. Act and under section 30(a) of the Bihar Prohibition & Excise Act, which set the criminal law in motion.

12. After completion of the investigation, the police chargesheeted the appellants for the alleged offences and learned Exclusive Special Judge, POCSO Act, took cognizance of the alleged offences and thereafter, charged the appellants in the above manner.

Submissions made by Appellants' counsel :-

13. Mr. Sanjeev Kumar, learned counsel appearing for the appellant Anita Devi has argued that the statement of the victim was recorded on 14.10.2020 several days after the alleged occurrence and there is nothing on record to corroborate her statement. He has further submitted that the medical evidence does not corroborate the story of the prosecution. It has been further argued that in this matter, the prosecution failed to examine any independent person to substantiate the offences charged and only police officials were produced and examined by the prosecution



despite several local persons having gathered at or near the raiding place but none of them was made as a witness. It has been further submitted that initially the victim went to Delhi with one Vasant Kumar, where she lived for several months and thereafter, she came alone at Patna and till that time, no any family member of the said victim came forward to lodge a missing complaint or take any other legal action. So by these facts, it can be safely deemed that the so-called victim was having loose character and she was recovered with one person only at the alleged place and she stated before the police that the said person did not commit any wrong with her.

It has been further argued that no occurrence as alleged took place and there are serious contradictions in between the statement of PW1-victim and the evidence of other prosecution witnesses and the statement of the victim was not recorded by a woman police officer. Learned counsel has further submitted that as per the medical evidence given by PW-10, no evidence of sexual assault to the so-called victim was found hence the allegation of penetrative sexual assault does not corroborate with medical evidence and provisions of section 100(4) of Cr.P.C. were not followed by the police officials during search of the alleged place and the evidence of prosecution witnesses is not sufficient to



establish the charge of the offence of penetrative sexual assault with the so-called victim. It has been further submitted that the prosecution was not entitled to get the benefit of section 29 of POCSO Act as the prosecution failed to prove the foundational facts of its case beyond reasonable doubt. Learned counsel further submitted that at the alleged place, only one girl (victim) is said to have been recovered so the said place cannot be deemed as a *brothel* and according to the evidence of the victim girl, only one person was found with her who did not commit any wrong with her and other four persons (appellants A2 to A5) who are said to have been found at the alleged place, were not present with the victim as per the prosecution's story.

14. Mr. Ashok Kumar Jha, learned counsel appearing for the appellants A2 to A5 has argued that the so-called victim failed to identify any of these appellants (A2 to A5) when they were produced before her through video call and as per the statement of Investigating Officer, the appellant A3 was caught with Epson machine which is used for generating electric bill, in fact the appellants A2 to A5 went to the house of A1 for generating electric bill and they were found outside her house from where they were taken into custody and the appellants A2 to A4 are employees of



Electricity Department while the appellant A5 was present as a companion of the appellants A2 to A4.

Submissions made by learned APPs :-

15. Mr. Ramchandra Singh and Mr. Bipin Kumar, learned APPs appearing for the State have vehemently opposed both the appeals and the common submissions made by them are that from the house of appellant A1, the victim was recovered with a person and several objectionable articles used in immoral activity were seized from the house of the said appellant and the victim remained consistent to her allegations and her evidence is completely reliable and trustworthy in respect of the allegations levelled by her against all these appellants. It is further submitted that though as per the medical evidence, any sign of recent sexual assault to the victim was not found but as per the evidence of the victim, she was being subjected to the immoral activity of prostitution by the appellant A1 and co-convict Rani Kumari @ Rani Parveen in a very planned and organized manner so, in such a situation, there was no possibility of finding any sign of recent sexual assault on the person of the victim and the prosecution witnesses proved the recovery of the victim and other objectionable articles from the house of A1 and as per the medical evidence, the victim's age was 15 to 16 years at the time of



medical examination so she was a minor girl when the alleged offence of POCSO Act was committed with her. It has been further submitted that the appellant A1 and co-convict used their house as a brothel and compelled the victim to be involved in prostitution and by this act, they earned money and on account of these acts the victim, who was below the age of 18 years, was subjected to penetrative sexual assault with the customers, hence, all the appellants have been rightly convicted for the alleged offences and there is no force in these appeals and both the appeals are liable to be dismissed.

Analysis and conclusion:-

16. Heard both the sides and perused the judgment impugned and the evidences available on the case record of the trial court and also gone through the statements of the convicts/appellants.

17. As per the allegation, the appellant A1 and her daughter Rani Kumari @ Rani Parveen indulged in immoral activity of prostitution and for this purpose, the victim was handed over to them by someone, a resident of Patna and she was forced by the appellant A1 and her daughter to establish sexual relationship with several persons who were called as customers and thereafter, PW-11/ Md. Jahid Hussain, a member of an NGO



namely Justice Ventures India Trust, made the police aware about the said illicit activity which was being committed in the house of appellant A1 by giving a secret information and then a police team, consisting of several police officials, was constituted which raided the house of appellant A1 and upon raid, the victim was recovered with several objectionable articles such as condoms, mobile phones, web camera, cheque books, drugs, empty wine bottles and Indian currency of different denominations and the appellants A2 to A5 were also found in the house of appellant A1 and as per the prosecution's story, they were present as customers.

