

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2433 of 2024**

Arising Out of PS. Case No.-71 Year-2018 Thana- SANHAULA District- Bhagalpur

Pappu Singh, S/O Late Anker Singh, R/O Village- Dogachhi, P.S- Sanhoula,
Distt.- Bhagalpur. ... Appellant/s

Versus

1. The State of Bihar
2. XXX, S/O AAA, R/O Village + P.S- Distt.- Purnea.

... Respondent/s

Appearance :

For the Appellant	:	Mr. Ajay Kumar Thakur, Adv. Mr. Ranjan Kumar Jha, Adv. Mr. Rana Pratap Singh, Adv.
For the State	:	Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 29-06-2026

Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant and Ms. Anita Kumari Singh, learned APP for the State.

2. The instant appeal has been preferred against the judgment of conviction dated 29.04.2024 and the consequent order of sentence dated 06.05.2024 passed by the learned Exclusive Special Court (POCSO Act)-cum-7th Additional District & Sessions Judge, Bhagalpur, in POCSO Case No. 1720 of 2018 arising out of Sanhoula P.S. Case No. 71 of 2018, whereby and whereunder the appellant has been convicted for the offences punishable under Sections 363 and 376 of the Indian Penal Code (in short, 'IPC') and section 4 of the



Protection of Children from Sexual Offences Act, (in short, 'POCSO Act'). The appellant has been sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 10,000/- (Rupees Ten Thousand) under section 363 of the IPC and in default of payment of fine, he has been directed to undergo simple imprisonment for six months and further, he has been sentenced to undergo rigorous imprisonment for ten years with a fine of Rs. 25,000/- (Rupees Twenty Five Thousand) under section 4 of the POCSO Act and in default of payment of fine, he has been directed to undergo simple imprisonment for one year. Considering the provision under section 42 of the POCSO Act, no separate sentence was awarded upon the appellant under section 376 of the IPC. All the sentences have been directed to run concurrently.

Prosecution story :-

3. The prosecution case, in brief, is that the informant (P.W. 2) submitted a written application before the S.H.O., Sanhaura Police Station, on 18.04.2018 alleging, inter alia, that after the death of his wife, his minor daughter, aged about 13 years, was residing along with her minor brother and a minor sister at Dogachhi, her maternal home. He further alleged that on 17.04.2018, while he was at his native village, he



received the information that accused Pappu Singh (the sole appellant), aged about 45 years, a resident of Village Dogachhi, had enticed away and kidnapped his minor daughter with an intention of marrying her with the assistance of one Purushottam Singh. As per informant, upon receiving the said information, he came to his in-laws' house at Dogachhi and made enquiries from his brothers-in-law, Nirdosh Kumar and Ashutosh Kumar, who informed him that their co-villager, Pappu Singh (appellant) had kidnapped his daughter (the victim) with the intention of marrying her with the assistance of Purushottam Singh. On the basis of the said written application, the F.I.R. was instituted.

4. The informant filed his written application on 18.04.2018 at about 09:00 P.M. at Sanhaura Police Station and detailed the above-mentioned incident. Upon that basis, a formal FIR bearing Sanhaura P.S. Case No. 71 of 2018 was registered for the offences punishable under section 366A read with section 34 of the IPC, thereby setting the criminal law in motion. Subsequently, vide order dated 06.08.2018, sections 363, 376 and 327 of the IPC and section 4 of the POCSO Act were added to the FIR.

5. During the course of investigation, the victim



was recovered and her statement was recorded under sections 161 and 164 of the Cr.P.C. After completion of the investigation, the appellant was charge-sheeted for the offences punishable under sections 363, 366A, 376 and 327 read with section 34 of the IPC and section 4 of the POCSO Act.

6. After cognizance of the alleged offences, the learned CJM, Bhagalpur, committed the case of the appellant to the court of Special Court (POCSO)-cum-Additional District & Sessions Judge, Bhagalpur, for trial. The appellant stood charged for the offences under Sections 366A, 363/34, 376 & 327 of the IPC and sections 4 & 18 of the POCSO Act. The said charges were read over and explained in Hindi to the appellant by the trial court, to which he pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined altogether eight witnesses who are as under :-

Rank	Name	Nature of Evidence
PW-1	Swayama Prabha	Police officer who recorded victim's statement under section 161 of Cr.P.C.
PW-2	YYY	Father of the victim
PW-3	XXX	Victim
PW-4	ZZZ	Maternal uncle of the victim
PW-5	Dr. Priyanka Kumari	Medical officer who examined the victim
PW-6	Anil Kumar Jha	3 rd Investigating Officer since 10.01.2019
PW-7	Brajesh Kumar	4 th Investigating Officer since 23.04.2019
PW-8	Jay Hind Kumar	Incharge Principal & School teacher at the time of victim's admission