18. In the light of above allegations, the most important witness of the prosecution is the victim girl who is said to have been recovered from the house of appellant A1 and the prosecution's case completely depends upon her evidence. The victim was examined as PW-1. She deposed that she firstly went to Delhi with one person namely Vasant Kumar one year prior to the alleged occurrence and thereafter, she reached at Patna where one person met her and assured her to provide good employment to her but he sold her to appellant A1 for Rs. 10,000/- (rupees ten thousand). She further deposed that the appellant A1 and her daughter Rani Kumari @ Rani Parveen mixed some intoxicated tablets in her food and thereafter, she was forced to eat the said



food and when she denied to eat the same, she was assaulted by them and both took Rs. 1,000/- (rupees one thousand) from each customer and forced her to establish sexual relation with customers. She further stated that in the night of the alleged day at about 8:00 P.M., the police raided the house of A1 and recovered bottles of wine, condoms, etc. and at that time, A1 and Rani Kumari @ Rani Parveen were apprehended at the spot. The victim was cross-examined at length by A1 and Rani Kumari @ Rani Parveen and in the cross-examination, she stated that she went to Delhi in the month of July 2019 with one Vasant Kumar where she lived with him for 8-9 months and she could not state the details of the house where she resided but she denied to live as wife of said Vasant Kumar and further stated that she returned to Patna in the year 2020 where she resided for one month with someone though she could not give the details of the said person as she did not know his name but she denied to make any relationship with the said person of Patna as husband and wife. From these facts, one thing is clear that the victim first went to Delhi and thereafter, returned to Patna but she flatly denied to make any physical relationship with the persons with whom she resided there. During course of argument, learned counsel appearing for the appellants vehemently argued that the so-called victim was having loose



character which can be inferred from her conduct as to going to Delhi and Patna and residing there with some unknown persons. But in view of above facts stated by the victim, it cannot be presumed that the victim was having loose character as in the cross-examination, she did not accept to have established physical relation or have done any other illegal activity with the persons with whom she resided in Delhi and Patna rather it appears that she herself became the victim of the circumstances.

19. PW-1, victim, deposed in the para-9 of her cross-examination that the house of A1 had several rooms and she was kept inside a middle room and there were also rooms above and below the room where she was kept. The victim clearly stated that the said house belonged to A1.

20. PW-11, Md. Jahid Hussain, a member of NGO, who initially informed the police about the illegal activity which was running in the house of A1 and he was also a part of the police party which raided the house of A1 and he deposed that the house of A1 had two floors. This statement corroborates the victim's statement as to the description of the place of recovery.

21. The victim denied the suggestion that she had made false allegation against A1 and falsely roped her in a false case. The accused/appellant A1 did not succeed to elicit any fact by



cross-examining the victim to contradict her about the allegations which were levelled by her in the examination-in-chief. So, the victim's evidence seems to be reliable and trustworthy.

22. As per the prosecution, the victim's age was 16 years at the time of her recovery from the house of A1. There are some circumstances which go in favour of this age. Firstly, the victim herself disclosed her age as 16 years while recording her evidence before the trial court as well as at the time of recording her statement before the Judicial Magistrate. Secondly, the trial court as well as the Judicial Magistrate who recorded the victim's statement under section 164 of Cr.P.C. also assessed the victim's age as being 16 years at that time and the third most important circumstance and evidence is the medical evidence. The victim was examined by a medical board to ascertain her age and the board assessed her age between 15 to 16 years on the basis of Ossification Test and in this regard, the evidence of PW-8 is relevant. The witness deposed that the last molar teeth of the victim had not erupted on both side of Mandible. As per the Modi jurisprudence, the last molar teeth in most of the cases, erupts between 17 and 25 years of age, so in view of this medical evidence, the victim girl can be treated as below 18 years at the time of her examination on account of non eruption of her last



molar teeth. Furthermore, in order to rebut these circumstances, no evidence has been given by the appellants in their defence.

23. The penal provision of section 4(1) of POCSO Act is attracted if someone penetrates his penis to any extent into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person. In the instant matter, in view of the evidence of PW-1, several persons sexually assaulted the victim for which A1 forced her to do so. So, the alleged act of A1 clearly attracts the penal provision of section 4(1) of POCSO Act.

24. The appellant A1 has also been convicted for the offences under sections 3, 4, 5 and 6 of ITP Act. From the house of A1, several used and unused condoms, wine bottles, several cheque books, CPU, mobile phones, cash amount of different denomination, drugs, etc. were recovered by the police party along with the victim and in this regard, the evidence of PW-2, PW-4, PW-5, PW-6, PW-9 and PW-11 is very relevant. All these witnesses fully supported the recovery of the said articles from the house of A-1. Though the prosecution failed to produce these articles before the trial court but the evidence of these witnesses is sufficient to prove the recovery of the alleged articles as they proved the seizure memo which was prepared in respect of recovered articles. PW-2 deposed that the seizure list was prepared



at 9:32 P.M. on 07.10.2020, upon which she made her signature. The witness identified her signature which was marked and exhibited as Ext.-2. She further deposed in para-22 of her cross-examination that the seizure list was prepared in respect of the seized articles and she could give the details of the seized articles.

25. PW-9 deposed that from the rooms of A1 and Rani Kumari @ Rani Parveen, several used and unused condoms, 9-10 mobile phones, Indian currency of different denominations, web camera, CPU and empty wine bottles were recovered and the seizure list of these articles was also prepared by him. The witness proved the seizure list which was marked as P2/1. The witness is the informant and he stated in his examination-in-chief that during interrogation, the victim told that she was assaulted by A1 and co-convict Rani Kumari @ Rani Parveen and was also confined in a room by them and everyday 8-10 persons established sexual relation with her. The evidence of this witness goes in favour of the prosecution and is sufficient to prove the recovery of the objectionable articles from the house of A1 and also supports the victim's allegations. Here, it is important to mention that in the trial court, A1 was produced before the victim through video call and she was identified by the victim. In view of the allegations levelled by the victim as well as in the light of the recovery of



objectionable articles from the house of A1, the prosecution's allegations as to A1 being involved in immoral activities and using her house as brothel and forcing the victim into prostitution and getting earning from the said activity and detaining the victim with the intention that she would be subjected to sexual intercourse with several persons without her consent, appears to be believable, hence, conviction of A-1 for the offences under sections 3, 4, 5 and 6 of ITP Act also appears to be proper and legal.

26. So far as the legality of the conviction of A2 to A5 is concerned, this Court does not find sufficient evidences to justify their conviction under section 4 of POCSO Act. Though these appellants were found present in the house of A1 when police party raided the said house but the victim girl did not say anything against any of them and she did not make any allegation of sexual assault against any of them and even she did not identify them when they were produced before her through video call in the trial court, so merely on account of the presence of these appellants in the house of A1, it will not be proper and legal to convict them for the offence under section 4 of POCSO Act and moreover, these appellants took the defence that they visited the house of A1 to generate electricity bill and from the possession of A3, EPSON machine which is used in generating bill was recovered and the



appellants A2 and A4 are said to be employees of the Electricity Department and according to them, A5 was present with them as their companion.

In view of this evidence as well as considering the victim's evidence in respect to A2 to A5, their conviction under section 4 of POCSO Act does not appear to be proper and legal and the same requires interference from this Court.

27. For the above noted and discussed evidences and circumstances coming out from the prosecution evidences, this Court forms the opinion that A1-Anita Devi confined the victim in her house, forced the victim to undergo prostitution and establish sexual relation with several persons and the appellant used the premises of her house to run prostitution activity and earned money by subjecting the victim to prostitution and the prosecution also succeeded to prove the victim's minority and her age being below 18 years when the alleged occurrence was being committed with her. As such, the conviction of appellant Anita Devi (A1) for the offences punishable under sections 3, 4, 5 and 6 of ITP Act and under section 4 of POCSO Act appears to be proper and legal and this Court finds no reason to interfere with the same, hence, **the conviction of the appellant Anita Devi is hereby upheld and**



her criminal appeal bearing no. Cr. APP(SJ) No. 3181/2022 stands dismissed.

28. The appellants A2-Amarjeet Kumar, A3-Gaurav Kumar, A4-Sumit Kumar and A5-Himanshu Kumar are hereby acquitted of the offence punishable under section 4 of POCSO Act for which they have been convicted and the judgment and order impugned convicting and sentencing them for the offence under section 4 of POCSO Act are **hereby set aside only to the extent of A2 to A5 and their appeal bearing No. Cr. APP (SJ) No. 4009/2022 stands allowed.**

29. Since the appellants namely Amarjeet Kumar, Gaurav Kumar, Sumit Kumar and Himanshu Kumar have already been granted bail by a co-ordinate bench of this Court vide order dated 21.08.2023, hence, no specific order for their release is required and they as well as their sureties are discharged from their respective bail bond which shall stand cancelled.

30. Let the judgment's copy be sent immediately to the trial court as well as the jail authority concerned for needful information and compliance.

31. Since both the criminal appeals and Cr. APP (SJ) No. 3090/2022 have arisen out of the same judgment and the Cr. APP (SJ) No. 3090/2022 is running for determination of appellant's



plea of juvenility as well as for final hearing, in which the trial court’s record will be required, hence, the trial court’s record be attached to the case record of Cr. APP (SJ) No. 3090/2022.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	14.03.2024
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