8. In addition to the above mentioned ocular evidence, the prosecution proved and exhibited the following documents in documentary evidence :-

Sr. No	Exhibit No.	Description	Proved by/Attested by
1.	Ext.-P1/PW1	Writing and signature of SHO of Mahila P.S. on the statement recorded under section 161 of the Cr.P.C.	PW-1
2.	Ext.-P2/PW1	Signature upon the written application	PW-2
3.	Ext.-P1/1/PW3	Signature of the victim upon the statement recorded under section 161 of the Cr.P.C.	PW-3
4.	Ext.- P3/PW3	Signature of the victim upon the statement recorded under section 164 of the Cr.P.C.	PW-3
5.	Ext.-P4/PW5	The report of the Doctor	PW-5
6.	Ext.- P5/PW7	The chargesheet	PW-7
7.	Ext.-P6/PW7	The formal FIR	PW-7
8.	Ext.-P7/PW8	The transfer certificate of the victim	PW-8

9. After the completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short, ‘Cr.P.C.’) by the trial court. The appellant denied the material circumstances appearing against him from the prosecution evidences and pleaded innocence.

10. The appellant did not give any oral or documentary evidence in his defence.

11. While convicting the appellant for the charged offences under section 363 of the IPC and section 4 of the POCSO Act, the learned trial court mainly placed reliance upon



the testimony of the victim (PW-3).

Submissions on behalf of the appellant :-

12. Mr. Ajay Kumar Thakur, learned counsel appearing for the appellant has mainly argued that the daughter of the informant (the victim), who was examined as PW-3, is not a sterling witness for proving the charged offences under sections 363 and 376 of the IPC and section 4 of the POCSO Act, for which the appellant has been convicted and sentenced. In support of this submission, learned counsel has drawn the attention of this Court to the deposition of the victim.

12.1. Further argument is that, in view of the evidence of the informant, who was examined as PW-2, the statements made by him in the FIR do not appear to be his own. In support of this submission, learned counsel has drawn the attention of this Court to the informant's deposition.

12.2. The third contention raised by learned counsel for the appellant is that PW-4 was wrongly shown as an eyewitness to the alleged occurrence. In support of this contention, learned counsel has drawn the attention of this Court to the evidence of the victim, who was examined as PW-3.

12.3. Lastly, it is contended that the neighbours of the informant, who were the best persons to speak about the



truth of alleged occurrence, were not produced and examined and withheld by prosecution without any reason.

Submissions on behalf of the State :-

13. In rebuttal of above arguments, learned APP has submitted that the victim's own evidence is sufficient to prove the charged offences and she has fully supported the prosecution case in her statement recorded under section 164 of the Cr.P.C. as well as in her deposition before the trial court. Further, her allegations find corroboration from her injury report.

Consideration and analysis :-

14. I have heard both the sides, perused the judgment impugned, the evidences adduced by both the sides, including the statement of the appellant recorded by him under section 313 of the Cr.P.C.

15. In the light of the above submissions and contentions, I have gone through the evidence of the material witnesses of the prosecution. At the outset, I would like to discuss the evidence of PW-2, who is the informant. As per the FIR, he received information regarding the alleged occurrence from his brothers-in-law, namely NNN and ZZZ (PW-4), and the alleged occurrence took place at the village of the informant's in-laws. Admittedly, he was not present at the place



of occurrence at the relevant time, therefore, in relation to the commission of the alleged offence, he appears to be a hearsay witness.

15.1. In the cross-examination, the PW-2 deposed that he was not able to read or write and only knew how to sign, and that the written report was scribed by Bada Babu (police official). He further stated that he did not know the person who wrote the report and at the direction of the said Bada Babu, he merely affixed his signature on the written report. This statement indicates that the informant was not fully aware of the contents of the written report and had simply signed it at the direction of a police official. This creates a doubt regarding the reliability of the written report/fardbeyan (Exhibit P-2/PW1).

15.2. Further, the witness (PW-2) stated in his examination-in-chief that he received information about the alleged rape of his daughter (the victim) from his own daughter (PW-3) whereas in the FIR he stated that he received such information from his two brothers-in-law. It is relevant to mention here that out of the said two brothers-in-law, only one was examined as PW-4, and the other was not examined. Surprisingly, in his cross-examination, he stated that he received all the information regarding the occurrence from his brother-in-



law (PW-4). This statement is contradictory to the version given in the FIR. He further stated in the paragraph 11 of his cross-examination that he lodged the FIR on the basis of the information received from PW-4. In this way, as per the evidence of this witness, the informant's brothers-in-laws were important persons for substantiating the allegations made in the FIR, as the informant claimed to have received information of the occurrence from them. The evidence of PW-4, who happens to be one of the brothers-in-law of the informant, will be appreciated later in the light of the evidence given by the victim herself.

16. Now, I come to the evidence of the victim, who was examined as PW-3. She deposed in her examination-in-chief that, on the alleged day and time of the occurrence, her uncles, who are the brothers-in-law of the informant, were not present at the house of her maternal grandmother. They had gone to attend a feast, and at that time, she and her maternal grandmother (Nani) were the only persons present there. She further deposed in her examination-in-chief that on that day, the appellant and his associates (Purushottam Singh, Ravi Singh and Nilesh Singh), who have been acquitted of the charged offences by the same impugned judgment, came to the house.



The appellant then caught hold of her by her hair and threatened to kill her if she did not agree to marry him. Thereafter, he started beating her maternal grandmother (Nani), and after that the appellant and his companions brought her to a temple situated near the River Geruwa, where the appellant forcibly married her by showing a pistol.

16.1. In view of above statements, at the time of commission of the alleged occurrence, only the victim and her maternal grandmother (Nani) were present at their house, and the victim's grandmother witnessed the commission of the alleged occurrence. However, very surprisingly, she (Nani) was not examined by the prosecution. Further, the prosecution failed to produce any medical evidence to prove the alleged assault on the victim's grandmother by the accused persons, despite the victim's allegation that she had been assaulted by the accused persons, including the appellant.

17. If these above statements are taken into account, it appears that PW-4, the brother-in-law of the informant, was not present at the victim's maternal grandmother's house where the first part of the alleged occurrence took place. However, the said statements of the victim contradict the evidence of PW-4, particularly with



respect to his presence at the alleged place at the time of the occurrence. PW-4 deposed in his examination-in-chief that, on the alleged day and time of occurrence, he and his family members went to sleep after taking meals and thereafter, the appellant and his companions, armed with weapons, came and started beating him, caught hold of the victim by her hair, and dragged her outside the village. They also fired shots on the outskirts of the village. This statement shows that PW-4 claimed to have witnessed the first part of the occurrence, whereas the victim (PW-3) denied his presence at that place. This serious contradiction between the testimony of the victim (PW-3) and her maternal uncle (PW-4) creates a serious doubt regarding the credibility of the prosecution story.

18. Now, coming to the other aspects of the evidence of PW-3, she deposed in her examination-in-chief that the appellant and his companions first took her to Ghogha railway station, from where the appellant took her to Ranchi, where she was kept in a rented room. It is an admitted position that the investigating officer did not make any effort to investigate the place where the victim was allegedly kept by the appellant in Ranchi. Thus, the prosecution failed to bring material evidence that was highly relevant to establish the



allegation of rape by the appellant on the victim while she was in his captivity, which lasted for several days in Ranchi. Here, it is relevant to mention that, as per the prosecution story emerging from the victim's evidence, she was first taken to a temple situated on the bank of the Geruwa River, where the appellant allegedly forcibly married her. It also came in the evidence of PW-4 that there are several houses of villagers in the victim's maternal grandmother's village, and the house of the victim's maternal grandmother is surrounded by the houses of her relatives. As per the allegation, the appellant, along with three associates, first entered the house of the victim's maternal grandmother, assaulted her, and thereafter dragged the victim towards the said temple. All these events allegedly took place inside the village and in close proximity to the houses of the victim's relatives and neighbours, yet the investigating officer did not examine any of them. This circumstance goes against the prosecution and creates doubt regarding the reliability of the prosecution story, particularly the allegations made by the victim.

19. Now, coming to the evidence of PW-4, who happens to be the maternal uncle of the victim. Though he claimed himself to be an eyewitness to the initial part of the



alleged occurrence but as discussed above in light of the evidence of the victim (PW-3), he does not appear to be an eyewitness to that part of the occurrence. He deposed in paragraph 2 of his examination-in-chief that the accused had threatened him with dire consequences if he attempted to lodge an FIR, and for that reason, he did not lodge the case and instead informed the victim's father about the occurrence. However, in paragraph 13 of his cross-examination, he stated that a period of four years had passed after the alleged occurrence and during the said period, the appellant had never threatened him. If the statements made by this witness (PW-4) in his examination-in-chief are believed, it appears that the alleged incident came to his knowledge on the same day, yet he did not take any step to lodge an FIR. His subsequent conduct also appears to be suspicious, as he stated in cross-examination that when the victim returned home, he did not inform the police.

20. Here, it is important to mention that, as per the evidence of this witness (PW-4), the victim returned home alone, and it is not the case of the prosecution that she was recovered by the police from the captivity of the appellant. PW-4 stated in his cross-examination that 10 to 20 blows with the



butt of a gun were inflicted upon his body by the accused, for which he was treated by a doctor, however, the prosecution failed to produce any medical evidence to substantiate this statement.

21. In the instant matter, the prosecution could not examine the main investigating officer. Therefore, with regard to the places of the alleged occurrence, particularly the reasons for not examining material witnesses, the appellant did not get an opportunity to cross-examine him, as a result of which the defence taken by the appellant stood prejudiced.

22. In order to shake the credibility of the victim, learned counsel appearing for the appellant has drawn the attention of this Court to the evidence of the victim's father and argued that the victim was not of good character, as her father deposed in cross-examination before the trial court that the victim had been married one year ago and she had a male child who was 5 to 6 months old at that time. In rebuttal to this statement, the prosecution has not offered any explanation.

23. As far as the evidence of PW-5, who medically examined the victim, is concerned, the learned APP has vehemently argued that the medical findings recorded by PW-5 corroborate the victim's allegation as to subjecting her to rape



by the appellant as an abrasion on outer vaginal orifice was found by the medical expert (PW-5). Merely in view of this medical evidence, particularly the presence of an abrasion on the outer vaginal orifice of the victim, the prosecution cannot be absolved from its burden to establish the allegation of rape beyond reasonable doubt especially when the victim does not appear to be a sterling witness like in the present matter.

23.1. Furthermore, the medical expert (PW-5) admitted in her examination-in-chief that she did not find any evidence of recent sexual intercourse with the victim.

23.2. Here, it is relevant to mention that the victim was examined on 08.05.2018, whereas the alleged occurrence is said to have taken place on 17.04.2018. With regard to the circumstances under which the victim returned from the alleged captivity of the appellant, no cogent evidence has been adduced by the victim or the other witnesses. Therefore, it is difficult to conclude that the said abrasion found on the private part of the victim was a result of the alleged sexual violence. Hence, the said contention does not assist the prosecution.

Conclusion :-

24. For the reasons discussed above, this Court is of the considered opinion that the victim, who is the star and most



material witness of the prosecution, does not qualify as a sterling witness. Her testimony is neither of such impeccable quality nor of such consistency as to inspire the confidence of the Court without hesitation. On the contrary, her evidence suffers from material inconsistencies and lacks the degree of certainty required of a sterling witness, as explained by the Supreme Court in paragraph 22 of the judgment in **Rai Sandeep @ Deepu v. State (NCT of Delhi), (2012) 8 SCC 21**.

24.1. Further, there are serious contradictions between her testimony and that of PW-4, who claimed to be an eyewitness to the alleged kidnapping. These contradictions strike at the root of the prosecution case and render the prosecution version doubtful.

24.2. The prosecution has, therefore, failed to establish the foundational facts necessary to invoke the statutory presumption under Section 29 of the Protection of Children from Sexual Offences Act, 2012. Consequently, the burden cannot be shifted upon the appellant, and the benefit of the statutory presumption cannot be extended to the prosecution in the facts and circumstances of the present case.

25. The judgment impugned convicting the appellant for the charged offences punishable under sections 363



of the IPC and section 4 of the POCSO Act does not inspire confidence of this court to affirm it and this court finds sufficient reasons as discussed above to set aside it. Hence, the impugned judgment of conviction and the consequent order of sentence passed by the learned Exclusive Special Court (POCSO Act)-cum-7th Additional District & Sessions Judge, Bhagalpur, in POCSO Case No. 1720 of 2018 arising out of Sanhaura P.S. Case No. 71 of 2018, are hereby set aside.

26. In the result, the instant appeal stands allowed.

27. The appellant is in judicial custody, so, he is directed to be released forthwith if his custody is not required in any other case.

28. Let the records of the trial court, along with a copy of this judgment, be transmitted forthwith to the trial court for needful and necessary compliance.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.07.2026
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